

UNION OF INDIA
v.
TECCO TRICHY ENGINEERS & CONTRACTORS

MARCH 16, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND P.P. NAOLEKAR, JJ.]

Arbitration and Conciliation Act, 1996 :

ss. 2(h), 31(5), 34(1) read with s.34(3) proviso—Limitation for filing application for setting aside the award—Delivery of copy of award to “party”—“Party” making application for setting aside award—Arbitration proceedings between Railways and contractor—Copy of award delivered in office of General Manager, Railways—Later, copy of award delivered by arbitral tribunal to Chief Engineer concerned—Chief Engineer filing application for setting aside the award alongwith an application for condonation of delay—Application contested as being beyond the period of limitation from the date of receipt of copy of award in Office of General Manager—Held, in the context of State or a department of Government, more so, a large organization like Railways, “party” as referred to in s.2(h) read with s.31(5) and s.34(3) has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the arbitrator—On facts, the Chief Engineer was representing the Union of India and notices of the proceedings were served on him—Subject matter of arbitration was related to his department—He was directly concerned with the arbitration—Delivery of copy of award within the meaning of s.31(5) shall be deemed to have taken place on the date Chief Engineer received copy of the award as that date would be the starting point of limitation to challenge the award—Thus calculated, the delay in filing application u/s 34(1) deserves to be condoned—Judicial Notice.

In a disputed claim arising out of a work contract between appellant-Railways and respondent-contractor, the General Manager, Southern Railways referred the matter to an arbitral tribunal, which gave its award, a copy of which was delivered in the office of the General Manager, Southern Railways on 12.3.2001. The Chief Engineer of the department concerned received the copy of the award from the arbitral tribunal on

- A 19.3.2000, and presented an application on 10.7.2001 for setting aside the said award under s.34 of the Arbitration and Conciliation Act, 1996, alongwith an application for condonation of 27 days delay calculated from 19.3.2001, the date on which he received the copy of the award. The contractor contested the application for condonation of delay on the ground that limitation was to be calculated from 12.3.2001, the date on which copy of the award was delivered in the office of the General Manager, Southern Railways, and thus calculated, there being 34 days' delay, the proviso appended to sub-s.(3) of s.34 of the Act did not permit any delay beyond 30 days' to be condoned by the Court. The single Judge of the High Court accepted the stand of the contractor. In appeal, the Division Bench of the High Court upheld the decision. Aggrieved, the Railways filed the present appeal.

Allowing the appeal, the Court

- D HELD : 1.1. In the instant case, it is to be seen as to what is the meaning to be assigned to the term "party" and "party making the application" for setting the award in the context of the State or a department of the Government, more so, a large organization like the Railways. In such organizations "party" as referred to in s.2 (h) read with s.34 (3) and sub-s. (5) of s.31 of the Arbitration and Conciliation Act, 1996 has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the arbitrator. [987-E; 988-D-E]

- F 1.2. Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the Railways before arbitration. The General Manager, with executive workload of entire Division cannot be expected to know all the niceties of the case pending before the arbitral tribunals or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of the departmental head who is directly concerned with the subject matter as well as arbitral proceedings. [988-B-C]

- H 1.3. The delivery of an arbitral award under sub-s.(5) of s.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. In the context of a huge organization like 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-s. (1) or (5) of s.33 or under sub-s.(1) of s.34. [988-E-F; 989-A]

1.4. In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. The Chief Engineer is directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The delivery of the copy of the award within the meaning of sub-s. (5) of s.31 shall be deemed to have taken place on the date the Chief Engineer received the copy of the award. [989-B-G]

1.5. The High Court erred in holding the application under s.34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of sub-s.(3) of s.34. There was a delay of 27 days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under sub-s. (1) of s.34 of the Act filed on behalf of the appellant deserves to be heard and decided on merits. [989-H; 990-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1784 of 2005.

From the Judgment and Order Dated 19.6.2002 of the Madras High Court in O.S.A. No. 195 of 2002.

K. Radhakrishnan, T.A. Khan, S.N. Terdal and Mrs. Anil Katiyar for the Appellant.

Arvind Kumar, Ms. Poonam Prasad and Ms. Laxmi Arvind for the Respondent.

The Judgment of the Court was delivered by

P.P. NAOLEKAR, J. Leave granted.

The Southern Railway entered into a contract with respondent No. 1 for gauge conversion from Madras Beach to Trichchirappalli Villupuram Section

- A - construction of a bridge being agreement No. 136/Cn/95 dated 29.9.95. On behalf of the Southern Railway, the contract was signed by the then Chief Project Manager, presently, the Chief Engineer. Disputes arose touching the claims arising out of the execution of works under the contract and in exercise of the power conferred by the arbitration clause contained in the contract, the General Manager, Southern Railway appointed an arbitrator as also a Presiding Arbitrator, while respondent No. 1 nominated its arbitrator. The arbitral tribunal so constituted gave its award on 10/11.03.2001 and signed the same. A copy of the award was delivered in the office of the General Manager, Southern Railway on 12.3.2001. The receipt seems to have been acknowledged by someone in the office, probably the inwards clerk. The Chief Engineer received the copy of the award from the tribunal on 19.3.2001.

- On 10.7.2001, the Chief Engineer presented an application for setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act' for short). An application seeking condonation of delay under sub-Section (3) of Section 34 was also filed. The delay sought to be condoned was of 27 days only based on an assumption that the copy of the award was received on 19.3.2001. The application for condonation of delay was contested by respondent No. 1 on the ground that arbitral award was delivered on 12.3.2001 and calculated from that date there was a delay of 34 days in filing the application beyond the period of limitation prescribed by sub-Section (3) of Section 34 of the Act while the proviso appended to the said provision does not permit any delay beyond the period of 30 days being condoned by the Court. The objection raised by respondent No. 1 has found favour with the learned Single Judge of the High Court, who rejected the application holding it as barred by limitation. The decision has been upheld by the Division Bench of the High Court. Feeling aggrieved, the appeal has been filed by special leave.

- The short question which arises for decision in this appeal is : which is the effective date on which the appellant was delivered with and received the arbitral award as that would be the date wherefrom the limitation within the meaning of sub-Section (3) of Section 34 of the Act shall be calculated.

Sub-sections (1) and (3) of Section 34 are relevant for our purpose and are reproduced hereunder :

34. *Application for setting aside arbitral award.*- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-

section (2) and sub-section (3).

XXX

XXX

XXX

XXX

(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."

Form and contents of arbitral award are provided by Section 31 of the Act. The arbitral award drawn up in the manner prescribed by Section 31 of the Act has to be signed and dated. According to sub-Section (5), "after the arbitral award is made, a signed copy shall be delivered to each party". The term "party" is defined by clause (h) of Section 2 of the Act as meaning 'a party to an arbitration agreement'. The definition is to be read as given unless the context otherwise requires. Under sub-Section (3) of Section 34 the limitation of 3 months commences from the date on which "the party making that application" had received the arbitral award. We have to see what is the meaning to be assigned to the term "party" and "party making the application" for setting aside the award in the context of the State or a department of the Government, more so a large organization like the Railways.

It is well-known that the Ministry of Railways has very large area of operation covering several Divisions, having different Divisional Heads and various departments within the Division, having their own Departmental Heads. The General Manager of Railways is at the very apex of the Division with a responsibility of taking strategic decisions, laying down policies of the Organisation, giving administrative instructions and issuing guidelines in the organisation. He is from elite managerial cadre which runs entire Organisation of his Division with different Departments, having different Departmental Heads. The day to day management and operations of different departments rests with different Departmental Heads. Departmental Head is directly connected and concerned with the departmental functioning and is alone expected to know the progress of the matter pending before the arbitral Tribunal concerning his department. He is the person who knows exactly

- A where the shoe pinches, whether the arbitral award is adverse to Department's interest. Departmental Head would naturally be in a position to know whether the Arbitrator has committed a mistake in understanding Departmental's line of submissions and the grounds available to challenge the award. He is aware of the factual aspect of the case and also the factual and legal aspects of the questions involved in the arbitration proceedings. It is also a known fact and
- B Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the Railways before arbitration. The General Manager, with executive work load of entire Division cannot be expected to know all the niceties of the case pending before the arbitral tribunal or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of
- C the Departmental Head. General Manager, being the head of the Division, at best is only expected to take final decision whether the arbitral award is to be challenged or not on the basis of the advise and the material placed before him by the person concerned with arbitration proceedings. Taking a final decision would be possible only if the subject matter of challenge namely,
- D the arbitral award is known to the Departmental Head, who is directly concerned with the subject matter as well as arbitral proceedings. In the large organizations like Railways, "party" as referred to in Section 2(h) read with Section 34(3) of the Act has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings
- E before the Arbitrator.

- 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
- F 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
- G 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.
- H

In the context of a huge organization like 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.

In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19.3.2001 would be the starting point of limitation to challenge the award in the Court.

We cannot be oblivious of the fact of impersonal approach in the Government departments and organizations like Railways. In the very nature of the working of Government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have taken place unless the Chief Engineer had received the copy of the award when only the delivery of the award within the meaning of sub-Section (5) of Section 31 shall be deemed to have taken place.

The learned Single Judge of the High Court as also the Division Bench

- A** have erred in holding the application under Section 34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of sub-Section (3) of Section 34. There was a delay of 27 days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under sub-Section (1) of Section 34 of the Act
- B** filed on behalf of the appellant deserves to be heard and decided on merits.

- C** The appeal is allowed. The application under Section 34(1) filed on behalf of the appellant shall stand restored in the High Court, to be heard and decided in accordance with law by the learned Single Judge. No order as to costs.

R.P.

Appeal allowed.