

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 1

**APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT NO. 264 of 2023**

SMT. JASVINDER KAUR

v.

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND 2 OTHERS

For the Appellant : Ms. Gunjan Jadwani and Ms. Chandrika Patel,
Advocates
For the Respondents : Mr. Pranjal Mehrotra, Advocate

Last heard on: May 23, 2024
Judgement on: May 29, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. The instant application has been filed under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') by Smt. Jasvinder Kaur (hereinafter referred to as the 'Appellant') challenging the order dated February 7, 2023 passed by District Judge, Rampur by which the application under Section 34 of the Act filed by the Appellant was dismissed as time barred.

FACTS

2. I have laid down the factual matrix of the instant *lis* below:

- a. A notification under Section 3A of the National Highways Act, 1956 (hereinafter referred to as the 'NHAI Act') was issued by National Highways Authority of India (hereinafter referred to as the 'Respondent No. 1'). Subsequently, a notification under

Section 3D of the NHAI Act was published by the Respondent on June 17, 2013.

- b. Appellant filed an objection before the Competent Authority, claiming higher rate of compensation. Objection of the Appellant was rejected by the Competent Authority. Against the award passed by the Competent Authority, the Appellant preferred arbitration under Section 3G(5) of the NHAI Act.
- c. The Arbitrator passed an award on January 31, 2023 (back dated to October 11, 2022). Thereafter, the Appellant proceeded to challenge the said arbitral award under Section 34 of the Act before the District Judge, Rampur which was dismissed vide order dated February 7, 2023 as time barred.
- d. Aggrieved by the order dated February 7, 2023, the Appellant has preferred the instant appeal under Section 37 of the Act before this Court.

CONTENTIONS OF THE APPELLANT

3. Learned counsel appearing for the appellant has made the following submissions before this Court:

- a. District Judge, Rampur in its order dated February 7, 2023 has failed to return any finding as to when the signed copy of the award was served upon the Appellant. In the absence of any finding as to when the signed copy of the award was served upon the Appellant, it was erroneous on part of the District Judge, Rampur to return a finding that there was a delay in filing the application under Section 34 of the Act, in as much as Section 34(3) of the Act provides that the limitation for filing an application under Section 34 of the Act shall begin from the date when the arbitral award has been received by the aggrieved party.
- b. In the application filed by the Appellant under Section 34 of the Act before the District Judge, Rampur, it was specifically

pleaded by the Appellant that the award was not pronounced on October 11, 2022 which was the date fixed for pronouncement of award. The Appellant was making continuous efforts to enquire about the status of the award from court officer of the Arbitrator. Subsequently the award was pronounced only on January 31, 2023 and the certified copy of the same was made available to the Appellant only on February 1, 2023 pursuant to which the application under Section 34 of the Act was filed on February 7, 2023 and as such there is no delay in filing the application under Section 34 of the Act.

- c. Appellant also sent a letter to the Respondents on February 6, 2023 duly intimating them that the award was pronounced only on January 31, 2023 and as such the Appellant will be assailing the same by filing a case under Section 34 of the Act.
- d. District Judge, Rampur, without considering the averments of the Appellant, proceeded to dismiss the application under Section 34 of the Act vide its order dated February 7, 2023 without arriving at any finding as to when the Appellant became aware of the award.
- e. Reliance is placed upon the judgment of this Court in ***Smt. Sudha v. Union of India & 3 Others (Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 No. 271 of 2022)***.
- f. A bare perusal of the Counter Affidavit filed by the Respondents clearly goes to show that the Respondent No. 1 has not controverted the fact that the award was not pronounced by the Arbitrator on October 11, 2022 and instead the award was published only on January 31, 2023. No document, much less, any averment has been made by the Respondents to show that the award was published on October 11, 2022 and not January 31, 2023. Moreover, even the details of the order sheet of the arbitration case, filed by the Respondent No. 1, clearly

shows that there is no recording of judgment delivery/pronouncement of order on October 11, 2022.

- g. Respondents have sought to rely upon the judgment passed by the High Court of Chhattisgarh in *Union of India v. Bhola Prasad Agarwal & Anr.* reported in **2022 SCC OnLine Chh 1644** but the said judgment is distinguishable with the instant case, in as much as in the case before the High Court of Chhattisgarh, the Appellant therein was already aware of the award, which is not the circumstance in the instant case.
- h. Respondents have sought to rely upon the judgment passed by the Madras High Court in *Resurgent Power Projects Limited v. ABB India Limited* reported in **MANU/TN/1154/2020** which is distinguishable from the facts of the instant case. There is a categorical finding about awareness of the award by the appellant therein, which is absent in the instant case.
- i. Importance of delivering a signed copy of the award by the arbitrator to the party as per Section 31(5) of the Act has been considered by the High Court of Delhi in *Ministry of Health & Family Welfare & Anr. v. M/s. Hosmac Projects Division of Hosmac India Pvt. Ltd.* reported in **2023 SCC OnLine Del 8296**.
- j. In view of the aforesaid facts and circumstances, it is submitted that the present appeal filed by the Appellant under Section 37 of the Act be allowed and order dated February 7, 2023 passed by District Judge, Rampur be set aside.

CONTENTIONS OF THE RESPONDENTS

4. Learned counsel appearing for the Respondents has made the following submissions:

- a. Appellant was well aware that the matter was fixed for orders on October 11, 2022. Even, then the Appellant applied for the certified copy well after the expiry of three months limitation

period under Section 34(3) of the Act. This clearly shows that the Appellant was not interested in the matter. It must be borne in mind that this Court ought not to adopt an approach which helps a dishonest evader, and defeats the very intent of the legislation that is the Act. Had the Appellant been prudent, the Appellant would have applied for the certified copy of the award well within the three months period from October 11, 2022. The Appellant at this belated stage cannot contend that the Appellant had no knowledge of the award being passed on October 11, 2022. Not even a shred of evidence is on record to establish the bona fides of the Appellant.

- b. The District Judge, Rampur in its order categorically records that there is a delay of 37 days in filing the application under Section 34 of the Act. As there is 37 days delay, the instant Appeal deserves to be dismissed with costs.

CONCLUSION & ANALYSIS

5. The primary issue raised in the instant case is that whether the District Judge, Rampur was justified in dismissing the application filed by the Appellant under Section 34 of the Act since the Appellant was never served with a signed copy of the arbitral award, which is a mandatory requirement under Section 31(5) of the Arbitration Act. Relevant parts of Section 31(5) of the Arbitration Act have been extracted herein below for ease of reference:

“31. Form and contents of arbitral award. —

(1) ...

(2) ...

(3) ...

(4) ...

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

6. Section 31(5) of the Arbitration Act while seemingly procedural in nature, embodies broader objectives. The Hon’ble Supreme Court in ***Union of India -v- Tecco Trichy Engineers*** reported in **(2005) 4 SCC 239**

propounded the importance of the requirement to deliver a signed copy of the arbitral award on parties. Relevant paragraph of the said judgment reads as under:

“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.”

7. In ***Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited*** reported in (2021) 7 SCC 657, the Hon’ble Supreme Court reiterated that the limitation for filing objections to an arbitral award will only commence from the date of receipt of a signed copy under Section 31(5) of the Act. Relevant paragraph is extracted below:

“29. The judgment in Tecco Trichy Engineers [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239] was followed in State of Maharashtra v. ARK Builders (P) Ltd. [State of Maharashtra v. ARK Builders (P) Ltd., (2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413], 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 [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239] has been recently followed in Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141].”

8. Delivery of an arbitral award under Section 31(5) of the Act plays a pivotal role by initiating various stages of the arbitration process, setting limitation periods, and conferring rights upon the parties. In the realm of sports, where victory and defeat hang in balance, arbitration serves as the referee adjudicating disputes on the field of play. Section 31(5) of the Act acts as the final whistle, signalling the end of the match and the declaration of the winner. For the prevailing party, the delivery of the award marks the culmination of their efforts and provides them with a means of enforcing their rights against the losing party. Conversely, for the losing party, the delivery of the award represents the beginning of the period within which they may challenge the award on specified grounds under Section 34 of the Act.

9. The duty to deliver an arbitral award, a cornerstone of the arbitration process, is unequivocally cast upon the arbitral tribunal. Rooted in the foundational principles of arbitration, procedural fairness, and judicial integrity, this obligation embodies the essence of justice delivery and the sanctity of due process. Arbitration, as an alternative dispute resolution mechanism, operates on the premise of party autonomy, where disputing parties voluntarily submit their grievances to a neutral arbitrator or tribunal, with the expectation of a fair and impartial adjudication process. Within this framework, the arbitral tribunal assumes a quasi-judicial role, vested with the authority to render decisions that are binding on the parties, akin to the solemn pronouncements of traditional courts. Arbitration proceedings often involve parties with disparate levels of legal knowledge, resources, and bargaining power. In such circumstances, placing the onus on the parties to request a copy of the award could potentially disadvantage parties who may

be unaware of their rights or unable to navigate the intricacies of the arbitration process effectively. This could lead to situations where one party, typically the more legally sophisticated or resourceful party, obtains a copy of the award promptly, while the other party, due to lack of awareness or means, is left uninformed and disadvantaged. Such an outcome would not only be contrary to the principles of equality and fairness that underpin arbitration but could also undermine public confidence in the arbitration process as a whole.

10. The only exception to Section 31(5) of the Act arises in situations where a party has consciously accepted the award or acted upon it. This exception is grounded in the principles of fairness, finality, and efficiency in arbitration. When a party has consciously accepted the award, it indicates a clear and unequivocal acknowledgment of the tribunal's decision. This acceptance can manifest in various forms, such as a written statement agreeing to the award, compliance with the terms of the award, or any conduct that demonstrates acknowledgment of the award's finality. By consciously accepting the award, the party essentially waives any procedural rights related to the formal receipt of the signed award copy. This waiver is based on the principle that actions speak louder than words; if a party behaves in a manner that indicates acceptance, insisting on formal delivery becomes redundant. Similarly, if a party acts upon the award, such as by making payments or performing obligations stipulated by the award, this conduct also signifies acceptance. Acting upon the award reflects the party's intention to comply with the tribunal's decision, further reinforcing the notion that the formal delivery of the signed award is unnecessary. The rationale behind this exception aligns with the core objectives of arbitration, which include resolving disputes efficiently and minimizing procedural formalities that could hinder the swift execution of arbitral awards. This exception prevents unnecessary delays that could arise if parties who have already accepted or acted upon the award were still required to wait for the formal delivery of a signed copy. Moreover, this exception upholds the principle of estoppel, where a party is prevented from denying the validity of

the award after having accepted it or acted upon it. This is particularly important in maintaining the integrity and finality of arbitral decisions, as it prevents parties from engaging in conduct that would contradict their prior acceptance of the award.

11. It appears from the factual matrix of the instant case that a signed copy of the arbitral award was never delivered upon the Appellant by the Arbitrator. The Arbitrator had announced that the award was reserved on October 11, 2022 and also will be pronounced on October 11, 2022 but the Arbitrator did not deliver his award on that day. Instead, the award was actually pronounced on January 31, 2023 with a back date, which should not have been done. Appellant cannot be blamed for this lapse on part of the Arbitrator. Furthermore, what emerges from the Counter Affidavit filed by the Respondents is that there is no specific denial of the fact that although the award was scheduled to be pronounced on October 11, 2022 it was in reality pronounced on January 31, 2023. Relevant paragraph from the Counter Affidavit is extracted herein:

“That the contents of paragraph nos. 8,9,10,11,12,13 and 14 of the affidavits, as stated, are not admitted. In reply, it is respectfully submitted that from a perusal of the impugned judgment and order dated 7.2.2023 passed by the District Judge, Rampur, it is apparent that the appellant had not given any sufficient cause for the 37 days delay, nor any documents were filed in support of the Delay Condonation Application, and therefore, it is apparent that the application under Section 34(3) of the Arbitration and Conciliation Act, 1996 filed by the Appellant was liable to be rejected, and the same was rightly rejected by the Learned Court Below by the judgment and order dated 7.2.2023.”

12. The judgments in ***Bhola Prasad (supra)*** and ***Resurgent Power (supra)*** relied upon by the Respondents do not align with the factual circumstances in the instant case. In ***Bhola Prasad (supra)*** and ***Resurgent Power (supra)***, the Appellant was aware of the award and had knowledge of its content. However, nothing has been brought on record by the Respondents to establish that the Appellant in the instant case was aware of or had knowledge of the contents of the arbitral award. The lack of evidence supporting the Appellant's awareness of the arbitral awards creates a

substantial disparity between the circumstances of the present case and those in *Bhola Prasad (supra)* and *Resurgent Power (supra)* therefore making the law laid down in the aforesaid judgments inapplicable to the instant case. The Appellant cannot be placed at a disadvantage as a result of statutory lapse on part of the Arbitrator to not deliver a signed copy of the award under Section 31(5) of the Act.

13. The Appellant in the instant case received a certified copy of the arbitral award which was passed on January 31, 2023 (although dated October 11, 2022) on February 1, 2023. Thereafter, the Appellant preferred the application under Section 34 of the Act before the District Judge, Rampur on February 7, 2023 that is within the prescribed limitation period of three months as provided under Section 34(3) of the Act. Since, a certified copy of the arbitral award was received by the Appellant only on February 1, 2023, it is from that date only that the clock of limitation will start ticking.

14. The argument of the Respondents that the Appellant never requested for a certified copy of the award is of no consequence since Section 31(5) of the Act casts a duty upon the Arbitrator to deliver the award. Section 31(5) of the Act unequivocally imposes an obligation upon the Arbitrator to deliver a signed copy of the arbitral award to each party involved in the arbitration. This statutory duty is not contingent upon a party's request for the award; rather, it is an imperative that must be fulfilled by the Arbitrator irrespective of any such request. The failure to comply with this statutory obligation can lead to significant procedural irregularities, potentially undermining the arbitral process and the enforceability of the award. The eventual pronouncement of the award on January 31, 2023, with a backdate, introduces a further layer of procedural irregularity. The practice of backdating an arbitral award is inherently problematic as it can obscure the actual timeline of the arbitral proceedings, potentially affecting the parties' rights and obligations. In this case, the backdated pronouncement of the award could mislead the parties regarding the timeline for challenging or enforcing the award, thereby affecting their legal recourse.

15. In light of the aforesaid, the instant Appeal under Section 37 of the Act is allowed and the order dated February 7, 2023 passed by the District Judge, Rampur is set aside. This Court directs the District Judge, Rampur to adjudicate the application filed by the Appellant under Section 34 of the Act on merits expeditiously and preferably, within a period of 6 months from the date of receipt of a certified copy of this order.

16. Accordingly, the instant appeal is allowed. There shall be no order as to the costs.

29.5.2024

Kuldeep

(Shekhar B. Saraf,J.)