

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.7785 of 2014 (O&M)

Date of decision : 17.09.2015

MSK Projects India Ltd.

...Appellant

Versus

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sameer Parekh, Advocate &
Ms. Sonali Basu Parekh, Advocate &
Mr. Lalit Chauhan, Advocate and
Ms. Divya Khanna, Advocate for appellant.

Mr. H.S. Sethi, Addl. Advocate General, Punjab.

AMIT RAWAL, J. (Oral)

The appellant has challenged, the order dated 20.08.2014, passed by Additional District Judge, Chandigarh, whereby objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') by the State of Punjab against the award dated 21.12.2011, purportedly have been sent vide letter dated 26.12.2011, received by them on 04.01.2012, have been set aside and the award dated

05.03.2012 rendered by the Third Arbitrator, has been upheld.

Mr. Sameer Parekh, learned counsel appearing on behalf of appellant submits that objections at the behest of the respondent-State were ex facie time barred, in essence, two Arbitrators had given award on 21.12.2011, which admittedly has been received by the State on 04.01.2012, whereas objections had been filed on 31.05.2012 i.e. beyond 90 plus 30 days. The Additional District Judge has erroneously taken into consideration the period of limitation from 05.03.2012 i.e. the award given by the third Arbitrator, whereby he had given his dissent to the award dated 21.12.2011. In this context, he has drawn attention of this Court to note dated 21.12.2011 signed by the Presiding Arbitrator and another Arbitrator, which reads thus:-

“Note

201. *Before delivering the award, a draft award was sent to Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator for his perusal and comments, if any, vide Presiding Arbitrator's letter dated 28.5.2011. The same reached him in due time. Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator, did not send any comments. A reminder was again sent by the Presiding Arbitrator to him on 06.08.2011. Thereafter, Presiding Arbitrator often requested, Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator, about this draft award but never received any positive reply from him. Again, after receiving the concurrence of Mr. J.C. Shah, Co-Arbitrator, letter dated 08.11.2011 was sent by the Presiding Arbitrator to Hon'ble Justice Mr. G.C. Mittal, Co-Arbitrator, but with no response from him. Anticipating finalization of award, the parties were requested to send non-judicial stamp paper of Rs.100/-*

each for preparation and declaration of final award which the parties sent to the Presiding Arbitrator. It is important to state that the draft award that was sent to Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator, was having concurrence of the majority of the Arbitrators namely Hon'ble Justice (Retd) Mr. B.P. Singh and Mr. J.C. Shah, in terms of Section 29 of the Arbitration and Conciliation Act, 1996. We also deem it proper to make copy of the letters sent to Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator for his comments and views on the draft award as part of this award as Annexure-AT-1 (Colly).

202. *It is also stated that respondent, DOT, GOP did not submitted written synopsis of their arguments to the AT.*

203. *This award is signed by Hon'ble Justice (Retd) Mr. B.P. Singh, Presiding Arbitrator and Mr. J.C. Shah, Arbitrator. Since, Hon'ble Justice (Retd) Mr. G.C. Mittal, Arbitrator has not sent his views or comments in spite of repeated reminders since May, 2011 and telephonic requests, the Tribunal is not in a position to obtain his signature on this award, which furnishes the explanation as required by sub section (2) of Section 31 of the Arbitration and Conciliation Act, 1996.*

204. *The award is made in accordance with the provisions of Section 31 of the Arbitration and Conciliation Act, 1996. A signed copy of this award is sent to each party free of cost in accordance with Sub Section (v) of Section 31 of the Arbitration and Conciliation Act, 1996.”*

In pursuance to the aforementioned observation, as penultimate paragraph of the award, which read thus:-

“199. This award is made at New Delhi on Wednesday, the 21st December, 2011 on non-judicial stamp paper of Rs.100/- purchased by the parties. The deficiency in the stamp

paper fee will be borne by the parties on equal sharing basis. If any party intends to move the court, that party will supply the deficiency in stamp paper value before moving the competent court of jurisdiction. 50% thereof will be recoverable from the other party and our award will be so read for sharing the deficiency in stamp fee. If any party moves the court and the Arbitral Tribunal is called upon to file the award in the court by the concerned party or by the court, then all costs of filing the award and related papers in the competent court of law and all other related costs, will be borne by the party making the request for filing of the award in the court, or the party on whose application/request, the court issues the directions for filing the same.

200. *Before we conclude we wish to record our appreciation of the valuable assistance rendered to the Arbitral Tribunal by the learned counsel representing the parties.*

Signed copies of the original award are being sent to both the parties.”

He further submits that, preceding to the aforementioned date i.e. 21.12.2011, the Arbitrator had been writing letters to the third Arbitrator to make suggestions with regard to the draft award so that it can be declared in the month of November 2011. The correspondences are the part of the paper book, for the sake of brevity its contents are reproduced herein:-

*“In the matter of Arbitration between
M/s MSK Projects (India) Ltd.
707, Sterling Centre, R.C. Dutt Road, Alkapuri, Vadodara,
390005Claimants
Versus
1. The State of Punjab, Department of Transport,
2. The Director State Transport, Punjab, Chandigarh*

...Respondents

Subject:- Construction of bus terminal on BOT basis at Jalandhar.

Dear Sir,

Attached here with please find draft final award for the above dispute.

I have prepared this draft based on the documents available on record and written submission of arguments submitted by the claimant, MSK, Respondent, DOT did not submit any written arguments subsequently, therefore I have prepared their (DOT) submission based on my notings. Kindly, feel free to edit this draft award and make your suggestions in it so that we can declare this during May, 2011. Last correspondence in this regard was received from the Claimant vide letter dated 5th March, 2011 for WELLSPUN, who took over MSK Company. If necessary we can meet either at New Delhi or Chandigarh.

With regards

Yours truly

(Justice B.P. Singh) 15.04.2011, New Delhi

Presiding Arbitrator 28.05.2011 Encl: draft award

Copy with complements to,

- 1. Shri Jagdish Chinubhai Shah, Arbitrator
Former Managing Director, GSRDC, GOG,
8, Satelite Society, NR. Central Bank of India,
Jodhpur Tekra, Ahmedabad, 380015.*
- 2. Hon'ble Mr. Justice G.C. Mittal,
Former Chief Justice, Delhi & Rajasthan High
Court, Arbitrator,
House No.7, Sector-9, Chandigarh*

6th August 2011

Dear

*Subject:- Draft award in the matter of MSK Projects Vs.
State of Punjab*

This has reference to the draft in the above matter which I had sent to your by Speed Post on 28.05.2011 which was received by you and was being examined by you. I have not heard from you since. I am eagerly awaiting your comments so that award may be finalized and declared. The parties have been making enquiries about the declaration of the award. Kindly let me have your views so that we can process the matter further and finalise the award in the light of your views in the matter.

With regards,

Yours sincerely,

Sd/- (B.P. Singh)

In the matter of Arbitration between

Welspun Projects Ltd.

8th November, 2011

(Formerly: MSK Projects (India) Ltd.

And

- 1. The Director, Deptt. Of Transport*
- 2. The Director, State of Transport, Punjab,
Chandigarh*

To

Hon'ble Mr. Justice G.C. Mittal

Former Chief Justice, Delhi & Rajasthan High

Courts, Arbitrator, House No.7 Sector 9,

Chandigarh.

Dear Brother,

In the above matter, I had forwarded to you draft award for your consideration and suggestions vide letter dated 28.05.2011 and reminder dated 06.08.2011. I had expected that within a short time thereafter we could finalize the award and pronounce the award. Accordingly, I had required both the parties to send non-judicial stamp papers of Rs.100/- each so that the final award could be

prepared.

I had requested you telephonically to let me have your views in the matter so that we could, if necessary, finalize the award after discussions. You had then informed me that you are going through the award and you will let me have your views as soon as possible. I have not heard from you since. I would, therefore, request you to kindly let me have your views in the matter and suggestions, if any, at the earliest. If I do not receive your suggestions, if any, for any modification in the draft award by 25th November, 2011 I shall proceed on the basis that you have no suggestions to make and the award may, therefore, be pronounced as it is.

Mr. J.C. Shah, Co-arbitrator has already conveyed his concurrence.

I eagerly await your response.

Yours sincerely

Sd/- (B.P. Singh)”

In support of his contention, he has relied upon Division Bench judgment of the Hon'ble Delhi High Court rendered in *Government of India Vs. M/s Acome and others, 2009 AIR Delhi 102* to contend that limitation would start/run from the date when award is signed by the majority Arbitrators and the copy of their award had already been received by the Objector, limitation would start from there and not from the date of award signed by the minority Arbitrator.

He further submits, that de hors of the fact that objections were time barred, the impugned order also suffers from illegality and perversity for the reasons that award of the minority Arbitrator cannot be upheld and thus, the impugned order is not sustainable in the eyes of law. He has

referred to the provision of Section 31 of the Act.

Whereas on the other hand, Mr. H.S. Sethi, Addl. Advocate General Punjab submits that as per the provision of Sub Section 4 of Section 31 of the Act, the arbitral award stating the place of the arbitration has to be determined in accordance with law as also provided under Section 20 of the Act and, thereafter award shall be deemed to have made at that place. He further submits that place of arbitration, from the perusal of the proceedings of the Arbitration Tribunal had been at Chandigarh, whereas from the perusal of the award given by the Majority Arbitration, it has been signed at Delhi and, therefore, same is not sustainable in the eyes of law.

Even letters extracted (supra) does not reveals the contents of the draft award and, therefore, State was totally unaware of the contents of the draft award vis-a-vis the final award. The objections were within limitation as the same have been filed, from the date of receipt of the minority award dated 05.03.2012. There is no illegality and perversity in the impugned order and, therefore does not warrant any interference and finally prays that appeal should be dismissed with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

As per the ratio decidendi culled out in the Government of India Vs. M/s Acome and others (Supra), it discernible that the limitation would begin from the date when the award has been signed by the majority Arbitrator. It would be apt to refer the relevant paragraphs, which read thus:-

“4. *The matter was referred to the arbitral tribunal*

consisting of three technical experts, namely, Mr.B.R.Nair (Chairman of the Tribunal), Mr.T.Narayanamoorthy, the arbitrator nominated by the respondent and Mr.Ranbir Khanna, the arbitrator nominated by the appellant. Majority arbitrators, namely, Mr. B.R.Nair and Mr.T.Narayanamoorthy, made and published award dated 1st February, 2002. The award was not signed Mr. Ranbir Khanna, the third arbitrator. However reasons for not signing the award are contained in the award itself. In paragraph 6 of the award majority arbitrators recorded that a draft award was prepared and circulated by the Secretariat and was discussed by the three arbitrators on 12th November, 2001. While the presiding arbitrator Mr.B.R.Nair and Mr.T.Narayanamoorthy were more or less in agreement, the third arbitrator, namely, Mr.Ranbir Khanna disagreed with them and expressed his disability to make and sign the award. In the minutes of the meeting held on 12th November, 2001, annexed to the majority award, the majority arbitrators recorded that Mr.Ranbir Khanna had opined on that day that no agreement could be reached on the award and, therefore, he was making his award in due course of time. As on the date of the publication of the majority award his award was still not available. Mr.Khanna gave his minority award on 18th September, 2002. Thereafter the appellant preferred the petition under Section 34 of the Act on 16th December, 2002 to challenge the majority award dated 1st February, 2002.

9. *Section 31 of the 1996 Act which is material for our purpose requires that an arbitral award must be in writing and signed by all the arbitrators whether the award is unanimous or not. An oral award is unknown to the 1996 Act. Sub-section (2) of the Section 31 deals with arbitral*

proceedings with more than one arbitrator. As per sub-section (2) bearing signatures of majority of all the members of the arbitral tribunal shall be sufficient so long as valid reasons for the omitted signature is made clear. Section 31 contemplates a single award and there is no plurality of award and signatures of majority of the members of the arbitral tribunal are sufficient so long as reasons for omission of the signatures of the minority arbitrator are contained in the majority award itself. Thus it is enough if the award is signed by the majority arbitrators and refusal of the minority arbitrator to sign will not affect its validity. Learned counsel for the respondent has referred to the following passage from Russel on Arbitration at page 271 of the 21st Edition (1997). In para 6-059 Russel states as follows:

"If however there is no chairman, then decisions, orders and awards must be made by all or a majority of the tribunal. Any member of the tribunal who does not assent to an award need not sign it and may set out his own views of the case in a "dissenting opinion". This is for the parties' information only and does not form part of the award, but it may be useful in terms of adding weight to the arguments of a party wishing to appeal against the award." "

Even from the perusal of the objection petition, it is nowhere discernible that objections have been filed from the date of receipt of the view of minority. For the sake of brevity, head note of the application is reproduced herein:-

“Application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated

21.12.2011 sent vide letter dated 26.12.2011 received by the petitioners on 4.1.2012, passed by the two arbitrators out of the three as the same is not only contrary to the facts, evidence and law, but has been passed on conjectures and opinions of the arbitrators without considering the counter claim filed by the petitioners to the claim filed by the respondent.

And for issuance of appropriate directions to the respondent to release the amount admissible to the petitioners as per the award passed by the third arbitrator dated 5.3.2012 vide which the claim filed by the respondent has been rejected and the counter claim filed by the petitioners has been allowed along with interest and consequential benefits.

And for any other appropriate order or direction, which this Hon'ble Court deems fit in the peculiar facts and circumstances of this case.”

The aforementioned facts would lead irresistible conclusion that objections have been filed beyond 90 plus 30 days, as provision of limitation Act 1963 do not apply to proceedings or provision under Section 34 of the Act and, therefore in my view, Additional District Judge ought to have taken aforementioned facts, while dealing with objections. Even as per the provision of Section 36 of the Act, the award, unless, challenged within the prescribed period shall be enforced under the Code of Civil Procedure in the same manner as if it was a decree of the Court. The impugned order also suffers from fallacy, for the reasons, that minority view of the Single Arbitrator cannot be made a Rule of Court in the presence of majority view.

In view of the aforementioned facts and circumstances, I am of the view that impugned order is not sustainable and, therefore, the same is

hereby set aside.

Appeal is accordingly allowed and the majority view of the Arbitrator (II) as per the award dated 21.12.2011 is upheld.

The appellant would be at liberty to claim the outstanding dues/execution of the award in accordance with law.

17.09.2015

pawan

**(AMIT RAWAL)
JUDGE**