

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 341/2006 & CMA No. 6843/2006**

% DATE OF DECISION : 9th September, 2008

UNION OF INDIA Appellant
Through: Ms. Saroj Bidawat, Advocate
versus

M/S. AUTO PINS (INDIA) PVT.
LTD. & ANR. Respondents
Through: Mr. (appearance not given),
Advocate.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

J U D G M E N T

MUKUL MUDGAL, J: (ORAL)

1. The present belated appeal arises against the judgment and order dated 20th September, 2005 passed by the learned Single Judge. By the impugned judgment the learned Single Judge has dismissed an application for enlargement of time for making an award.

2. In the impugned order the learned Single Judge had arrived at the following findings:-

"9. If the aforesaid is the position, in respect of revocation authority of this Court, the analogous principles must be kept in mind while granting extension of time. If arbitration proceedings are not concluded within the stipulated time, no steps are taken for seeking extension from the Court and Arbitrators are appointed one after the other, it shows a lack of follow up on the part of the claimant (the petitioner herein). It is to be

noticed that the Arbitrator adjourned the matter sine die. Almost after a lapse of two years the petition was filed for extension of time. In my considered view this is not a fit case where any extension of time should be granted as the arbitration proceedings itself has failed to serve purpose for which they were meant. This is actually a case of exercise of jurisdiction under Section 5 and 12 (1) (b) (SIC) 12 (2) (b) for revocation of the authority of any arbitration proceedings in view of the conduct of the petitioner. Ordered accordingly.”

3. The learned Single Judge has reproduced the averments in the impugned order filed by the Appellant in para 3 of his petition which reads as follows:-

“3. That Smt. Lakshmi Swaminathan was appointed as sole Arbitrator on 3.5.1991 to adjudicate the controversy between the parties. Respondent No. 1 had not agreed for extension of time beyond prescribed period of 4 months. The case for extension of time was initiated in the High Court of Delhi. But the summons could not be served to the Respondent No. 1 being not available at the address. Then the Respondent was traced and summons was served with the help of Police department. In the meantime, sole Arbitrator had resigned as she was appointed as Member Judicial in Central Administrative Tribunal. Brig. R.P. Karwal was appointed as Sole Arbitrator on 15.11.93. Proceedings could not be progressed since the Respondent No. 1 insisted for extension of time from High Court. On retirement of Brig. Karwal on 30.11.94 Shri. C.L. Arora was appointed as Sole Arbitrator on 11.01.95. He could not proceed because Respondent No. 1 was not agreeable for enlargement of time and resigned on 9.10.96. Thereafter AVB V.B. Batra (then Air Commodore) was appointed as Arbitrator on 8.12.96. Respondent No. 1 reiterated the enlargement on time from High Court. Sole Arbitrator has adjourned the case Sine Die on 19.9.97.”

4. The learned Single Judge had thus recorded the following findings:-

- (a) That the dispute between the parties arose pursuant to an agreement dated 27.12.1982.
- (b) That the first Arbitrator *Lakshmi Swaminathan* was appointed on 3.5.1991 and the award was not made within the prescribed period of four months owing to lack of agreement on behalf of Respondent No. 1. While the application for the extension of time for making an award was pending in this Court, the sole Arbitrator had resigned. Another Arbitrator was appointed as late as on 15.11.1993 only. The said Arbitrator/Brig. R.P. Karwal retired on 30.11.1994 and in his place Shri C.L. Arora was appointed as sole Arbitrator on 11.01.1995. Proceedings dragged on and no application for the extension of time was made. Thereafter on 8.12.96 Shri. *V.B. Batra* was appointed as Arbitrator and since the proceedings again prolonged, the Arbitrator adjourned the proceedings sine die on 19.09.97.
- (c) That the application under Section 28 was filed by the appellant on 2.8.1999 after a delay of about two years from the date of the of the sine die adjournment by the Arbitrator on 19.9.1997.
- (d) The impact of Section 28 of the Arbitration Act, 1940 was noted and the judgment of ***M/s. Stelco Tubes (P) Ltd. vs. Union of India & Anr. in OMP No. 53/1995*** decided on 10.9.2005 was relied upon in support of this finding.

- (e) The impact of Sections 5 and 12 (2) (b) which gives power to the court to revoke the authority of the Arbitrator was discussed by relying upon the judgment of this Court in ***Union of India vs. Som Nath Chadha & Co. 25 (1984) DLT 226*** whereby it was held that the Court can revoke the authority of the Arbitrator as the main object of referring a dispute to an Arbitrator for adjudication is the speedy end of the dispute.
- (f) The impact of the law laid down in ***M/s. Fulchand Kanhaiyalal Co. vs. Kharda Company Ltd. reported in AIR 1966 SC 1036***, was also discussed where it was held that expeditious commencement of arbitral proceedings is must, as delay defeats justice and equity and in such cases the court would be justified in exercising the discretionary power and exercise jurisdiction under Sections 5 and 12 (2) (b), to permit the rescinding of the arbitration agreement and drawing an analogical power to revoke the authority of the Arbitrator.
- (g) That there was a lack of follow up on the part of the claimant/Union of India.
- (h) That after a lapse of two years the petition was filed for the extension of time. In this case any extension of time could not be granted as the arbitration proceedings itself failed to solve the purpose for which they were meant.

- (i) That this was actually a case of exercise of jurisdiction under Sections 5 and 12 (2) (b) for revocation of the authority of any arbitration proceedings in view of the conduct of the appellant.

5. Consequently, the learned Single Judge dismissed the application for extension of time for making the award by his impugned judgment dated 20th September, 2005.

6. In this view of the matter, learned counsel for the Appellant vehemently urged in the present appeal that Respondent had not asked for an extension of time even though directed by the Arbitrator. We are surprised as to how the Arbitrator could have directed the Respondent to seek an extension of time. It was not the Respondent's responsibility to seek an extension of time, it was entirely the Appellant's responsibility to do so. The very fact that the last extension of time was sought nearly two years after the proceedings were adjourned sine die, demonstrates that the findings of learned Single Judge are not contrary to law and need not be inferred with. This apart even otherwise the dispute emanates from an agreement dated 27.12.1982 and the Arbitration has been unduly prolonged solely on account of the Appellant's conduct and successive appointments of four arbitrators without any progress over a span of about eight years.

7. There is, therefore, no merit in the appeal and appeal itself is belated by 195 days. The only explanation given for condonation of delay is found in para 4 which reads as follows:-

“4. That there has been delay in filing the present appeal which has occurred under the following circumstances:-

(a) That the writ petition was disposed of on 20.09.2005 by Ld. Single Judge of the Hon’ble High Court and counsel for the Appellant applied for the certified copy of the order and on the receipt of the same supplied to the legal section of the Ministry of Law and Justice in Delhi High Court.

(b) After receiving the judgment, concerned department sent the file to the ministry for the approval for challenging the judgment of the Ld. Single Judge of the Hon’ble High Court and after seeking approval from the Ministry, department approached the counsel in February 2006 to file appeal against the order/judgment passed by Ld. Single Judge of the Hon’ble High Court.”

7. There is no valid explanation in the above paragraph justifying the delay except the bureaucratic inaction. Accordingly, the application for delay is dismissed. Consequently, the appeal is dismissed both on merits and on the ground of delay.

MUKUL MUDGAL, J

SEPTEMBER 09, 2008
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MANMOHAN, J