

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 1

**APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT NO. 8 of 2020**

BHARATIYA RASHTRIYA RAJMARG PRADHIKARAN

v.

NEERAJ SHARMA AND OTHERS

For the Appellant : Sri Pranjal Mehrotra, Advocate
For the Respondents : Ms. Shalini Goel, Advocate

Last heard on May 16, 2024
Judgement on May 24, 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 'Arbitration Act') against the judgment and order dated November 16, 2019 passed by the District Judge, Mathura rejecting the application filed by Bharatiya Rashtriya Rajmarg Pradhikaran (hereinafter referred to as the 'Appellant') under Section 34 of the Arbitration Act.

FACTS

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

- (a) A notification was issued under Section 3A of the National Highways Act, 1956 (hereinafter referred to as the 'NHAI Act') on December 4, 2009 followed by a declaration dated June 25, 2010 under Section 3D of the NHAI Act in respect of the land in question. Thereafter, the Competent Authority declared the

award determining the amount of compensation in respect of the land in question under Section 3G of the NHAI Act.

- (b) Against the award of the Competent Authority, the Respondents filed a petition under Section 3G(5) of the NHAI Act before the Arbitrator (Additional Commissioner (Administration), Agra Division, Agra). The Arbitrator published an award on July 28, 2016 and remanded the matter to the Competent Authority.
- (c) The appellant filed an application under Section 34 of the Arbitration Act against the award dated July 28, 2016 which was rejected vide judgment and order dated November 16, 2019.
- (d) Against the judgment and order dated November 16, 2019, the appellant has filed the instant application under Section 37 of the Arbitration Act before this Court.

CONTENTIONS OF THE APPELLANT

3. Shri Pranjal Mehrotra, learned counsel appearing for the appellant has made the following submissions before this Court:

- (i) As per the provisions of Section 3G(5) of the NHAI Act, the Arbitrator ought to have determined the amount itself. As such, the Arbitrator was not justified in remitting the matter back to the Competent Authority.
- (ii) Learned District Judge acted with patent illegality in passing the impugned judgment and order dated November 16, 2019.
- (iii) The appellant never received a signed copy of the arbitral award dated July 28, 2016 which is a mandatory requirement under Section 31(5) of the Arbitration Act. As such, the Learned District Judge was not justified in dismissing the application filed by the appellant as time barred.

CONTENTIONS OF THE RESPONDENT

4. Learned counsel appearing for the Respondents has made the following submission before this Court:

The appellant had knowledge of the arbitral award dated July 28, 2016 and was fully aware of the same. As such, it is not open for it to now argue that since the appellant did not receive a signed copy of the award dated July 28, 2016, the period of limitation for challenging an arbitral award under Section 34 of the Act never started. Learned District Judge did not err in dismissing the application filed by the appellant under Section 34 of the Act as time barred. Reliance in this regard is placed upon the judgment of the High Court of Chhattisgarh in *Union of India -v- Bhola Prasad Agrawal* reported in *2022 SCC OnLine Chh 1644*.

ANALYSIS

5. I have heard the learned counsel appearing for the parties and perused the materials on record.

6. The primary issue raised in the instant case is that whether or not the Learned District Judge was justified in dismissing the application filed by the appellant under Section 34 of the Arbitration 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.”

7. 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.”

8. Delivery of an arbitral award under Section 31(5) of the Arbitration 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 Arbitration 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 Arbitration Act.

9. The Bombay High Court in ***Rahul -v- Akola Janta Commercial Co-operative Bank Ltd.*** reported in **2023 SCC OnLine Bom 814** espoused on the significance of delivering the signed copy of an award under Section 31(5) of the Arbitration Act to the party, relevant paragraphs thereof read as under:

“24. The entire object and purport of Section 31(5) of the A & C Act, when it states that a signed copy of the award shall be delivered to each party, appears to be, that the party to the award should be made known the nature, effect and import of the award, so that each party, may then take a decision whether to challenge the award further by instituting appropriate proceedings under Section 34 of the A & C Act, before the Court, or in case there are any inaccuracies, corrections, interpretations or need for an additional award therein, to get it corrected by filing an application under Section 33 of the A & C Act, before the Arbitrator. This also so, for the reason that both Section 33(1) and 34(3) of the A & C Act, provide for limitations of time in this regard to approach either the Arbitral Tribunal or the Court for the said purpose and therefore the delivery of the award as contemplated in Section 31(5) has the effect of setting in motion these time periods, within which the remedies available are to be availed of by the party. It is in this context it has to be understood that the signed copy of the award has to be delivered to the ‘party’, as defined in Section 2(h) of the A & C Act, so that a decision can be taken by the ‘party’ regarding the future course of action to be adopted, within the time frame as stipulated by the provisions of the Statute. The delivery of the signed copy of the award, is therefore information, brought to the notice and knowledge of each party, as to the contents of the award, so as to make the ‘party’, aware that the limitation to raise a challenge, has started to run, which knowledge/information is equally available to the ‘party’, when it receives the certified copy of the award signed by the Arbitrator. The purpose of the provision, of imparting knowledge to the ‘party’, as to the contents of the award, is achieved whether a signed copy is delivered or the certified copy of the signed award is obtained by the ‘party’. In either case knowledge/information as to the contents of the award stands attributed to the ‘party’, and the time as provided in Section 33(1) and 34(3) of the A & C Act, begins to run therefrom. The situation is quite different when the award is not delivered to the ‘party’, or obtained by the ‘party’, but is delivered or obtained to/by the

counsel or agent of the 'party' as the knowledge of the 'party', as defined in Section 2(1)(h) of the A & C Act, is what is contemplated by Section 31(5), as in that circumstances a plea can successfully be raised by the 'party', of non-compliance with the requirement of Section 31(1) which would entitle it to claim that the time for challenging the award under Section 34(3) or for correction/interpretation/modification of the award or passing of an additional award did not begin to run.

25. All the judgments cited by Mr. Bhattad, learned counsel for the petitioner, contemplate the requirement of Section 31(5) vis-a-vis the time as prescribed in Section 34(3) for challenging of the award. In fact, the factual position in Anilkumar Jinabhai Patel (supra) is quite similar to the factual position as extant in the present matter.

26. Section 32(1) of the A & C Act pressed into service by Mr. Bhattad, learned counsel for the petitioner, merely contemplates that the arbitration proceedings stand terminated by the final arbitral award, or by an order of the Arbitral Tribunal under sub-section (2) thereof. It does not contemplate that the arbitration proceedings stand terminated, only upon delivery of the arbitral award, as contemplated by Section 31(5) and therefore nothing turn around the language of Section 32(1) insofar as the present issue is concerned.

27. Section 36(1) of the A & C Act, provides that when the time for making an application to set aside the arbitral award under Section 34 has expired, then subject to Section 36(2) the award shall be enforced as a decree under the Code of Civil Procedure. The contention of Mr. Bhattad, learned counsel for the petitioner, is that since the signed copy of the award was not delivered to the petitioner, in terms of Section 31(5) of the A & C Act, the time for making the application for setting aside the arbitral award had not expired and the execution proceedings were therefore infirm, is in my considered opinion taking a too literal and narrow view of the language of Section 31(5) of the A & C Act, which would defeat the very purpose and object of the Act itself, as once a 'party', is held to have received/obtained the signed copy of the award, maybe a certified copy, as indicated above the information regarding the contents of the award stands attributed to the party, and therefore the time, would begin to run for raising a challenge to the award. Once that time has expired, it cannot be permitted to be said that though a certified signed copy was obtained by the 'party', from the Arbitrator, still the time under Section 31(1) or 34(3) of the A & C Act, did not run and expire, as a signed copy of the award, in terms of Section 31(5) was not delivered to the 'party'. It is a settled position of law, that where the literal meaning of a provision, entails in doing violence to the meaning, intent and purpose of the Act, it

would call for a purposeful and constructive meaning to be given to the language of the provision.”

10. The importance of Section 31(5) cannot be overstated as it initiates several procedural timelines. These include the periods within which parties may seek to correct, interpret, or request an additional award under Section 33 of the Arbitration Act, or challenge the award under Section 34 of the Arbitration Act. The delivery of the signed copy of the arbitral award is not a mere formality; it is a substantive requirement that marks the conclusion of the arbitration proceedings and the commencement of potential post-award actions. In *Union of India v. Tecco Trichy (supra)*, the Hon’ble Supreme Court emphasized that the delivery of an arbitral award is substantive, as it activates the commencement of several critical timelines. This stage marks the termination of the arbitral proceedings and sets the clock ticking for any remedial actions available under the Arbitration Act.

11. However, interpreting Section 31(5) too literally in all cases may lead to unjust outcomes, undermining the fundamental objectives of arbitration. The literal adherence to this provision might be used strategically by parties to delay the enforcement of the award, thus defeating the principle of expeditious dispute resolution that arbitration seeks to promote.

12. In the instant case, the appellant has assailed the order of the Learned District Judge based on the assertion that they never received a signed copy of the arbitral award. However, as highlighted by the Learned District Court, it is essential to consider several critical facts. Relevant portions from the impugned order dated November 16, 2019 passed by the Learned District Judge Court under Section 34 of the Arbitration Act are delineated below:

“इस पत्र से यह स्पष्ट है कि, मध्यस्थ के निर्णय दिनांकित 28.07.2016 के परिप्रेक्ष्य में परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, सी०एम०यू०, मथुरा द्वारा अपने पत्रांक 44271 दिनांकित 22.05.2017 द्वारा विशेष भूमि अध्याप्ति अधिकारी को अनुपूरक अभिनिर्णय घोषित कर उपलब्ध कराने हेतु पत्र भेजा गया है एवं उसके अनुपालन में सक्षम प्राधिकारी/विशेष भूमि अध्याप्ति अधिकारी द्वारा धनराशि का गणना प्रपत्र तथा धनराशि की गणना दिनांक 31.05.2017 को परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, सी०एम०यू०, मथुरा द्वारा प्रेषित की गयी है, जिससे यह स्पष्ट है कि , मौजूदा आपत्तिकर्ता यानि परियोजना

निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, सी०एम०यू०, मथुरा द्वारा मध्यस्थ के निर्णय दिनांकित 28.07.2016 को स्वीकार किया गया है एवं उसके अनुपालन में प्रतिकर की गणना करने हेतु सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी, संयुक्त संगठन, मथुरा को पत्र प्रेषित किया गया है एवं इस पत्र के तथा मध्यस्थ महोदय के पंचाट निर्णय दिनांकित 28.07.2016 के अनुपालन में सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी, संयुक्त संगठन ने तहसीलदार छाता से स्थलीय जाँच कर एवं इस जाँच की आख्या के अनुसार स्थल का निरीक्षण कर जाँच आख्या परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, फरीदाबाद को प्रेषित की। स्थलीय जाँच आख्या एवं सर्वेयर की जाँच आख्या के अनुसार मध्यस्थ महोदय के निर्णय दिनांकित 28.07.2016 के अनुपालन में सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी द्वारा अनुपूरक अधिनिर्णय घोषित कर मुवलिंग 29,04,000/- का प्रतिकर विपक्षीगण संख्या 1 लगायत 4 हेतु निर्धारित किया गया है एवं उक्त प्रतिकर निर्धारण मध्यस्थ महोदय के अनुमोदन हेतु भी प्रेषित किया गया है, जिसके सम्बन्ध में मध्यस्थ ने अनुमोदन का कोई प्रावधान न होने का कथन करते हुए सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी, संयुक्त संगठन, मथुरा को पत्र वापस प्रेषित किया गया है, जिससे स्पष्ट है कि, मध्यस्थ पंचाट निर्णय दिनांकित 28.07.2016 का किरयान्वयन हो चुका है। इस प्रकार प्रश्नगत मध्यस्थ निर्णय दिनांकित 28.07.2016 की पहले से ही जानकारी होने तथा इसके अनुपालन हेतु दिनांक 22.05.2017 को सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी, संयुक्त संगठन, मथुरा को मौजूदा आपत्तिकर्ता द्वारा पत्र भेजने तथा सक्षम अधिकारी/विशेष भूमि अध्याप्ति अधिकारी, संयुक्त संगठन, मथुरा के पत्रावली पर मौजूद पत्र दिनांकित 31.05.2017 एवं गणना प्रपत्र के अवलोकन से स्पष्ट है कि, मध्यस्थ के पंचाट निर्णय दिनांक 28.07.2016 का किरयान्वयन हो चुका है, अतः मध्यस्थ के पंचाट निर्णय दिनांकित 28.07.2016 का दिनांक 31.05.2017 से पूर्व अनुपालन हो जाने के कारण दिनांक 01.11.2017 को भारतीय राष्ट्रीय राजमार्ग प्राधिकरण द्वारा मध्यस्थ निर्णय दिनांकित 28.07.2016 के विरुद्ध प्रस्तुत मौजूदा आपत्ति अंतर्गत धारा 34 मध्यस्थ सुलह अधिनियम 1996 कानूनन अपोषणीय हो जाती है, अतः मौजूदा आपत्ति अंतर्गत धारा 34 मध्यस्थ सुलह अधिनियम 1996 द्वारा, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण द्वारा परियोजना निदेशक, सी०एम०यू० मथुरा, फरीदाबाद, हरियाणा कानूनन पोषणीय न होने के कारण निरस्त होने योग्य है।

आदेश

आपत्तिकर्ता भारतीय राष्ट्रीय राजमार्ग प्राधिकरण की आपत्ति कानूनन पोषणीय न होने के कारण निरस्त की जाती है।

पत्रावली नियमानुसार अभिलेखागार प्रेषित हो।”

13. What emerges from the order of the Learned District Judge is that the appellant was fully aware of the contents of the arbitral award dated July 28, 2016 and had acted on it, thereby demonstrating a practical acknowledgement of the arbitral award. In view of the award dated July 28,

2016, the Appellant through its letter dated May 22, 2017 asked the Special Land Acquisition officer to calculate the compensation amount and publish a supplementary award. In compliance of the same, the Competent Authority that is the Special Land Acquisition Officer calculated the amount of compensation to be paid and sent it to the Appellant on May 31, 2017. What is evident is that, the Appellant, even despite the non-receipt of a signed copy of the arbitral award dated July 28, 2016 accepted the same and acted upon it. Therefore, the appellant cannot now evade the consequences by exploiting a procedural technicality regarding the non-receipt of a signed copy. It is crucial to interpret Section 31(5) of the Arbitration Act in a matter that aligns with the Arbitration Act's overarching goals of promoting fairness and expeditious dispute resolution.

14. A literal interpretation, which ignores the practical reality that the party was aware of the arbitral award and acted upon it, would be contrary to the spirit of the Arbitration Act. This was aptly summarized by the Bombay High Court in *Akola Janta (supra)* when it remarked that a narrow view of Section 31(5) of the Arbitration Act would defeat the Arbitration Act's purpose if it allowed a party to delay proceedings unjustly by claiming non-receipt of a signed copy despite having knowledge of the award's contents.

15. In *Bhola Prasad (supra)*, the High Court of Chhattisgarh while dealing with a case wherein the signed copy of the award was not delivered to the appellant therein in accordance with Section 31(5) of the Arbitration Act, held that the Court under Section 34(2) of the Arbitration Act was justified in dismissing the application as time barred since the appellant therein despite non delivery of the signed copy of the arbitral award was aware of its contents. Relevant paragraph is extracted herein:

“21. 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.”

16. A party which has knowledge of the contents of an arbitral award, understands its implications, and begins to act upon it demonstrates practical acknowledgment of the arbitral award. This behaviour effectively nullifies any subsequent claims of non-receipt of a signed copy, as the party has already engaged with the award substantively. Courts have often observed that practical engagement with an arbitral award signifies awareness, which should trigger the timelines for any further legal action. The emphasis on acting upon the award is crucial. For instance, if a party begins to comply with the award's directives or uses the award's findings in subsequent actions, it indicates a de facto acceptance of the award. Such actions provide clear evidence that the party has understood and accepted the award's contents, thus making any later claims of non-receipt appear disingenuous.

17. The doctrine of estoppel is vital in maintaining procedural fairness and integrity within the arbitration process. Estoppel prevents a party from taking inconsistent positions that would harm the opposing party or undermine the legal process's credibility. In arbitration, this doctrine ensures that a party cannot claim ignorance or non-receipt of an award after having acted upon it. Estoppel operates to uphold fairness by ensuring that parties cannot benefit from their own wrongdoing or negligence. If a party, aware of the award, delays raising objections or seeks to take advantage of procedural nuances to avoid compliance, estoppel can prevent such tactics. This doctrine aligns with the fundamental principles of justice and equity, ensuring that parties engage with the arbitration process honestly and transparently.

18. Courts have often highlighted that a purely literal interpretation, ignoring the practical realities and broader legislative objectives, can lead to unjust outcomes. A strict literal interpretation could enable parties to delay or obstruct the arbitration process by claiming non-receipt of a signed copy despite being aware of the award's contents and having acted upon it. The legislative intent behind Section 31(5) of the Arbitration Act is to ensure that parties are adequately informed about the award to take necessary legal actions within prescribed timelines. Therefore, an interpretation that considers the party's actual awareness and actions, even if a signed copy was not formally received, aligns better with the legislative intent and the principles of justice and equity.

19. The Learned District Judge, Mathura, was justified in dismissing the appellant's application under Section 34 of the Arbitration Act as time-barred. The appellant's awareness of the award and its subsequent actions negate the claim of non-receipt of a signed copy. The principle of estoppel further prevents the appellant from contradicting their previous acknowledgment of the award. A balanced interpretation of Section 31(5) of the Arbitration Act supports the Learned District Judge's decision, ensuring procedural fairness and upholding the Arbitration Act's objectives of expeditious dispute resolution. The appellant's claim of patent illegality in

the Learned District Judge's judgment lacks substance. The decision to dismiss the Section 34 application as time-barred was grounded in the appellant's evident awareness of the award and their subsequent actions.

20. In light of the same, this Court finds no reason to interfere with the impugned judgment and order dated November 16, 2019 passed by the Learned District Judge, Mathura under Section 34 of the Arbitration Act. The arbitral award dated July 28, 2016 having attained finality, cannot be questioned at this stage.

21. Accordingly, the instant application is dismissed. There shall be no order as to the costs.

24.05.2024

Kuldeep

(Shekhar B. Saraf, J.)