AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment delivered on 10-06-2024

ARBA No.51 of 2023

{Arising out of order dated 1-11-2023 passed by the Judge, Commercial Court (District Level), Naya Raipur, Chhattisgarh, in case No.Arb.MJC 26 of 2023}

1. The Superintending Engineer, National Highway Circle, Public Works Department, Government Of Chhattisgarh At Pension Bada, Raipur 492001, Chhattisgarh.

---- Appellant

Versus

1. ECI-Keystone (JV) through its Managing Director, H.No. 8-2-338/6, Road No.3, Panchavati Colony, Banjara Hills, Hyderabad 500034.

---- Respondent

For Appellant	Mr. Prafull N. Bharat, Advocate General with Mr. Atanu Ghosh, Dy. Govt. Advocate
For Respondent	Mr. Shishir Bhandarkar, Mr. Purvesh Buttan and Mr. Shobhit Mishra, Advocates

Hon'ble Mr. Goutam Bhaduri, J. &
Hon'ble Mr. Sanjay S. Agrawal, J.

CAV Judgment

Per **Goutam Bhaduri, J.**

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act, 1996') is against the order dated 1-11-2023 (Annexure-A/1) passed by the Judge, Commercial Court (District Level), Naya Raipur, Chhattisgarh, in case No.Arb.MJC

26 of 2023 wherein the application preferred under Section 34 (3) of the Act, 1996 seeking condonation of delay in filing the application under Section 34 was dismissed. The appellant-Superintending Engineer, National Highways is in appeal.

2. (i) The facts involved in this case are that the joint venture company namely; ECI-KEYSTONE was entered into a contract agreement for construction of two lane road at certain different distances from Bhopalapatnam to Jagdalpur under the LWE scheme. The contract price was ₹ 184,54,47,686.69. Admittedly, the extension was granted to the respondent up till 30-6-2019. During the course of execution of the contract, certain dispute arose between the parties which led to appointment of the Arbitrator as per clause 25.3 (a) of the contract. The respondent invoked the arbitration clause under special condition of contract. The appellant Department also acceded to such appointment, consequently, the Sole Arbitrator was appointed. Subsequently, the Department was advised by the Ministry of Road that since high stakes were involved in the project, therefore, in accordance with the provisions of clause 25.3 the arbitration should be conducted by a panel of three Arbitrators. Consequently, an application was moved and initial consent though was withdrawn by the Department on 16-8-2021, but the proceeding by the time conducted before the Sole Arbitrator and the award was passed on 2-9-2022 (Annexure - A/2).

(ii) The said arbitral award was assailed by the appellant before the Commercial Court (District Level), Naya Raipur, Chhattisgarh, by filing an application under Section 34 of the Act, 1996 along with the application under Section 36 (3) for grant of stay and application under Section 34 (3) for condonation of delay with a prayer to set aside the award on the ground that the appellant was not permitted to present the case and the prayer was made to set aside the *ex parte* award.

(iii) According to the appellant, the arbitral award was not signed and received by the appellant and only received a photocopy of the award lately. The date wise events are that :

- copy of the award along with summons of execution proceeding received on 10-2-2023;
- thereafter, the demand was raised for supply of signed copy of the award on 11-3-2023;
- on 14-3-2023 reply was sent by the Sole Arbitrator stating that he has already sent the award to the appellant;
- the Superintending Engineer by letter dated 17-3-2023 informed that no entry has been made in the office register regarding receipt of award;
- thereafter, on 20-3-2023 the legal opinion was sought by the Superintending Engineer from the office of the Advocate General;
- on 23-3-2023 legal opinion was sent;

- thereafter, on 24-3-2023 again a letter was sent by the Superintending Engineer to the Sole Arbitrator to send signed copy of the award;

- in reply to it on 25-3-2023 the Sole Arbitraor replied that the award has been sent by registered post;

- subsequently, on 27-4-2023 the Superintending Engineer wrote a letter to the Chief Engineer seeking departmental enquiry against the erring Clerk;

- a complaint was made to the police on 27-4-2023;

- again a letter dated 24-5-2023 was sent by the Superintending Engineer to the Sole Arbitrator and requested for signed copy of the award; and

- thereafter, the appeal was filed.

(iv) Learned Commercial Court observed that since the award was passed on 2-9-2022 and the application to set aside the same was preferred on 27-5-2023 after nine months, the application was barred by time and accordingly dismissed the same by the order impugned. Thus, this appeal.

3. (a) Learned Advocate General appearing for the appellant would submit that as per Section 31(5) of the Act, 1996 it is incumbent upon the Arbitrator to deliver signed copy of the award to each party. He would submit that the appellant was not served with the signed copy of the award. According to him, the Department received the photocopy of award along with the execution application on 10-2-2023 and immediately on 11-3-2023,

a request letter was sent to supply signed copy of the award. Learned counsel would submit that the Arbitrator has stated that he has already sent signed copy of the award by registered post, but having not been received by the Department again a communication was made on 17-3-2023 and requested for supply of signed copy of award. He would submit that even the copy of the award was sought for, it was refused by the Arbitrator on the ground that it has already been sent by the registered post. Learned counsel would submit that since signed copy of award is not served under Section 31(5) of the Act, 1996, no cause of action accrues to prefer the application under Section 34 of the Act, 1996.

(b) Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***State of Maharashtra and others v ARK Builders Private Limited***[1] to submit that the Supreme Court in this case has categorically laid down that the signed copy is required to be delivered to the party in a manner prescribed by law. He would further place reliance upon the decision rendered by the Supreme Court in the matter of ***Union of India v TECCO Trichy Engineers & Contractors***[2] to submit that who are the necessary party and receipt of order even by some of the Clerk would not amount to sending a copy. He would place reliance upon the decision rendered by the Supreme Court in the matter of ***Dakshin Haryana Bijli Vitran Nigam Limited v***

1 (2011) 4 SCC 616
2 (2005) 4 SCC 239

Navigant Technologies Private Limited[3] to submit that Section 31(1) is couched in mandatory terms and signed copy of order is required to be delivered to the parties.

(c) Referring to certain documents, the submission is made that it is quite presumptive value of official act to show that the Department was quite agile, however, having not been received the signed copy of the award as provided under Section 31(5) of the Act, 1996 the cause of action did not accrue. Learned counsel would further submit that he has not pressed upon the issue, at this stage, as to the legality and validity of the arbitral award and confined his arguments only in respect of receipt of signed copy of the arbitral award and limitation since the challenge is with respect to dismissal of application on the ground of limitation, it is submitted that presently the other issue about correctness of award is required to be raised before the Commercial Court.

4. (A) Learned counsel appearing for the respondent, *per contra*, would vehemently oppose the arguments advanced by the appellant and would submit that service of arbitral award is not at all in issue as initially on 2-9-2022 passing of the award was informed by e-mail and thereafter, the original copy of the signed award was sent through registered post. Signed copy of the award was received by the Department on 7-9-2022. He would submit that again the award was served by way of e-mail dated 8-9-2022 and the printout of attachment of e-mail dated 2-9-2022 served by the representative of

3 (2021) 7 SCC 657

the respondent on 7-9-2022 by hand. He would also submit that statement of the then Superintending Engineer Nagesh Kumar Jayanth, in affidavit, would show that some third person has served him with the copy of the award dated 7-9-2022. From the said fact, it is manifest that the department was very well in know of the fact that the award has been passed and was holding the same.

(B) Learned counsel would submit that the appellant took a different stand as related to the service of the copy of award and also tried to fabricate the facts and different stand has been taken in an application under Section 34 of the Act, 1996. It is stated that the truth came to fore when the affidavits were called upon by the Commercial Court, which shows the copy of award was delivered. He would submit that the Department has received the original arbitral award dated 2-9-2022 by registered post on 7-9-2022 and by e-mail on 8-9-2022 and subsequently copy of the award was received by hand at their office.

(C) Referring to the decisions rendered by this Court in the matter of ***Union of India v Bhola Prasad***[4]; Delhi High Court in the matter of ***Ministry of Youth Affairs and Sports, Dept. of Ports, Govt. of India v Ernst and Young Pvt. Ltd. (now Known as Ernst and Young LLP) and Another***[5]; and the Delhi High Court in the matter of ***Delhi Urban Shelter Improvement Board v Lakhvinder Singh***[6], learned counsel would submit that copy of the award even

4 2022 SCC OnLine Chh 1644
5 2023 SCC OnLine Del 5182
6 2017 SCC OnLine Del 9810

by e-mail would be sufficient and it would be averse to read the expression 'signed copy' of the award in a restrictive manner.

(D) Placing reliance upon the decision rendered by the Bombay High Court in the matter of ***Rahul v Akola Janta***[7], learned counsel would submit that only the party should be made aware of existence of award and effect and import of the award. He would submit that the appellant has not filed any documents along with the application e.g. copy of reply of the respondent to the application of the appellant under Section 34(3); copy of of affidavit of Shri Surender Kumar Manjhi along with photocopies of documents, which were filed before the Commercial Court; and copy of the complete set of documents filed by the respondent along with the copy of affidavit shows the fact otherwise.

(E) Learned counsel would submit that the important document having been deliberately held back would show that wrong contentions have been made and in order to divert the issue an invert register was placed, thereby the appellant tried to create the camouflage, which should not be acceptable. He would submit that having send copy of the award by registered post and the same having been received it cannot be stated that the signed copy of the award has not been received. The letter of the Sole Arbitrator along with postal receipts would carry a presumptive value and by the statement it has not been rebutted. Thus, the Commercial Court taking into the conduct of the appellant dismissed the application at

7 2023 SCC OnLine Bom 814

the threshold, which is well merited and warrants no interference of this Court.

5. We have heard learned counsel for the parties and perused the documents.

6. As per the records the contract was executed between the parties on 1-12-2012 for construction of two lane road at different intervening places. The parties to the contract were the Superintending Engineer, National Highway Circle, PWD, Government of Chhattisgarh, being the grantee and ECI Keystone Joint Venture was the contractor. The contract was extended from time to time. When the dispute arose, invocation of arbitration was made on 13-7-2020. The award shows the respondent therein (appellant herein) appointed the Arbitrator by its letter dated 10-8-2020 recording the mutual consent of both the parties.

7. Para 8 of award is relevant to the facts of the present case with respect to consent for appointment of Arbitrator, therefore, the same is quoted below :

> The above mentioned Contract Agreement was entered into between the Superintending Engineer, NH Circle, P.W.D, Raipur, Chhattisgarh and M/s. ECI-KEYSTONE (JV), Hyderabad, Telangana.
>
> Certain disputes have arose between the Parties under the Contract, which were not settled amicably, and as such the Contractor vide its letter No. ECI-KEYSTONE/NH-63/2019/4 dated 30.03.2020 (copy attached for reference) has invoked arbitration as per clause 25.3 of Special

> Conditions of Contract for adjudication of the disputes through arbitration.
>
> Both the parties have mutually agreed to refer the disputes to Sole Arbitrator as per clause 25.3 of Special Conditions of Contract. Now, with the consent of the Contractor, I hereby appoint your-good-self as a Sole Arbitrator to adjudicate upon the disputes referred by the Contractor.

8. The first hearing was held on 8-9-2020 and the appellant sought for time for filing statement of defence. The award shows that successive extensions of dates were made at the behest of the appellant and adjournments were granted by the Tribunal and though in the meanwhile, owing of outbreak of COVID-19 Pandemic and as per the directions of the Supreme Court, limitation was extended and the Tribunal, however, eventually extended the date for submission of statement of defence by the appellant up till 15-3-2022. Eventually, the statement of defence was not filed. The award further reflects that thereafter, the appellant sought for cancellation of appointment of Arbitrator on various grounds. Para 39 of the award would reflect that the said objection was made after a period of 22 months on the ground that the Ministry of Road Transport & Highways, New Delhi, has not appointed Officer-in-charge, therefore, the cancellation of appointment of Arbitrator was sought for. The said contention of the appellant was not accepted and the Arbitrator though was appointed, which was not objected and the appellant sought time to file its reply, but instead of filing reply unilaterally removal of Arbitrator was sought for. It is a settled principle that Arbitrator was required to be removed in

accordance with the procedure prescribed under the provisions of the Act, 1996, but the same was not adopted by the appellant as the cancellation procedure for appointment of Arbitrator was not adhered to. Since the Sole Arbitrator was already in hold of arbitral proceedings, he proceeded with the same and eventually the award was passed on 2-9-2022. The issue in the present appeal arose, when an application was filed by the appellant herein to set aside the said award before the Commercial Court, Nava Raipur, and the same was dismissed on the ground of limitation.

9. The contention of the appellant was that they have not been served with the signed copy of the award and they came to know about the award after execution notice was received by them. The said contention was not accepted by the Commercial Court and by order dated 1-11-2023 dismissed the application of the appellant preferred under Section 34(3) of the Act, 1996 on the ground of delay, as barred by limitation.

10. As per the Act, 1996 specific period of limitation prescribed to challenge the award. As per Section 34(3) from date of award when received the limitation starts and it is initially as three months. The proviso to the Section further gives a liberty for a period of thirty days apart from three months above but not thereafter.

11. For the sake of brevity the relevant part of Sections 31(5) and 34(3) of the Act, 1996 are reproduced hereinunder :

> **31. Form and contents of arbitral award.—**
>
> xxx xxx xxx
>
> (5) After the arbitral award is made, a signed copy shall be delivered to each party
>
> **34. Application for setting aside arbitral award.—**
>
> 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.

12. When specific limitation period is prescribed under statute is maximum for four months in the relevant case no further extention of time can be provided by the Court to challenge an award under the Act, 1996.

13. The Supreme Court in the matter of ***Union of India v Varindera Constructions Limited***[8] held thus at para 4 :

> 4. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in *Lachmeshwar Prasad Shukul vs. Keshwar Lal Chaudhuri* and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or

8 (2020) 2 SCC 111

> allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.

14. It is the trite law that merely because Government authorities is involved, a different yardstick for condonation of delay cannot be laid down. In this context, the Supreme Court in the matter of ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v Borse Brothers Engineers And Contractors Private Limited***[9] held thus at paras 58 & 59 :

> 58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in *Basawaraj* v. *LAO* [*Basawaraj* v. *LAO*, has held : (SCC pp. 85-88, paras 9-15)
>
> > "*9*. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. *In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not*

9 (2021) 6 SCC 460

acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land & Building Corpn.* v. *Bhutnath Banerjee*, *Mata Din* v. *A. Narayanan*, *Parimal* v. *Veena* and *Maniben Devraj Shah* v. *Municipal Corpn. of Brihan Mumbai*.)

10. In *Arjun Singh* v. *Mohindra Kumar* this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal* v. *Shyamlal* and *Ram Nath Sao* v. *Gobardhan Sao*.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. 'A result flowing from a statutory provision is never an evil. A court has no power to ignore that

provision to relieve what it considers a distress resulting from its operation.' The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, Para 605 p. 266:

> '605. *Policy of the Limitation Acts*.— The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (*1*) that long dormant claims have more of cruelty than justice in them, (*2*) that a defendant might have lost the evidence to disprove a stale claim, and (*3*) that persons with good causes of actions should pursue them with reasonable diligence.'

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat & Kotecha Property* v. *SBI Staff Assn.*, *Rajender Singh* v. *Santa Singh* and *Pundlik Jalam Patil* v. *Jalgaon Medium Project*.)

14. In *P. Ramachandra Rao* v. *State of Karnataka* this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law

laid down by the Constitution Bench in *Abdul Rehman Antulay* v. *R.S. Nayak* .

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

(emphasis supplied)

59. Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in *Postmaster General* v. *Living Media (India) Ltd.* ["*Postmaster General*"], as follows : (SCC pp. 573-74, paras 27-29)

"*27*. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and

> acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
>
> *28*. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.
>
> *29*. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

15. The Arbitrator initially vide e-amil dated 2-9-2022 intimated the Superintending Engineer about passing of such award. The communication sent by e-mail would show that apart from the intimation of such award it was also averred that the award is sent

through Registered Post with Acknowledgment Due to both the parties and the proof dispatch was also enclosed with the covering letter. Since the said award was sent by Registered Post, under the RTI Act subsequently the respondent obtained the information about service of such letter from the Department of Post India, which shows that the appellant Superintending Engineer, National Highway Circle, PWD, Raipur, has received the assignment. The e-mail dated 8-9-2022 sent by the Arbitrator would show that it was informed by him that hard copy of the award has been sent through the Registered Post to both the parties and since the additional request was made by the claimant to get a soft copy, the soft copy of the award sent to both the parties in the PDF format.

16. Nagesh Kumar Jayant, working as Chief Engineer, the then Superintending Engineer in between 13-6-2022 to 17-10-2022 in his affidavit filed before the Commercial Court, has made a statement that on 7-9-2022 a third person who was not working in the office of the Superintending Engineer had handed over a photocopy of the award to him by hand. He did not given any receipt to the same and marked the said photocopy and gave it to one Mithlesh Kumar Sahu for keeping.

17. Letter dated 16-3-2023 of one Gurudev Prasad Dahariya, AG III posted in the office of the Superintending Engineer, in a communication made to the Superintending Engineer stated that the main copy of award was received by him on 7-9-2022 by

Registered Post and after receipt, he forwarded the same to N.K. Jayant, the then Superintending Engineer. The said letter is on record. Further letter of Gurudev Prasad Dahariya, who was AG III in the office of appellant, engrafts the letter purports that whatever the postal receipts are received as per the office procedure they are being received by endorsement and thereafter placed before the S.E. for marking. The subject matter of communication is particular to that of award dated 2-9-2022 and receipt of the same. The letter purports with specific description and particulars, which was forwarded to the Superintending Engineer.

18. So far as reliance placed by the learned counsel for the appellant upon the decision rendered by the Supreme Court in the matter of ***ARK Builders Private Limited*** (supra) is concerned, the said judgment purports that the period of limitation prescribed under Section 34(3) of the Act, 1996 would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1). The Supreme Court further held that if the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.

19. Section 31(5) of the Act, 1996 would purport that after the arbitral award is made, a signed copy shall be delivered to each party. The contention of the appellant that he had not received the signed copy of award is negated by the postal receipt and the contradictory statements made.

20. As has been held by this Court in the matter of ***Union of India v Bhola Prasad Agrawal & Another***[10] which taking the view of the Supreme Court that there is only one date on which a signed copy of the final award is received by the parties, from which the period of limitation would start for filing objections. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award. In the instant case, it is not in dispute that award was signed on 2-9-2022. The contention of the appellant that it was not received by them.

21. After the award was signed on 2-9-2022, according to the respondent it was communicated by e-mail to the parties and copy of award was sent by Registered Post. The letter dated 11-3-2023 (Annexure-R/54) of the Superintending Engineer would purport that as per the records available in the office the award has not been received by the office. The said order was seen by the office for the first time from the notice issued by the Commercial Court, Nava Raipur. The communication of the Arbitrator dated 14-3-2023 (Annexure-R/55) made to the Superintending Engineer, pursuant to the letter issued by the appellant, would show the proof of sending

10 ARBA No.15 of 2022 (decided on 21-9-2022)

the award through India Post Consignment No.RK792604517IN. This goes in affirmative with the S.No., which was obtained under the RTI Act at S.No.70 shows that RK792604517IN consignment was received by the Superintending Engineer, National Highway Circle, PWD, Raipur on 7-9-2022.

22. The Supreme Court in reference to Section 27 of the General Clauses Act has observed that the principle incorporated therein could profitably be imported in a case where the sender had despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. (See: ***D. Vinod Shivappa v Nanda Belliappa***[11]).

23. In the matter of ***Ajeet Seeds Limited v K. Gopala Krishnaiah***[12] the Supreme Court again reiterated that Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. (Also see : ***C.C. Allavi Haji v Palapetty Muhammed and Another***[13]).

24. Before this Court, a reference is made to a communication dated 17-3-2023 (Annexure-R/59), which purports that the explanation has been sought for from the concerned Receipt Clerk about receipt of registered post and the enquiry was going on. As per the office

11 (2006) 6 SCC 456
12 (2014) 12 SCC 685
13 (2007) 6 SCC 555

procedure, whatever letter being received by the Receipt Clerk, the same was to be placed before the Superintending Engineer and after marking, the same is to be entered in the Receipt Register, however, no entry was made about the same.

25. In the affidavit of S.S. Manjhi dated 11-7-2023 filed before the Commercial Court it is stated that entry of 7-9-2022 in receipt of dak was with respect to a letter of 19-8-2022 and not an award. The respondent has placed copy of the letter dated 19-8-2022. At the bottom of said letter the receipt of Superintending Engineer is shown that of received on 24-8-2022. There is no plausible explanation made by the appellant. On the contrary, the receipt of 7-9-2022 is about a Registered/AD consignment obtained under the RTI from the Postal Department by the respondent shows that it was for particular consignment of letter of Registered/AD with particular S.No.RK792604517IN. The said S.No. tallies with the postal receipt send by the Arbitrator by postal receipt and is reflected in the letter of Arbitrator (Annexure-R/55). Therefore, the appellant tried to camouflage and create an evidence to support the contention of non-receipt of award, which cannot be appreciated at all.

26. The further communication of the Superintending Engineer dated 20-3-2023 (Annxure-R/63) seeking legal opinion from the Advocate General the word of appreciation for the Arbitrator was recorded. However, subsequently, in the letter dated 24-3-2023

(Annexure-R/66) complete change of stand was taken by the appellant, which shows that after the opinion was obtained from the office of the Advocate General the appellant came out with the plea that the signed copy of the award was not received and only photocopy of the award was received. It was further averred that the final arbitral award was also not signed, which was received. The said unsigned photocopy of the award is not on record.

27. If it was the main stand of the appellant in the letter dated 24-3-2023 that they are in hold of photocopy of unsigned award, the same should have been placed before the Court to appreciate as it was the only relevant document to deliberate about receipt and/or non-receipt of the award. If the said document, which is important to the *lis*, is held back by the appellant then adverse inference is required to be drawn.

28. The Supreme Court in the matter of ***Union of India v Ibrahim Uddin and Another***[14] held thus at para 12 :

> 12. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under Section 114 Illustration (g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. (Vide: Murugesam Pillai v. Manickavasaka Pandara; Hiralal v. Badkulal; A. Raghavamma v. A. Chenchamma; Union of India v. Mahadeolal Prabhu Dayal; Gopal Krishnaji Ketkar v. Mohamed Haji Latif; BHEL v. State of U.P.; Musauddin Ahmed v.

14 (2012) 8 SCC 148

State of Assam; and Khatri Hotels (P) Ltd. v. Union of India.

29. The Supreme Court in the matter of ***Ajay Kumar D. Amin v Air France***[15] held thus at para 7 :

> 7. Again, in support of the said proposition, the Commissioner for Taking Accounts rightly placed reliance upon the judgment of this Court in *Gopal Krishnaji Ketkar* v. *Mohd. Haji Latif*, wherein this Court held that under Sections 114(*g*) and 103 of the Evidence Act, 1872, a party in possession of best evidence which throws light on the issue in controversy withholding it, the Court ought to draw an adverse inference against it notwithstanding that onus of proof does not lie on him and the party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

30. In absence of any document before us it is clear that the communication made by the Arbitrator to say that the award copy was signed and sent the same through Registered Post appears to be correct.

31. In the matter of ***Ministry of Youth Affairs and Sports, Dept. of Ports, Govt. of India*** (supra) the High Court of Delhi held that even receipt of photocopy of a signed Award from an Arbitral Tribunal has been held to be receipt of Arbitral Award in terms of Section 31(5) of the Act, 1996. Para 46 of the said decision is quoted below :

> 46. Even receipt of photocopy of a signed Award from an Arbitral Tribunal has been held to be receipt of Arbitral Award in terms of Section 31(5) of the Arbitration Act. It has categorically been held that there is no requirement in Section

15 (2016) 2 SCC 566

34 of the Arbitration Act for filing ink signed copy of the Award. Thus, in the case of Continental Telepower Industries Ltd. Vs. Union of India, it has been held as follows:

> "14. I also find that the legislature has while re-enacting the arbitration law made a conscious change in the provision as existing in 1940 Act. Section 14(1) of 1940 Act merely required the arbitrators to make and sign the award and to give notice in writing to parties of the making and signing thereof. There was no requirement therein as in Section 31(5) of the Act, that upon making of the award, deliver a signed copy thereof to each party to arbitration as in Section 31(5). Under Section 14(2) of 1940 Act, a party to arbitration was required to request to the arbitrator to cause the award or a signed copy of it together with the arbitration record to be filed in the court, and whereafter the court was required to give notice to parties of filing of award. The award was required to be made rule of the court before being executable. However, under the 1996 Act, the award is executable as such, after limitation for filing objections with respect thereto has expired. The grounds of challenge have been considerably restricted. The law, with a view to limit the time whereafter the award becomes executable as a decree of court, has done away with the application of Section 5 of Limitation Act qua the petition for filing of award in the court. Rather by use of the expression "but not thereafter" in proviso to Section 34(3), intent is clear, not to permit the execution of an award to remain in a state of suspended animation. In my view, if it is to be held that a photocopy of a signed award delivered by the arbitrator under cover of letter signed by him in evidence of authentication thereof is not sufficient compliance of Section 31(5), it will lead to indefinite delays in execution and in filing of petition under Section 34(3) and till when the award is inexecutable. Such an interpretation will be an impediment in expediency in arbitration matters, the purpose behind bringing about change in law.

15. I have recently in Aktiebolaget Volvo v. R. Venkata Chalam, (2009) 160 DLT 100 on an interpretation of various provisions of CPC held that Order 7 Rule 14 and Order 8 Rule 1A requiring filing of documents do not mean the original document and it is open to the parties to, in compliance thereof, file copies/photocopies of the documents. The requirement to "produce" as distinct from "file" the original document for inspection is only at the stage of admission/denial or tendering documents into evidence. In that context the definition of a document in Section 3 of Indian Evidence Act was also noted as including words printed, lithographed or photographed.

16. The Apex Court has been extending the meaning of primary as well as secondary evidence. It has been held in Prithi Chand v. State of Himachal Pradesh, (1989) 1 SCC 432 : AIR 1989 SC 702 that the carbon copy of the medical certificate bearing also the carbon copy of the signatures appended by the doctor on the original is primary evidence within the meaning of Section 62 of the Evidence Act and the judgments of the courts below holding otherwise were set aside. Similarly, in Y.N. Rao v. Y.V. Lakshmi, 1991 RLR 367 (SC) a photocopy of document has been held to be a secondary evidence within the meaning of Section 63 of the Indian Evidence Act. The judgment of the High Court refusing to see a foreign judgment and decree for the reason of copy provided being a photocopy was set aside.

17. In the absence of there being any words in the Act to indicate the requirement of furnishing award in the form of primary evidence to the parties, the law if laid down so to require an “ink signed‟ award would, in my opinion, lead to delays and also give a handle to the unscrupulous litigants to indefinitely delay the execution of the award by contending that the signed copies of the award had not been delivered.

18. Law has to evolve with changing technologies. In today's time it would be

> unfair to require the arbitrator to sign each and every copy of the award, especially when photocopy has become common place and is the accepted mode.
>
> xxx xxx xxx

32. Applying the well settled principles of law and for the reasons stated hereinabove, we are of the view that the award was duly signed by the Arbitrator and sent & delivered the same to the appellant in terms of Section 31(5) of the Act, 1996, but contradictory statements were made and different stand was taken by the appellant to set aside the award on false grounds. In view of aforesaid discussion, we find that the impugned order passed by the learned Commercial Court, Nava Raipur, is just and proper, warranting no interference of this Court.

33. As a sequel, the present appeal (ARBA No.51 of 2023), *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Goutam Bhaduri)
Judge

Sd/

(Sanjay S. Agrawal)
Judge

Gowri

HEAD NOTE

Presumption.--Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post.

उपधारणा – धारा 27 साधारण खण्ड अधिनियम यह उपधारित करती है कि सूचना तामील हुई तब समझी जायेगी जब इसे सही पते पर पंजीकृत डाक द्वारा भेज दी गई हो।

Limitation.--When specific limitation period is prescribed under the Arbitration and Conciliation Act, 1996 no further extention of time can be provided by the Court to challenge an award.

परिसीमा – जब माध्यस्थम् और सुलह अधिनियम, 1996 में विनिर्दिष्ट परिसीमा अवधि निर्धारित हो तो पंचाट को चुनौती देने के लिये न्यायालय द्वारा अतिरिक्त समय प्रदान नहीं किया जा सकता।

Delay.--Merely because Government is involved, a different yardstick for condonation of delay cannot be laid down.

थ्वलम्ब – केवल इसलिए कि शासन सम्मिलित है, विलम्ब की माफी के लिए कोई अलग मानदंड निर्धारित नहीं किया जा सकता।