

GAHC030003652024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./1/2024

The National Highways and Infrastructure Development Corporation Ltd. and 2 Ors.
Represented by the General Manager (LA and CORRD), NHIDCL, Tuikhuahtlang,
Aizawl2: The National Highways and Infrastructure Development Corporation
Limited (NHIDCL)

3: The General Manager (LA and Admin)
NHIDC

VERSUS

Sh. Lalthanzuala and 16 Ors.
S/o Darngaia, R/o Seling, Aizawl District, Mizoram 2:Smt. Sanghliri

3:Sh. Lianthanga

4:Sh. Thangsavunga

5:Sh. Lalnura

6:Smt. V.L. Zamlani

7:Sh. Laldusanga

8:Sh. Lalengzauva

9:Smt. Lalhmingthangi

10:Smt. Vanlalhruii

11:Sh. C. Biakzinga

12:Sh. Lalengmawia

13:Smt. Kawlthanchhungi

14:Sh. Rohmingthanga

15:Sh. Runluaia

16:Smt. Lallianthangi

17:The Deputy Commissioner-cum-Competent Authority for Land Acquisitio

Advocate for the Petitioner : Mr C Zoramchhana

Advocate for the Respondent :

Arbitration Appeal No. 1 of 2024

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

15.07.2024

Heard Mr. C. Zoramchhana, learned counsel for the appellants who has prayed for setting aside the impugned Order dated 08.03.2024 passed by the Addl. District Judge, Aizawl in CMA No. 801/2023, by which the appellants' application for condonation of delay in filing the application under Section 34 of the Arbitration and

Conciliation Act, 1996 (*hereinafter referred to as the 1996 Act*) beyond a period of 120 days, has been rejected.

2. The brief facts of the case is that pursuant to an arbitration proceeding under the 1996 Act, the learned sole Arbitrator passed the arbitral Award on 01.05.2023. The copy of the arbitral Award was received by the appellants on 15.05.2023.

3. The appellants thereafter filed an application under Section 34 of the 1996 Act on 10.10.2023 before the District Judge, Aizawl against the arbitral Award dated 05.05.2023.

4. The case was endorsed to Addl. District Judge, Aizawl by the District Judge, Aizawl for disposal and the Addl. District Judge, Aizawl rejected the appellants' application under Section 34 of the 1996 Act, on the ground that no application under Section 34 could be filed beyond the period of 120 days, in terms of Section 34 (3) of the 1996 Act.

5. The appellants being aggrieved have put a challenge to the same, on the ground that an application made under Section 34 challenging an arbitral Award, which has been rejected on grounds of delay in filing the Section 34 application of the 1996 Act is appealable under Section 37 of the 1996 Act, as it falls under appealable orders under Section 37 of the 1996 Act. He submits that the impugned Order dated 08.03.2024 passed in CMA No. 801/2023 should be set aside, as the rejection of the Section 34 application is an appealable order.

6. The learned counsel for the appellants submits that an order refusing to condone the delay in filing a claim petition has the effect of finally disposing of the original petition and as such, the said order can therefore, be treated as an award and hence,

is appealable in terms of the judgment of the Madras High Court in the case of **G. Gopalaswami Vs. G. Navalgaria & Others** reported in **1965 SCC Online MAD 110**. Thus, by applying the above ratio, the rejection of the appellants' Section 34 application being appealable, the appeal has to be allowed, even though the appellants filed the Section 34 application, after 120 days had expired from the date of receiving the Arbitral Award. Further, the Division Bench decision of the **Assam High Court in Mafizuddin Bhuyan & Another Vs. Alimuddin Bhuyan & Others** reported in **1950 SCC Online GAU 83** held that when objections to an award are dismissed on merits or they are dismissed on the ground that they are filed beyond time, the Court by dismissing them in effect refuses to set aside the award, and an order refusing to set aside the award is clearly appealable under Section 37.

7. The learned counsel for the appellants submits that the above two cases were referred to in **Chintels India Limited Vs. Bhayana Builders Private Limited** reported in **(2021) 4 SCC 602**, wherein it was held that an appeal under Section 37(1)(c) of the 1996 Act is maintainable against an order refusing to condone the delay in filing an application under Section 34 of the 1996 Act. He accordingly submits that the rejection of the appellants' application for condonation of delay in filing application under Section 34, on the ground that the same was filed after 120 days was bad in law and the same has to be set aside.

8. I have heard the counsels for the appellants.

9. The issue involved in this appeal is whether an application can be filed under Section 34 of the 1996 Act, after the expiry of 120 days from the date on which the party making the application had received the arbitral award.

10. The learned Addl. District Judge, Aizawl in the impugned Order dated 08.03.2024

passed in CMA No. 801/2023 had dismissed the application on the ground that the same had been filed on 10.10.2023, i.e. beyond the limitation period of 120 days expressly provided under Section 34(3) of the 1996 Act.

11. Section 34 (3) of the 1996 Act provides as follows:-

“34. Application for setting aside arbitral award.-

(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. A perusal of Section 34 provides that an application for setting aside an arbitral award may not be made after three months have elapsed, w.e.f from the date on which the party making the application had received the arbitral award.

13. The proviso to Section 34 (3) provides 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 30 days, but not thereafter. A reading of Section 34(3) clearly provides that no application under Section 34 of the 1996 Act can be made beyond a period of 120 days, from the date on which the party making the application had received the arbitral award.

14. In the present case, the appellants have admitted to have received the arbitral award on 15.05.2023 and as such, the appellants would have a maximum of 120 days to file an application under Section 34 and it's proviso i.e. till 14.09.2023. However, the appellants filed their application under Section 34 only on 10.10.2023, that is beyond the period of limitation provided under Section 34(3) of the 1996 Act.

15. The judgments relied upon by the learned counsel for the appellants was with regard to whether an order refusing to condone the delay in filing an application under Section 34 of the 1996 Act is an appealable order under Section 37 (1)(c) of the 1996 Act.

16. The judgments of the Madras and Assam High Courts were made prior to the promulgation of the 1996 Act. The Supreme Court judgment in ***Chintels India Limited (Supra)*** held that an appeal under Section 37(1)(c) of the 1996 Act would be maintainable against an order refusing to condone delay in filing an application under Section 34 of the 1996 Act to set aside an award. There is no quarrel with the above proposition of law, inasmuch, as the same only provides that an order refusing to condone the delay in filing an appeal, is appealable. The same however does not take away the fact that an appealable order has to overcome the rigors of law provided in the statute. In the present case, it is clear that Section 34(3) of the 1996 Act barred the filing of a Section 34 application beyond the period of 120 days, to be counted from the date the applicants/appellants received the Award.

17. The Supreme Court in the case of ***Union of India Vs. Popular Construction Co.*** reported in ***(2001) 8 SCC 470*** has held at paragraphs 12 and 16 as follows:-

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and

would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provided that

"where the time for making an application to set aside the arbitral award under Section 34 has expired..the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

18. In view of the reasons stated above, this Court does not find any infirmity with the impugned Order dated 08.03.2024 passed by the Addl. District Judge, Aizawl in CMA No. 801/2023, as the Section 34 application under the 1996 Act has not been filed before the expiry of the maximum period of 120 days, to be counted from the date the Arbitral Award was received by the appellants.

19. The appeal is accordingly dismissed.

JUDGE

Comparing Assistant