

(2022) 09 CHH CK 0041
In the Chhattisgarh High Court
Case No : Arbitration Appeal No.15 Of 2022

Union Of India

APPELLANT

Vs

Bhola Prasad Agrawal

RESPONDENT

Date of Decision : 21-09-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(h), 32, 33(1), 31(5), 33(4), 34, 34(1), 34(2), 34(3), 37
National Highways Act, 1956 — Section 3G
Limitation Act, 1963 — Section 5

Citation : (2022) 09 CHH CK 0041

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Ramakant Mishra, Abhishek Vinod Deshmukh, Anurag Singh, Rahul Jha

Final Decision : Dismissed

Judgement

1. The instant appeal has been preferred against the order dated 17.2.2020 (Annexure A1) passed by the District Judge, Ambikapur in M.J.C. (Civil) No.3 of 2020 arising out of the order dated 7.3.2018 (Annexure A4) passed by the Additional Commissioner/Arbitrator under the provisions of National Highways Act, 1956 (henceforth 'the Highways Act'). The District Judge/Principal Civil Court has rejected the application moved under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth 'the Arbitration Act') on the ground of limitation.

2. The short question involved for consideration in this arbitration appeal is whether the District Judge was justified in rejecting the appeal/application moved under Section 34(2) of the Arbitration Act only on the ground of limitation.

3. Facts of the case, in short, are that for upgradation and widening of National Highway No.78 (Ambikapur to Patthalgaon Section) certain acquisition took place wherein Respondent 1's land was also acquired and award was granted under

Section 3G of the Highways Act by Respondent 2 in Land Acquisition Case No.02/A-82/2015-16 (Annexure A2) and the amount for acquisition was granted to Respondent 1 vide order dated 17.10.2016. Respondent 1 being dissatisfied by the award passed by the competent authority filed application before the Arbitrator, Surguja Region, wherein after perusal of the claim proposed by Respondent 1, the Arbitrator vide order dated 7.3.2018 (Annexure A4) enhanced the award granted by Respondent 2. The Appellant being aggrieved by the order dated 7.3.2018 preferred an appeal under Section 34 of the Arbitration Act on 21.1.2020 (Annexure A5). Vide the impugned order dated 17.2.2020 (Annexure A1), the District Judge/Principal Civil Court, Ambikapur rejected the appeal/application only on the ground of limitation. Hence, this appeal moved by the Appellant under Section 37 of the Arbitration Act.

4. Learned Assistant Solicitor General appearing for the Appellant submitted that the order passed by the Arbitrator dated 7.3.2018 was never communicated to the Appellant. The Appellant came to know about the award passed by the Arbitrator only when Respondent 1 made a representation for disbursement of the amount of award. As the order was not delivered to the Appellant as contained in Section 31(5) of the Arbitration Act, the Appellant made applications for obtaining certified copy of the arbitral award vide applications dated 14.11.2019, 16.6.2021, 4.1.2022 and 4.2.2022. In spite of that, certified copy of the award dated 7.3.2018 has not been provided to the Appellant. It was further submitted that limitation should be counted from the date of getting certified copy of the award. The delivery of an award constitutes an important stage in the arbitral proceeding. Referring to the judgment of the Supreme Court in (2005) 4 SCC 239 (Union of India v. Tecco Trichy Engineers & Contractors), it was submitted that delivery of an arbitral award is not a matter of formality but of substance as it confers certain rights on the party. Further relying on the judgment in (2010) 12 SCC 210 (State of Himachal Pradesh v. Himachal Techno Engineers), it was argued that the time period for filing an application under Section 34 of the Arbitration Act would commence a day after the receipt of award by the party. In the instant case, the arbitral award was passed on 7.3.2018 whereas the Appellant has not been supplied a signed copy of the award as mandated by the law and procedure. To complete the arbitration proceeding, it is mandatory to supply the signed copy of award to both the parties and in the event of failure to perform the mandatory provision and procedure the arbitration proceeding cannot be held to be completed. The application under Section 34(2) of the Arbitration Act was also filed with a xerox copy of the award passed by the Arbitrator as the same was received by the Appellant through the representation made by Respondent 1. Therefore, it is prayed that the impugned order dated 17.2.2020 (Annexure A1) be set aside and the matter be remanded back to the District Judge for consideration in accordance with law.

5. Learned Counsel appearing for Respondent 1 opposed the arguments raised on behalf of the Appellant and argued that as contained in Section 34(3) of the

Arbitration Act maximum period is prescribed as 120 days for submission of application/appeal under Section 34(1) and (2) of the Arbitration Act.

6. Learned Counsel appearing for Respondent 2/State supported the impugned order.

7. I have heard and considered the rival submissions made on behalf of the parties and perused the material available with utmost circumspection.

8. In order to ascertain the correctness at the bar, it would be appropriate to notice Section 34(3) of the Arbitration Act, which runs thus:

"34. Application for setting aside arbitral award.—(1) xxxx (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

9. At this stage, it would also be appropriate to notice Section 31(5) of the Arbitration Act, which runs as under:

"31. Form and contents of arbitral award.—(1) xxxx xxxx

(5) After the arbitral award is made, a signed copy shall be delivered to each party."

10. A careful perusal of the above provisions shows that the limitation prescribed is 3 months and the Court is empowered to condone delay for a period of another 30 days thereof, i.e., 3 months plus 30 days and thereafter further delay cannot be condoned by the Court. It also shows that after making the arbitral award, delivery of a signed copy of the award to each of the parties is sine qua non.

11. The Supreme Court in (2008) 7 SCC 169 (Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department) while dealing with Section 34(3) of the Arbitration Act clearly held that the proviso to Section 34(3) of the Arbitration Act being a specific legislation excludes applicability of general provisions contained in Section 5 of the Limitation Act and, therefore, the Court has no discretion to extend limitation beyond 30 days prescribed in the proviso to Section 34(3) of the Arbitration Act even if sufficient cause is shown for it.

12. The Supreme Court, dealing with the issue in Himachal Techno Engineers case (supra), held as under:

"5. Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under

Section 34 of the Act. While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days, but not thereafter". Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.

7. Sub-section (3) of Section 34 of the Act provides that:

"an application for setting aside an award may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award". (emphasis supplied)

8. Sub-section (5) of Section 31 of the Act provides that after an arbitral award is made, a signed copy shall be delivered to each party. If one of the parties to arbitration is a Government or a statutory body or a corporation, which has notified holidays or non-working days, and if the award was delivered to it on a holiday, the question is: whether the date of physical delivery to the office of a party, should be considered as the date of receipt of the award by the party, or the next working day should be considered as the date of receipt?

9. In *Union of India v. Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239 this Court considered the meaning of the word "received" in Section 31(5) of the Act and held: (SCC pp. 243-44, paras 8-9)

"8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. ... The delivery of arbitral award to the party, to be effective, has to be 'received' by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

9. In the context of a huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34."

10. When the award is delivered or deposited or left in the office of a party on a non-working day, the date of such physical delivery is not the date of "receipt" of the award by that party. The fact that the beldar or a watchman was present on a holiday or non-working day and had received the copy of the award cannot be considered as "receipt of the award" by the party concerned, for the purposes of Section 31(5) of the Act. Necessarily the date of receipt will have to be the next working day."

13. In (2021) 4 SCC 602 (Chintels India Limited v. Bhayana Builders Private Limited), the Supreme Court held as under:

"11. A reading of Section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2-A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that Section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned – see State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 at para 5."

14. With regard to delivery of the arbitral award, the Supreme Court in (2012) 9 SCC 496 (Benarsi Krishna Committee v. Karmyogi Shelters Private Limited) held as under:

"15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression "party" as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision Karmyogi Shelters (P) Ltd. v. Benarsi Krishna Committee, AIR 2010 Del 156 of the Division Bench of the Delhi High Court impugned in these proceedings. The expression "party" has been amply dealt with in Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239 and also in State of Maharashtra v. ARK Builders (P) Ltd., (2011) 4 SCC 616, referred to hereinabove. It is one thing for an advocate to act and plead on behalf of a party in a proceeding and it is another for an advocate to act as the party himself. The expression "party", as defined in Section 2(1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of a vakalatnama. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the arbitral award on the party himself and not on his advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act.

16. The view taken in *Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566 is in relation to the authority given to an advocate to act on behalf of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the award has to be delivered to the party. Accordingly, when a copy of the signed award is not delivered to the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr Ranjit Kumar in *Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti*, AIR 1962 SC 666 was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also.”

15. In (2018) 15 SCC 178 (*Anilkumar Jinabhai Patel (Dead) Through Legal Representatives v. Pravinchandra Jinabhai Patel*), the Supreme Court held as follows:

“17. In *State of Maharashtra v. ARK Builders (P) Ltd.*, (2011) 4 SCC 616, while following the judgment in *Union of India v. Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239 held that the expression “... party making that application had received the arbitral award ...” cannot be read in isolation and it must be understood that Section 31(5) of the Act requires a signed copy of the award to be delivered to each party. By cumulative reading of Section 34(3) and Section 31(5) of the Act, it is clear that the limitation period prescribed under Section 34(3) of the Act would commence only from the date of signed copy of the award delivered to the party making the application for setting it aside.”

16. In (2021) 7 SCC 657 (*Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited*), a question arose before the Supreme Court that whether the period of limitation for filing a petition under Section 34 of the Arbitration Act would commence from the date on which the draft award was circulated to the parties or the date on which the signed copy of the award was provided.

Answering to the question, the Supreme Court observed thus:

“28. In *Union of India v. Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239, a three-Judge Bench of this Court held that the period of limitation for filing an application under Section 34 would commence only after a valid delivery of the award takes place under Section 31(5) of the Act. In para 8, it was held as under: (SCC p. 243, para 8)

“8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several

periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.” (emphasis supplied)

29. The judgment in *Union of India v. Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239 was followed in *State of Maharashtra v. ARK Builders (P) Ltd.*, (2011) 4 SCC 616, wherein this Court held that Section 31(1) obliges the members of the Arbitral Tribunal to make the award in writing and sign it. The legal requirement under sub-section (5) of Section 31 is the delivery of a copy of the award signed by the members of the Arbitral Tribunal/arbitrator, and not any copy of the award. On a harmonious construction of Section 31(5) read with Section 34(3), the period of limitation prescribed for filing objections would commence only from the date when the signed copy of the award is delivered to the party making the application for setting aside the award. If the law prescribes that a copy of the award is to be communicated, delivered, despatched, forwarded, rendered, or sent to the parties concerned in a particular way, and since the law sets a period of limitation for challenging the award in question by the aggrieved party, then the period of limitation can only commence from the date on which the award was received by the party concerned in the manner prescribed by law. The judgment in *Tecco Trichy* has been recently followed in *Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel*, (2018) 15 SCC 178.”

It was further observed in paragraph 34 as under:

“34. There is only one date recognised by law i.e. the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award.”

17. On examining the facts of the present case in the light of the above principles of law laid down by their Lordships of the Supreme Court, it appears that the arbitral award was passed on 7.3.2018, whereas the application under Section 34(2) of the Arbitration Act for setting aside the arbitral award along with the application under Section 34(3) of the Arbitration Act for condonation of delay was filed before the District Judge on 21.1.2020, i.e., after 1 year 10 months and 14 days of passing of the arbitral award. From perusal of the order-sheets of the arbitration proceeding, it also reveals that on 7.3.2018 after passing and signing the arbitral award, none of the parties of the arbitration proceeding was delivered signed copy of the arbitral award as contained in

Section 31(5) of the Arbitration Act.

18. As submitted by Learned Assistant Solicitor General for the Appellant, signed copy of the arbitral award or certified copy thereof has not been provided to the Appellant or is received by the Appellant till today. Despite that, the Appellant preferred the appeal/application under Section 34(2) of the Arbitration Act before the District Judge. If the Appellant has not received signed copy of the arbitral award as contained in Section 31(5) of the Arbitration Act, he had no occasion to prefer the appeal/application before the District Judge for setting aside the arbitral award. Despite that, he chose to prefer the appeal along with the application under Section 34(3) of the Arbitration Act for condonation of delay.

19. Perusal of the said application under Section 34(3) of the Arbitration Act also reveals that the Appellant has not raised any ground in his application that he has not been made available signed copy or certified copy of the arbitral award or he has received any of the same. This ground has been taken by the Appellant for the first time before this Court. Furthermore, from perusal of the relevant record of the Court of District Judge, it also appears that the Appellant filed the appeal/application along with the true copy of the arbitral award signed by the Arbitrator. In paragraph 9 of the appeal/application, it is mentioned that the Appellant came to know about passing of the arbitral award only when Respondent 1 moved an application before Respondent 2 for enhancement of the compensation granted vide the arbitral award dated 7.3.2018. It is further mentioned that thereafter legal opinion was sought from an Advocate on 20.1.2019. Thus, it is clear that on 20.1.2019, the Appellant was aware of the fact that the arbitral award was passed on 7.3.2018 and on 20.1.2019 legal opinion was given by the Advocate that an appeal/objection was to be preferred against the arbitral award. Despite that, the Appellant preferred the appeal on 21.1.2020, i.e., after 1 year of obtaining of the legal opinion from the Advocate. Before filing the appeal/objection, the Appellant only once, i.e., on 14.11.2019 applied for certified copy of the arbitral award. From the above, it is also clear that the Appellant applied for certified copy of the arbitral award after 10 months of obtaining the legal opinion from the Advocate. Thus, it is very clear that at every stage, the Appellant remained negligent.

20. True, in the instant case, the Appellant had not received or was not delivered signed copy of the award as contained in Section 31(5) of the Arbitration Act, but, when Respondent 1 moved the application before Respondent 2 for enhancement of the compensation on the basis of the arbitral award dated 7.3.2018 the Appellant became aware of passing of the arbitral award and on 20.1.2019 on which he got legal opinion from the Advocate he became aware that he had to file an appeal/objection against the arbitral award. Meaning thereby, on 20.1.2019 itself, the Appellant was very well aware that he had to prefer an appeal/objection against the arbitral award. True, as per the provisions of Section 31(5) of the Arbitration Act, it is necessary to deliver a signed copy of the arbitral award to each of the parties after passing of the arbitral award, but,

in the instant case, it has not been done so by the Arbitrator. This Court is of the view that provision of delivery of a signed copy of the arbitral award to each of the parties to the proceeding is meant for the purpose that the parties should aware of the contents of the award passed and if any of them has grievance, he can proceed further in accordance with law. As observed earlier, the Appellant had already become aware of the award when Respondent 1 moved the application before Respondent 2 for enhancement of the compensation on the basis of arbitral award dated 7.3.2018 and a legal opinion on this had also been obtained by the Appellant from the Advocate on 20.1.2019. Therefore, mere non-delivery of a signed copy of the award as contained in Section 31(5) of the Arbitration Act does not create any prejudice to the Appellant. Accordingly, in my considered view, the District Judge has rightly rejected the appeal/application moved under Section 34(2) of the Arbitration Act on the ground of limitation.

21. Consequently, I do not find any merit in the instant appeal. It is dismissed. The impugned order dated 17.2.2020 (Annexure A1) passed by the District Judge is affirmed.