2025 INSC 1062

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4480 OF 2016

M/S. MOTILAL AGARWALA … APPELLANT

Versus

STATE OF WEST BENGAL & ANR. … RESPONDENTS

O R D E R

1. This appeal arises from the judgment and order passed by the High Court at Calcutta (Civil Appellate Jurisdiction), dated 01.03.2016, in F.M.A. No. 4576/2015, by which the order passed by the District Court in Miscellaneous Case No.12/2014, came to be set aside thereby holding that the Section 34 application, preferred by the State against the arbitral award, was time-barred.

2. We need not delve much into the facts of this litigation as we are in a position to affirm the impugned judgment and order passed by the High Court on a neat question of law.

3. Here is a case in which an arbitral award came to be passed in favour of the appellant herein dated 12.11.2013. The State having suffered an award challenged the same invoking Section 34 of the Arbitration and Conciliation Act, 1996 (for short, `the Act 1996'). The period of limitation prescribed for the purpose of preferring Section 34 application is 90 days. Going by the date of the award and the receipt of the xerox copy of the award by the authorised representative of the State, the period of limitation could be said

to have expired on 12.02.2014. It is the case of the State that till 12.02.2014, it had no idea at all about the passing of the arbitral award. It is only when the appellant herein initiated execution proceedings that they came to know about the same. In such circumstances, they immediately preferred Section 34 application on 20.03.2014. On 03.04.2014, the State addressed a letter to the learned Arbitrator to provide for a certified copy of the arbitral award dated 12.11.2013. The letter upon which reliance has been placed by the State reads thus:

"GOVERNMENT OF WEST BENGAL
IRRIGATION & WATERWAYS DIRECTORATE
OFFICE OF THE EXECUTIVE ENGINEER
TEESTA CANAL DIVISION NO.1
ISLAMPUR, UTTAR DINAJPUR

From
The Executive Engineer
Teesta Canal Division No.1
Teesta Pally, Islampur
Uttar Dinajpur

To
Justice Kalyanmoy Ganguli
High Court (Retd.)
51/4, Biren Roy Road (West)
Kolkata – 700008

Sub: Prayer for certified copy of the arbitral award passed on 12/11/2013

Ref. A.P. No. - 200 of 2002 in the matter of Arbitration between M/s Motilal Agrawal – vs – The State of West Bengal & Others

Sir,

You are requested to provide a certified copy of the arbitral award passed by your kind self on 12/11/2013 as sole arbitrator in the above cited reference at the earliest possible. It is urgently required for filing the same before the Ld. District Judge, District Court, Uttar Dinajpur before 29.04.2014 which is the next date fixed

for filing the certified copy of Arbitration award in the matter of Misc.12/2014 (Arbitration) – State of West Bengal Vs. M/S Motilal Agarwal.

In this context, I would like to inform you that certified copy of the said award was not delivered to the undersigned or the department from your end on 12/11/2013. Charges for certified copy, if any, will be paid to you.

Thanking you,

Yours sincerely,

(NRAJ KUMAR SINGH)
Executive Engineer
Teesta Canal Division No.1
Islampur, Uttar Dinajpur"

4. The Section 34 application being time-barred, according to the District Court, was not entertained and in such circumstances, the Miscellaneous Case No.12/2014 came to be dismissed.

5. The State being dissatisfied with the order passed by the District Court dismissing the application being Miscellaneous Case No.12/2014 went before the High Court by way of F.M.A. No.4576/2015. The High Court, by its impugned judgment and order, allowed the FMA, preferred by the State, and thereby set aside the order passed by the District Court, referred to above. The High Court while allowing the FMA, preferred by the State, observed as under:

> "In our view, limitation under Section 34(3) would start running from the date on which the party applying for setting aside of the arbitral award received a signed copy of the award from the Arbitral Tribunal. Such copy need not necessarily be signed in original by the Arbitrator/majority of the Arbitrators. An authentic photo copy along with signatures would suffice. This issue is covered by a judgment dated 28th August, 2015 of this Bench in APOT 337 of 2015 (National Agricultural Cooperative Marketing Federation of India Ltd. vs. M/s R. Piyarelal Import & Export Ltd.).
>
> The award made over by the learned Arbitrator to Sri Pradip Saha, Assistant Engineer was a signed copy.

However, the question is whether the period of limitation for making an application under Section 34 of the 1996 Act, would start running from the date on which the signed copy was received by Mr. Pradip Saha, Assistant Engineer.

In State of Maharashtra Vs. ARK Builders reported in (2011) 4 SCC 616, cited by Mr. Sen, the issue was, whether the period of limitation for making an application under Section 34 of the 1996 Act, for setting aside an arbitral award, was to be reckoned from the date on which a copy of the award was received by the applicant by any means or source, or whether it was to start running from the date a signed copy of the award was delivered to the applicant by the Arbitrator.

The Supreme Court held that the period of limitation prescribed under Section 34(3) of the 1996 Act, could only commence from the date on which the award was received by the applicant in the manner prescribed by law and/or in other words, in the manner for service of the award prescribed in Section 31(5) of the 1996 Act.

In ARK Builders (supra) the Arbitrators had not supplied a copy of the award to the appellants. The award holder had, however, forwarded a photocopy of the award to the appellant and claimed payment in terms of the award. The Supreme Court held that limitation would run from the time the award duly signed, was received by the appellant, from the Arbitrator.

In ARK Builders (supra) the Supreme Court did not consider the question of whether the copies served by the Arbitrators to the parties concerned, would all have to actually and separately be signed by the Arbitrators themselves. However, the Supreme Court clearly held that limitation would start running from the date on which a copy of the award was received by the applicant from the Arbitral Tribunal.

In Benarsi Krishna Committee & Ors. Vs. Karmyogi Shelters Private Limited reported in (2012) 9 SCC 496 the Supreme Court held that the expression 'party' as defined in Section 2(i)(h) of the 1996 Act clearly indicates a person who is a party to an arbitration agreement. The said definition is not clarified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act could only mean the party himself and not his or her agent or advocate empowered to act on the basis of a vakalatnama. In the aforesaid case, the award had been served on the

advocate.

In this case, Sri Pradip Saha, Assistant Engineer was not a party to the arbitration. The State of West Bengal, represented through the Secretary, Irrigation and Waterways Department and the Executive Engineer were parties. Copies of the award should have been served on the Secretary, Irrigation and Waterways Department, and the Executive Engineer.

The award not having been served on the Secretary, Irrigation and Waterways Department, or the Executive Engineer, it cannot be said that limitation had started running. The application under Section 34(2) for setting aside of the arbitral award cannot be held to have been barred by limitation.

The appeal is therefore, allowed.

The order under appeal is set aside. The learned Court is directed to hear and dispose of the application under Section 34 of the 1996 Act on merits, at the earliest preferably within 6 months from the date of communication of this order."

6. Thus, it appears on a plain reading of the impugned order passed by the High Court that what weighed with the High Court was the fact that the award was not served on the Secretary, Irrigation and Waterways Department or the Executive Engineer. According to the High Court, it is only the Secretary, Irrigation and Waterways Department or the Executive Engineer, who could be termed as "party", as defined in Section 2(1)(h) of the Act 1996. An authorised representative of the State, who might have participated in the proceedings before the Arbitrator and who might have also received a xerox copy of the award cannot be said to be falling within the expression "party".

7. Mr. Ajit Kumar Sinha, the learned Senior Counsel appearing for the appellant would vehemently submit that the High Court committed an error in passing the impugned order. The principal argument of the learned Senior Counsel is that the authorised representative,

who actually participated in the arbitral proceedings and was in complete knowledge of every fact of the proceedings, had collected the xerox copy of the award duly signed by the Arbitrator and in such circumstances, it could be said that the State had the knowledge of passing of such award on 12.11.2013. He would argue that this Court may take the view that the authorised representative in full knowledge of the entire litigation would fall within the expression "party", as defined under the Act 1996.

8. In such circumstances, referred to above, the learned Senior Counsel prayed that there being merit in his appeal, the same may be allowed and the Section 34 application be declared to be time-barred.

9. On the other hand, Ms. Madhumita Bhattacharjee, the learned counsel appearing for the State, would submit that no error, not to speak of any error in law, could be said to have been committed by the High Court in passing the impugned order. She fairly submitted that the State is unable to run away from the fact that the authorised representative had collected the xerox copy of the arbitral award, duly signed by the Arbitrator, on 12.11.2013 but unfortunately the authorised representative never brought it to the notice of the State that such award had been passed. According to her, it is only when the execution proceedings were initiated by the award-holder, i.e., the appellant herein and a notice was issued to the State that for the first time, the State came to learn about the passing of such award. Having learnt about the passing of such award, immediately on 20.03.2014, Section 34 application was filed. Since there was delay, an application was filed before the District

Court. According to her, the District Court was in error in taking the view that the Section 34 application was time-barred.

10. In the last, she submitted that the authorised representative of the State would not fall within the ambit of "party", as defined under the Act 1996.

11. In such circumstances, referred to above, she prayed that there being no merit in this appeal, the same may be dismissed.

ANALYSIS

12. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the delivery of the true/xerox copy of the Arbitral Award duly signed by the Arbitrator to an authorised representative of the State on 12.11.2013 would constitute delivery upon the respondent herein in accordance with Section 31(5) of the Act 1996?

13. The limitation period under the Act 1996 for the Section 34 application is three months from the date of "receipt" of an Arbitral Award or from the date on which request under Section 33 of the Act is disposed.

14. The proviso to sub-section (3) gives an additional 30 days to a party provided it can satisfy the Court that it was prevented in filing on time for sufficient reasons. Sub-section (1) and Sub-section (3) of Section 34 of the Act 1996 are reproduced below:

> **"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 subsection (2) and sub-section (3)**
> **……..**
> **(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."**
>
> **(emphasis supplied)**

15. Section 31(1) and (5) of the Act 1996 respectively read as under:

> **"31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.**
>
> **xxx xxx xxx**
>
> **(5) After the arbitral award is made, a signed copy shall be delivered to each party."**

16. Thus, Section 31 of the Act 1996 sets forth the form and content of an Arbitral Award. Sub-section (1) of Section 31 states that an arbitral Award shall be drawn out in the manner as prescribed by the Section and is to be signed by all members of the Arbitral Tribunal.

17. Sub-section (5) of Section 31 of the Act 1996 provides that once an Award is made, a signed copy shall be delivered to each 'party'.

18. A "party" is defined by Clause (h) of sub-section (1) of Section 2 of the Act 1996 as a party to an Arbitration Agreement.

19. The analysis of the provisions above shows that an Application for setting aside an Arbitral Award may be made by such party within three months from the date of its receipt unless the proviso is

applicable and that limitation under Sub-section (3) of Section 34 of the Act 1996 commences on the date when the party has received the Arbitral Award.

20. The facts are not in dispute. At the cost of repetition, we state that the authorised representative, in fact, had collected a xerox copy of the award on 12.11.2013 and that too, duly signed by the Arbitrator. But the fact remains that the authorised representative in this case would not fall within the ambit of "party" as defined by Clause (h) of Sub-Section (1) of Section 2 of the Act 1996 to an arbitration agreement. The application for setting aside an arbitral award in accordance with the provisions of the Act 1996 has to be preferred by such party within three months from the date of its receipt unless the proviso is applicable and that limitation, under Sub-section 3 of Section 34 of the Act 1996 commences from the date when the party has received the arbitral award.

21. What exactly constitutes a "party", in the context of Government, has been interpreted by this Court in Union of India vs. Tecco Trichy Engineers & Contractors, reported in (2005) 4 SCC 239. In the said decision, this Court held that in order to constitute an effective service, a copy of an award, where such party is the Ministry of a particular Department, is to be delivered to a person who has the knowledge and is the best person to understand and appreciate an award and more particularly, to take decision for its challenge. We are of the view that the authorised representative of the State could not have taken the final decision to challenge the award. It is only the Secretary of the concerned Department or the

Executive Engineer, who could be said to be the competent authority to take a decision as to whether the award could be challenged or not.

22. As held by this Court, the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. The delivery by the Arbitral Tribunal and receipt by the party 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. The delivery of the copy of the award has the effect of conferring certain rights on the party 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 the award by the Tribunal the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

23. This Court has held that the award should be received in the context of huge organisations by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award as also to take a decision in the matter of moving appropriate applications. In this context, the following paragraphs from Tecco Trichy Engineers & Contractors (supra) are relevant and repays close study:-

> **“6. Form and contents of the 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 organisation like the Railways.

7. It is well known that the Ministry of Railways has a 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 the Railways is at the very apex of the division with the 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 the 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. The 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 where the shoe pinches, whether the arbitral award is adverse to the department's interest. The departmental head would naturally be in a position to know whether the arbitrator has committed a mistake in understanding the department'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 the 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 the 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 the departmental head. The 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 advice 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, the arbitral award is known to the departmental head, who is directly concerned with the subject-matter as well as arbitral proceedings. In large organisations like the 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 before the arbitrator.

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.

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

10. In the present case, the Chief Engineer had signed the agreement on behalf of the Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during proceedings of the arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by the 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 the 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 the 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.

11. We cannot be oblivious of the fact of impersonal approach in the government departments and organisations 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."

24. In the present case, it is averred in the counter affidavit and is not disputed by the appellant that the contract was executed between the Superintending Engineer, Mahananda Baraj Circle (I&W) DTE and M/s Motilal Agarwala, the appellant. The Executive Engineer, Teesta Canal Division No.1, Islampur was also a party to the arbitration. Admittedly and as is clear from the letter dated 08.08.2014 of the Arbitrator, Annexure P-11 to the Civil Appeal the signed copy of the award was delivered to SDO/AE – TCS D-2 Islampur who was present at the meeting on behalf of the respondent. Applying the dictum in Tecco Trichy Engineers & Contractors (supra) a delivery to the Assistant Engineer who was not "a party to the arbitration" and who was not in a decision-making capacity to take further recourses on the award would not be a valid service of the

award.

25. We take notice of the fact that Tecco Trichy (supra) has been relied upon by this Court in Benarsi Krishna Committee and others v. Karmyogi Shelters Private Limited, reported in (2012) 9 SCC 496, wherein this Court held that the expression "party", as defined in Section 2(1)(h) of the 1996 Act would be a person who is a "party" to an arbitration agreement. The relevant extract from the decision in Benarsi Krishna Committee (supra), more particularly the observations made in para 15 therein reads thus:

> **"15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression "party" as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision of the Division Bench of the Delhi High Court impugned in these proceedings. The expression "party" has been amply dealt with in Tecco Trechy Engineers's case (supra) and also in ARK Builders (P) Ltd. case (supra), referred to hereinabove. It is one thing for an advocate to act and plead on behalf of a party in a proceeding and it is another for an Advocate to act as the party himself. The expression "party", as defined in Section 2 (1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of a Vakalatnama. In such circumstances, proper compliance with Section 31 (5) would mean delivery of a signed copy of the Arbitral Award on the party himself and not on his advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act."**
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> **(emphasis supplied)**

26. In the overall view of the matter, we have reached the conclusion that we should not disturb the impugned judgment and order passed by the High Court.

27. In the result, this appeal fails and is hereby dismissed.

28. This litigation is now almost 12 years old. In such circumstances, there should not be any further delay in hearing the Section 34 application filed by the State. We request the District Court to take up the appeal of the State and see to it that the same is decided on its own merit within a period of six months from the date of receipt of a copy of this order.

.....J.
(J.B. PARDIWALA)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
AUGUST 28, 2025.