

AFR

Reserved on 25.09.2024

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 305 of 2024 (Leading)

Appellant :- Bharat Sanchar Nigam Limited and another
Respondent :- Chaurasiya Enterprises and 2 others

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 306 of 2024 (Connected C1)

Appellant :- Bharat Sanchar Nigam Limited Bsnl Through Its Chairman And Managing Director and Another
Respondent :- Chaurasiya Enterprises Through Its Proprietor Sri Amar Bahadur Chaurasiya and 2 others

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 307 of 2024 (Connected C2)

Appellant :- Bharat Sanchar Nigam Limited And Another
Respondent :- Chaurasiya Enterprises and 2 others

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 308 of 2024 (Connected C3)

Appellant :- Bharat Sanchar Nigam Limited Bsnl And Another
Respondent :- Chaurasiya Enterprises Village Shahjipur Post Tharwai District Allahabad and 2 others

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 310 of 2024 (Connected C4)

Appellant :- Bharat Sanchar Nigam Limited Bsnl And Another
Respondent :- Chaurasiya Enterprises Village Shahjipur Post Tharwai District Allahabad and 2 others

Appearance:- B.K.Singh Raghuvanshi, Counsel for BSNL(Appellant),
Daya Shankar and Mahendra Kumar Mishra, Counsel for Respondents(Claimants)

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

(Per: Hon'ble Vikas Budhwar,J.)

1. Challenge in these appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'A & C Act 1996') are the orders of the Commercial Court rejecting the objections preferred by the Bharat Sanchar Nigam Ltd. (in short 'BSNL') under Section 34 of the A & C Act, 1996 upholding the awards passed in favour of the Chaurasiya Enterprises (in short 'claimant').

2. Since common question of facts and law are involved in all the captioned appeals, thus, they are being decided by a common order.

Facts

3. Briefly stated facts, sans unnecessary details are that BSNL in the year 2015 in order to lay down underground Optical Fibre Cable in District Bhadoi floated tenders, seeking bids from the prospective bidders. The claimant is stated to have been issued work orders, however, owing to certain disputes/differences which arose between the parties in respect of different contracts, notices came to be issued by the claimants to the BSNL on 20.03.2019 to clear the outstanding dues within a period of 30 days and, in case, the said request is not acceded, then to appoint an arbitrator in term of Section 12(5) of the 7th Schedule of the A & C Act, 1996. A reminder was also sent by the claimant to the BSNL on 08.05.2019 and since nothing happened, the claimant approached this Court while filing an arbitration application purported to be under Section 11(4) of the A & C Act, 1996 for appointment of an arbitrator.

4. Sri Brahmdeo Mishra, a retired District Judge was appointed as the sole arbitrator. The arbitrator entered into the reference on 08.11.2019 and thereafter proceeded to pass awards in favour of the claimant.

5. Questioning the awards, objections under Section 34 of the A & C Act, 1996 came to be filed by the BSNL which was rejected by the Commercial Court, Varanasi.

6. Assailing the said orders, the present arbitration appeals have been preferred.

7. For the sake of clarity, the descriptions and the details of the proceedings which are subject matter of the present appeal are being recapitulated in the form of a tabular chart:-

A	B	C	D	E	F
Description of Appeals	Arbitration Case No.	Date of Award	Quantum of monetary benefits awarded to the claimant (in INR)	Number of objections under Section 34 of the A & C Act, 1996	Date of the order of rejection of the application under Section 34 of the A & C Act, 1996
Leading	3 of 2019	05.04.2021	83,23,416	13 of 2021	06.05.2024
Connected C1	6 of 2019	04.05.2021	15,24,931	14 of 2021	06.05.2024
Connected C2	5 of 2019	03.05.2021	6,01,516	15 of 2021	06.05.2024
Connected C3	4 of 2019	03.05.2021	13,96,465	12 of 2021	04.05.2024
Connected C4	7 of 2019	04.05.2021	5,04,568	11 of 2021	04.05.2024

Arguments of counsel for BSNL (Appellants)

8. Sri B.K. Singh Raghuvanshi, learned counsel for the BSNL has sought to argue that the orders of the Commercial Court rejecting the objections under Section 34 of the A & C Act, 1996 upholding the awards cannot be sustained for a single moment inasmuch as the Commercial Court, Varanasi has misconstrued the entire controversy

and has adopted an incorrect approach. Elaborating the said submission, it is submitted that though pursuant to the orders of this Court in the proceedings under Section 11(4) of the A & C Act, 1996, the sole arbitrator came to be appointed, however, the entire proceedings undertaken by the arbitrator are in the teeth of the procedure as envisaged under the A & C Act, 1996. Submission is that the present cases are classic example of violation of principles of natural justice and also equal treatment has not been meted to the BSNL as per Section 18 of the A & C Act, 1996 particularly when, though the claimant on 16.11.2019 submitted statement of claim to which a written statement came to be filed by the BSNL on 21.12.2019 and on 04.02.2020, a rejoinder affidavit also came to be filed by the claimant to the written statement submitted by the BSNL but on an objection being raised to the amendment sought in statement of claim of the claimant, the same stood rejected on 15.02.2020. Thereafter, on several occasions time was sought for filing another statement of claim and the same was ultimately filed on 24.06.2020 that too beyond the period stipulated under Section 23(4) of the A & C Act, 1996, since by all eventualities it was mandatory that the pleadings are to be completed within a period of six months from the date the arbitrator received notice in writing thereof, thus, in view of the provisions contained under Section 29A of the A & C Act, 1996 at that very stage, the mandate ought to have been terminated but the sole arbitrator continued with the proceedings and proceeded to pass an *ex parte* award. It is further submitted that at that relevant point of time due to pandemic relating to Covid-19, the counsel who was appearing for the BSNL before the arbitrator became seriously ill and an application seeking further time to submit written statement was filed on 11.07.2020 and in the meantime the wife of the counsel appearing for the BSNL also expired on 27.04.2021 and the counsel for the BSNL was infected with corona virus but, without considering

the genuine problems faced by the counsel for the BSNL the arbitrator proceeded to pass an *ex parte* award. In a nutshell, submission is that the Hon'ble Supreme Court considering the overall circumstances emanating from the pandemic relating to Covid-19 took *suo motu* cognizance and in the proceedings in COGNIZANCE FOR EXTENSION OF LIMITATION, IN RE, series of orders were passed on 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2021 and ultimately on 10.01.2022, whereby the period from 15.03.2020 till 28.02.2022 was excluded in computing the period prescribed under Section 23(4) and Section 29A of the A & C Act, 1996. It is also submitted that despite the fact that a specific ground had been taken in the objections under Section 34 of the A & C Act for setting aside the award that the arbitrator was biased and he did not conduct the proceedings in an impartial manner, though, the same was noticed but not adverted to. It is, therefore, prayed that the orders of the Commercial Court be set aside and the appeal be allowed in toto.

Arguments of Counsel for Claimants (Respondents)

9. Countering the submission of the learned counsel for the BSNL, Sri Daya Shankar Dubey along with Sri Mahendra Kumar Mishra who appears for the claimants have submitted that the orders of the Commercial Court rejecting the application under Section 34 of the A & C Act, 1996 needs no interference in the present proceedings. It is submitted that the conduct of the BSNL itself dis-entitles it for grant of any relief particularly when in the arbitration proceedings before the sole arbitrator the BSNL acted in a very reckless and careless manner and did not bother to participate in the said proceedings. Submission is that it is not a case wherein the BSNL was not aware about the pendency of the proceedings before the arbitrator as BSNL for the very first time had put in appearance before the arbitrator on 16.11.2019 and responded to the statement of claim of the claimant on 07.12.2019. Not only this, BSNL also contested the amendment

sought for in the statement of claim which came to be rejected on 15.02.2020 and thereafter on 24.06.2020 another statement of claim came to be filed by the claimant to which on 11.07.2020, 15 days' time was sought and thereafter, the BSNL and its counsel remained absent and did not participate in the said proceedings. However, despite several opportunities being accorded to file written statement on 22.09.2020 one of the parokar of the BSNL, Sri Sudhir Dumdum appeared and thereafter, neither the BSNL nor its counsel or representative chose to appear before the arbitrator. Contention is that the arbitrator cannot wait for time immemorial as it is also not a case that BSNL is an individual, however, it being a body corporate which functions through its officers and has a legal team, thus, it cannot be expected that they are ignorant or not conversant with the legal procedure.

10. With regard to the objection regarding termination of the mandate of the arbitrator on the ground of alleged non compliance of the provisions contained under Section 23(4) of the A & C Act, 1996, it is being contended that the statement of claim came to be filed within a period of six months as mandated under the statute and it was on account of the delay on the part of the BSNL in not filing the written statement the proceedings stood lingered on. It is also contended that the period of six months for completion of the pleadings stood triggered on 08.11.2019 when the arbitrator entered the reference and the first claim stood submitted by the claimant on 16.11.2019 and thereafter post withdrawal of the statement of claim, the second statement of claim was submitted on 24.06.2020 as the claimant is entitled for exclusion of the period from 24.03.2020 to 23.06.2020 when on account of Covid-19 the proceedings stood deferred and while taking into consideration the said period obviously the claim was filed much before the lapse of six months period. It is also submitted that so far as the objection of the BSNL that the sole

arbitrator was biased is concerned, the same is preposterous inasmuch as there is nothing on record except bald allegations. Submission is mere making of any allegation would not suffice as the same is to be substantiated through pleadings and record which is virtually lacking. It is also contended that each and every objection raised by the BSNL in the proceedings under Section 34 of the A & C Act, 1996 has been considered and no fault can be attributed in that regard. Thus, the orders impugned need no interference in the present proceedings.

11. Before proceeding to embark an inquiry upon submission of the rival parties, it would be appropriate to reproduce the translated version of the complete order sheet as well as the statutory provisions which have material bearing to the controversy in question.-

Order Sheet

“Chaurasia Enterprises V/s Bharat Sanchar Nigam Ltd.

Date	Order
08/11/2019	<p>Order regarding appointment of arbitrator was received from Hon'ble High Court. Notices be issued to both the parties to appear on 16/11/2019.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 1-11-19</p>
<p>16/11/19</p> <p>S/d- (illegible) Respondents</p>	<p>The Counsels for the petitioner and the opposite parties are present. On behalf of the petitioner, it has been stated that they are agree to participate in the arbitration proceedings to be conducted in the office located at the residence of the mediator. The Counsels for the opposite parties said that he would present the opinion of the department in this regard later.</p> <p style="text-align: center;">The details of the proceedings will be noted in Hindi/English languages.</p> <p style="text-align: center;">The fees shall be payable by both the parties as per Schedule IV of the Act. The parties are required to deposit the costs of arbitration as per Sections 6 and 31A.</p> <p style="text-align: center;">Petition filed by the petitioner. Opponents must file rejoinder</p>

	<p>by 7-12-19. Parties should pay fees/litigation expenses by the due date. Bill given.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 16-11-19</p>
<p>7-12-19 (S/d-) Amar Bahadur Chaurasia</p> <p>S/d- (illegible) Respondents</p>	<p>Adjournment application on behalf of the opposite parties. WS be filed by 21-12-19. Parties to submit the cost of the suit.</p> <p style="text-align: right;">Signature of Arbitrator (illegible)</p>
<p>21-12-19</p> <p>11/1/2020</p>	<p>W.S. filed on behalf of the opposite party Petitioners can file rejoinder on date 04-01-2020. Parties to bear the cost and fees till next date.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 1-11-12</p>
<p>4/1/20 (sd/-) Krishna Kumar</p>	<p>Petitioner has prayed for time. Petitioners can file rejoinder by 11-01-2020.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 4-1-20</p>
<p>11-1-20</p> <p>21-1-20</p>	<p>Petitioner has prayed for time. Petitioner can file rejoinder by 21-1-20.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 11-1-20</p>
<p>*21-12-19</p>	<p>W.S. filed on behalf of the opposite party. Petitioners can file rejoinder on date 04-01-2020. Till then, parties shall bear the cost of case.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 21-12-19</p>
<p>*4-1-20</p>	<p>Petitioner has prayed for time. Petitioner can file rejoinder by 11-1-20.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 4-1-20</p>

*11-1-20	<p>Petitioner has prayed for time. Petitioner can file rejoinder by 21-1-20.</p> <p style="text-align: right;">Signature of Arbitrator (illegible)</p>
21-1-2020 (sd/-) Amar Bahadur Chaurasia	<p>Petitioner has prayed for time. Petitioner can file rejoinder by 4-2-2020.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 21-1-2020</p>
4-2-2020 (sd/-) Amar Bahadur Chaurasia	<p>Petitioner has filed rejoinder. If the opposite party wants to make reply, they can do so by 15-2-2020.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 4-2-20</p>
15-2-20	<p>Parties are present. Objection filed on behalf of the opposite party. Arguments of learned counsels of both the parties were heard on amendment application and objection. From the perusal of file, it is clear that petitioner has presented his claim through an affidavit. Since, it is not in accordance with law to make amendment in an affidavit, therefore, amendment application preferred by the petitioner is dismissed. File be placed on 20-2-2020 for further proceedings.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 15-2-2020</p>
20-2-2020	<p>Petitioner prayed for time to file claim. Petitioner to file in advance by 24/3/2020.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 20-2-2020</p>
24/3/2020	<p>Parties are not present due to Corona pandemic (Covid). All the Courts have been closed by the High Court. Therefore, the parties should take further action considering the condition of corona till the court opens.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 24.03.20</p>
24.06.2020 (signature)	<p>The petitioner has filed an application and a Claim Petition to withdraw the statement which was filed earlier while not press it.</p>

<p>illegible 24/6 (signature) illegible 11/07/20</p>	<p>On 11.07.20, the objection be submitted for disposal.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 24.06.2020</p>
<p>11.07.2020</p>	<p>A prayer was made to get the time of 15 days for filing the objection on behalf of opposite parties.</p> <p>The opposite party be filed the <u>objection/W.S.</u> till 28.07.2020</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 11/7</p>
<p>28.07.2020 (signature) illegible 07/08/2020 (signature) illegible 28/7</p>	<p>Neither objection nor any adjournment application was filed on behalf of opposite parties. The learned counsel for petitioner is present. Was heard.</p> <p>An application has been given to withdraw the previously filed statement by not pressing it on behalf of petitioner and a prayer has been made to accept the new claim petition filed in its place.</p> <p>The reason given in the petitioner's application appears to be sufficient. Therefore, the application dated 24.06.2020 is accepted. The permission is allowed to include the filed claim petition in the file.</p> <p>The opposite parties be filled the W.S. till 07.08.2020.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 28.07.2020</p>
<p>07.08.2020 (signature) illegible 14/8 (signature) illegible 7/8</p>	<p>The learned counsel for petitioner is present. Nobody is present on behalf of opposite parties. An application was received by post from the Assistant General Manager (Legal Cell) Office of General Manager Telecom, District, Varanasi to me, the Arbitrator for separation from the trial of the case which is placed on the file.</p> <p>A prayer was made to seek time on behalf of petitioner to file an objection in the above application.</p> <p>Put up on 14.08.2020 for objections/ disposal.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 07.18.2020</p>
<p>14.08.2020 (signature) illegible 14/8 (signature)</p>	<p>The petitioner is present with his counsel.</p> <p>The opposite parties and their Counsel are not present. An objection was filled on behalf of petitioner.</p> <p>An application was submitted to summon some documents from opposite party on the behalf of the petitioner.</p> <p>Since, nobody is present on behalf of opposite parties.</p>

Amar Bahadur Chaurasiya	Therefore, the photocopy of the objection and application of the petitioner be sent to opposite parties through registered post. On 25.08.2020, the file be put up for disposal of applications.
25.08.2020	The counsel for petitioner is present. Nobody is present on behalf of the opposite parties. Opposite party Principal G.M.K.P. Singh was informed about the suit over the telephone and was told that nobody is appearing on behalf of opposite party even after getting information. On 01.09.2020, the file be put up for disposal of application. Signature of Arbitrator (illegible)
01.09.2020	The delivery report of Speed Post Registry to the opposite parties is filed in the file in which delivery has been shown. The information was also given through phone and whatsapp but nobody is present on behalf of opposite parties. It is considered that notice has been served upon the opposite parties. On 08.09.2020, the file be produced for disposal of application. Signature of Arbitrator (illegible) 01.09.2020
08.09.20 (signature) illegible	Nobody is present on behalf of the opposite parties. The counsel for petitioner is present. The application dated 31.07.2020 submitted by Asst. GM was heard on behalf of the petitioner. The order was got typed on a separate letter. If the opposite parties wish, they can submit their defense counter-claim by 21.09.2020 otherwise the petitioner be submit the evidence affidavit in support of his statement by 28.09.2020. The parties be pay all the suit expenses to the arbitrator by further date. Signature of Arbitrator (illegible) 08.09.2020
22.09.2020 copy received (signature) 22.09.2020	Request by counsel for the opposite parties for providing a copy of the order dated 08.09.2020 A copy was given to the <i>parokar</i> Sudhir Dumdum of opposite parties. Signature of Arbitrator (illegible) 22.09.2020
28.09.2020	A prayer was made to seek time for submitting evidence on behalf of

	<p>the petitioner.</p> <p style="text-align: right;">Signature of Arbitrator (illegible) 28.09</p>
30-9-2020	<p>On behalf of the petitioner, testimony affidavit and papers of Amar Bahadur Chaurasia are filed on the list.</p> <p>Time was sought for some other evidence. Remaining evidence be filed by the petitioner by 24-10-2020.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 30/9</p>
24-10-2020	<p>The petitioner prayed for time to submit evidence and pay fees. Evidence be submitted and fee be paid by the petitioner by 28-10-2020.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 24-10-20</p>
28-10-2020	<p>The petitioner prayed for time of two months to submit evidence and pay fee. Evidence be submitted and fee be paid by the petitioner by 28-12-2020.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 28-10-20</p>
28-12-2020	<p>The petitioner is absent. Time for submitting evidence was sought over phone.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 28-12-20</p>
25-2-2021	<p>Due to corona, the petitioner is absent. Evidence be submitted by 26-3-2021</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible</p>
26-03-2021	<p>Due to Corona, the petitioner is absent. The counsel for the petitioner stated that now he does not have to provide any other evidence. Arguments of the counsel for the petitioner were heard. File be put up on 3-5-2021 for order.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 26-3-2021</p>
3-5-2021	<p>The award was signed and announced. Due to Corona, party is not present therefore, copy of award be sent to them.</p> <p style="text-align: right;">Signature of Arbitrator</p>

	Sd/- illegible 3-5-2021
10-6-2021	<p>The petitioner prayed for a copy of the award. Copy of the award was provided to the petitioner. Copy of the award was sent to the opposite parties through registry.</p> <p style="text-align: right;">Signature of Arbitrator Sd/- illegible 10/6</p>

Note:-* In the order sheets the order dated 21.12.2019, 11.01.2020 and 04.01.2020 has been shown to be on two places.

Statutory Provisions

“**15. Termination of mandate and substitution of arbitrator.-** (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-

- (a) where he withdraws from office for any reason; or
- (b) by or pursuant to agreement of the parties.

(2) Whether the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

23. Statement of claim and defence.-(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2A) The respondent, in support of his case, may or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.

25. Default of a party.-Unless otherwise agreed by the parties, where, without showing sufficient cause.-

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant [and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

29A. Time limit for arbitral award.- (1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

Analysis

12. We have heard the learned counsel for the rival parties and perused the record carefully.

13. It is not in dispute that pursuant to the tender floated in the year 2015 by the BSNL for execution of the work of underground Optical Fibre Cable in District Bhadoi the claimants were awarded contracts. It is also not in dispute that dispute/differences stood arisen between them which entailed issuance of notices on 20.03.2019 and a reminder on 08.05.2019 for clearance of the outstanding dues and in case the request being not acceded to appoint an arbitrator in terms of Section 12(5) read with 7th Schedule of the A & C Act, 1996. Since BSNL did not appoint an arbitrator, thus, proceedings under Section 11(4) of the A & C Act, 1996 came to be instituted by the claimant which resulted in the appointment of the sole arbitrator.

14. Order sheet of the sole arbitrator reveals that on 08.11.2019 the sole arbitrator entered the reference requiring the parties to appear on 16.11.2019. On 16.11.2019, the BSNL and the claimants had put in appearance before the arbitrator and on that date the statement of claim came to be filed by the claimant. On 07.12.2019 the sole arbitrator directed the BSNL to file its written statement fixing next date on 21.12.2019. On 21.12.2019 written statement was filed by the BSNL to which time for filing reply was granted to the claimant. Again time was sought on 04.01.2020 by the claimant for filing reply to the written statement followed on 11.01.2020 and 21.01.2020. On 04.02.2020 reply to the written statement was submitted by the claimant. On 15.02.2020, the arbitrator rejected the amendment application preferred by the claimant on being objected by the BSNL. On 20.02.2020, the claimant took time for filing another statement of claim and on 24.03.2020 an order seems to have been passed by the sole arbitrator deferring the arbitration proceedings on account of Covid-19. The next date fixed as per the order sheet is 24.06.2020 on that date the statement of claim was submitted by the claimant to

which on 11.07.2020 the counsel for the BSNL took 15 days' time to submit its written statement.

15. Order sheet further reveals that on 28.07.2020 when the matter was taken up by the sole arbitrator though, the claimant was present but nobody appeared on behalf of the BSNL and after hearing the claimant the earlier (first) statement of claim was withdrawn while granting time to the BSNL to file its reply by 07.08.2020. The order sheet dated 07.08.2020 depicts that the counsel for the claimant was present but nobody appeared on behalf of BSNL. In the order sheet dated 07.08.2020, it is also recited that an application was received by the sole arbitrator under the signature of the Assistant General Manager, Legal Cell, in the office of the General Manager, Telecom, District Varanasi with a prayer to the arbitrator to reclude himself from the proceedings, to which the claimant was granted time to submit his reply/objection.

16. On 14.08.2020 the claimant was present but nobody appeared for the BSNL and on that date, a copy of the objection of the claimant to the application preferred by the BSNL for reclusion of the arbitrator was sent by registered post fixing 25.08.2020. On 25.08.2020 again nobody appeared on behalf of the BSNL though claimant was present and telephonically Principal, G.M., K.P. Singh was informed that nobody is appearing on behalf of the BSNL and the next date was fixed on 01.09.2020.

17. On 01.09.2020, the arbitrator recorded that the objection of the claimant to the application filed by the BSNL which was sent to the BSNL. Even information was also sent to the BSNL through whatsapp, however, nobody appeared so the next date fixed for 08.09.2020.

18. On 08.09.2020, nobody appeared on behalf of the BSNL though the counsel for the claimant was present and the objection dated 31.07.2020 of the BSNL was heard while granting time till

21.09.2020 to the BSNL to submit its reply. The order sheet further reveals that on 22.09.2020 the parokar of the BSNL, one Sri Sudhir Dumdum appeared before the arbitrator and got his signatures affected on the order sheet and received certain documents.

19. On 28.09.2020 the claimant took time to lead evidence and the next date fixed was 30.09.2020 and thereafter, on 30.09.2020 evidence was filed before the arbitrator and the next date was fixed on 24.10.2020 and on 24.10.2020 further date was fixed on 28.10.2020 and thereafter, next date was on 28.12.2020 on which date the claimant telephonically took time and thereafter, order sheet reveals that the awards came to be passed.

20. The order sheet of the sole arbitrator beyond shadow of doubt depicts that the BSNL was not serious and rather reckless in prosecuting the proceedings before the sole arbitrator. Though at the relevant time the nation was affected with Covid-19 and there happened to be orders of the Hon'ble Supreme Court for excluding the period from 15.03.2020 to 28.02.2022 relating to the proceedings 23(4) and 29A of the A & C Act, 1996 but, what is relevant is the conduct of the BSNL in pursuing the proceedings.

21. Learned counsel for the BSNL while inviting attention towards the supplementary affidavit sworn on 01.09.2024 of the Assistant General Manager (Legal) BSNL has contended that the counsel who used to appear in the arbitration proceedings before the arbitrator was at that relevant time 70 years old suffering from illness and he submitted an application on 11.07.2020 through its clerk apprising the sole arbitrator about the illness and requested 15 days' time for filing written statement, however, in the meantime the counsel as well as his wife got infected with Covid-19 and his wife expired on 27.04.2021 and he also stood hospitalized and on account whereof he could not appear before the sole arbitrator and, thus, the proceedings are *per se* illegal and is in contravention of the fundamental policy and is in

violation of the principles of natural justice and, thus, awards are liable to be set aside.

22. The argument of the learned counsel for the BSNL though looks attractive at the first blush but it is not liable to be accepted for the simple reason that after filing of an application on 11.07.2020 by the clerk of the BSNL seeking 15 days' time nobody appeared on behalf of the BSNL. It is not a case wherein the BSNL was not aware about the pendency of the proceedings before the arbitrator. As a matter of fact order sheet reveals that telephonically, through post, whatsapp and fax the officers of the BSNL were apprised about non-appearance of the counsel and the representative in the arbitration proceedings before the sole arbitrator.

23. The recitals contained in the order sheet are self indicative of the fact that recklessly the proceedings was being prosecuted and not only this on one fine day i.e. on 22.09.2020 one of the representatives of the BSNL, Sri Sudhir Dumdum appeared and thereafter, the proceedings before the arbitrator remained unattended.

24. On a pointed query being raised to the learned counsel for the BSNL whether there happens to be any communication at the end of the BSNL, seeking further time barring the request letter dated 11.07.2020, nothing is forthcoming. Apparently, there happens to be nothing on record to show that there was any attempt on the part of the BSNL to apprise the arbitrator about the difficulties and the problems faced by the them while seeking further time. In absence of anything on record, the arbitrator was not supposed to wait for the time unlimited with the expectation that on a fine day somebody would appear on behalf of the BSNL to pursue their stand. The benefit of the judgment in the case of cognizance of extension and limitation, **IN RE** (supra) cannot be granted on mere asking particularly when it is not the case of the BSNL that they were not aware about the pendency of the proceedings as rather to the contrary we find from the

order sheet that on certain dates, the BSNL through its counsel stood represented and on other dates remained absent.

25. As regards the submission of the learned counsel for the BSNL that the mandate of the arbitrator stood terminated on account of non completion of pleadings under Section 23(4) of the A & C Act, 1996 and the time limit for arbitral award came to lapse after a period of one year therefrom under Section 29A of the A & C Act, 1996, therefore, the award is liable to be set aside is wholly misplaced for the simple reason that the sole arbitrator entered into the reference on 08.11.2019 while fixing 16.11.2019 for submission of statement of claim and on the said date the statement of claim came to be filed before the claimant. A written statement on behalf of BSNL came to be filed on 21.12.2019 to which rejoinder was filed by the claimant on 04.02.2020 and when an amendment application came to be filed by the claimant for amending the statement of claim the same was opposed by BSNL, which came to be rejected on 15.02.2020 and liberty was sought by the claimant to file another statement of claim, however, in the meantime due to Covid-19 the arbitrator adjourned the proceedings on 24.03.2020 fixing the next date on 24.06.2020 and on that date statement of claim came to be filed before the arbitrator. While computing the period of six months for completion of pleadings, the crucial date would be 08.11.2019 and the said period would lapse on 07.05.2020 and the period from 24.03.2020 till 23.06.2020 would stand excluded due to Covid-19 and the next date fixed was 24.06.2020 and on that date the statement of claim came to be filed by the claimant. Thus, the statement of claim was filed within time.

26. The issue as to whether the provisions of Section 23(4) of the A & C Act, 1996 is mandatory or not and what would be the consequences is no more *res integra* as the Hon'ble High Court of Calcutta in **C.O. No. 4125 of 2023 Yashovardhan Sinha HUF & Anr.**

Vs. Satyatej Vyapaar Pvt. Ltd. decided on 19.02.2024 has held as under.-

“49. Section 23 (4) also does not start with any *non-obstante* clause. The provision neither curtails the discretion of the parties to fix their own timeline for submission of the pleadings nor does it take away the power of the Arbitrator to fix the timeline for submissions of pleadings. The Hon’ble Apex Court in **Lachmi Narain vs. Union of India reported in (1976) 2 SCC 953**, held that If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of pre-emptory language in a negative form is *per se* indicative of the intent that the provision is mandatory.

50. Section 23 (1) has not been amended by introduction of Section 23 (4). In other words, Section 23 (1) has not been made subject to the provisions of Section 23 (4). If the court proceeds to hold that the time frame under Section 23 (1) should be interpreted to be a shorter time limit and not beyond six months from service of notice upon the learned Arbitrator, it would amount to rewriting the statute. This is not permissible in law.

51. There is another aspect which requires further consideration i.e., the consequence of default in not adhering to the time limit fixed under Section 23 (1) of the Act. The same has been provided in Section 25 of the said Act. Section 25 provides as follows:-

“25. Default of party. – Unless, otherwise agreed by the parties, where, without showing sufficient cause- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the arbitral tribunal shall terminate the proceedings;

(b) The respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the allegation by the claimant [and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral may continue the proceedings and make the arbitral award on the evidence before it.”

52. Even after introduction of Section 23 (4), Section 25 has not been amended. Section 25 is silent about the consequence of non-compliance of Section 23 (4). Section 25 is not subject to Section 23(4). Party autonomy to decide the time line for completion of pleadings as provided in Section 23(1) has also not been made subject to Section 23(4). Termination of mandate under Section 25 is also not automatic. Proceeding will terminate under this section, if the claimant is unable to show sufficient cause for condonation of delay in filing the statement of claim within the timeline fixed under Section 23 (1), for submission of pleadings. Discretion has also been left to the learned Arbitrator to either proceed *ex parte* against the respondent, without treating the failure to file the defence as an admission of the allegations of the claimant, or to condone the delay in submission of the defence. Non-adherence to the time limit prescribed under Section 23(4) will not attract termination of the mandate of the Arbitrator.

53. The learned Arbitrator rightly held that the law did not prescribe the time limit within which the respondent should submit a counter-claim or plead a set off, which was also a part of pleadings and the counter-claim could be introduced subsequently, unless *ex facie* barred. Thus, the question of mandatory application of Section 23(4) will not arise.

54. In my view, had the legislature contemplated Section 23(4) to be mandatory, in that event, consequence for non-compliance of Section 23(4) would have been inbuilt in the said provision or Sections 23(1) and 25(a) would have been made subject to Section 23(4). Section 23(4) was introduced while amending the Act, to ensure that the pleadings should be completed expeditiously, preferably within the time prescribed, otherwise, the very purpose of providing a speedy and efficacious mechanism for resolution of such disputes, would be defeated. Mention of Section 23(4), in Section 29-A should be read as a requirement for making the award within twelve months from the date of completion of pleadings and not as a requirement of publication of an award within eighteen months from service of the notice upon the learned Arbitrator. The statute provides the circumstances under which a mandate terminates. Had the intention of the legislature been to incorporate a mandatory provision for completion of pleadings within six months as per Section 23(4), the consequence of non-compliance would have been provided in the statute itself, or the section

would have been couched in a different language. The orders directing filing of pleadings have not been passed in wrongful exercise of jurisdiction.”

27. The aforesaid judgment came to be challenged before the Apex Court in **Special Leave to Appeal (C) No. 5851 of 2024 Yashovardhan Sinha HUF & Anr. Vs. Satyatej Vyapaar Pvt. Ltd.** in which on 18.03.2024 the following order was passed.-

“1. We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India.

2. The Special Leave Petition is accordingly dismissed.

3. Pending applications, if any, stand disposed of.”

28. Applying the above noted judgment in the facts of the case, we are of the firm opinion that the statement of claim stood submitted by the claimant within the time stipulated under Section 23(4) of the A & C Act, 1996 and it was on account of fault of the BSNL, the written statement could not be filed and due to their absence an *ex parte* award came to be filed.

29. Viewing the case from all points of angle, we do not find any patent illegality committed by the court below in rejecting the applications under Section 34 of the A & C Act, 1996 while upholding the awards.

30. Resultantly, the appeals are **dismissed**.

Order Date :- 22.10.2024

Rajesh

(Vikas Budhwar, J) (Arun Bhansali, CJ)