

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.05.2017

+ **O.M.P. (COMM) 421/2016 & IA No.11655/2016**

**DELHI URBAN SHELTER IMPROVEMENT
BOARD**

..... Petitioner

versus

SH. LAKHVINDER SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajeev Sharma and Ms Radha
Lakshmi R.
For the Respondent : Mr Arun Batta.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'DUSIB') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning the arbitral award dated 14.03.2016 (hereafter 'the impugned award') passed by the sole arbitrator appointed by DUSIB.

2. The first and foremost question that falls for consideration is whether the present petition is beyond the period of limitation as specified under Section 34(3) of the Act.

3. The impugned award was made on 14.03.2016 and a copy of that was forwarded by the arbitrator to both the parties. It is now admitted - although was not disclosed in the petition - that a copy of the impugned award was received by DUSIB immediately thereafter (the documents

handed over by respondent indicate that the copy of the impugned award was received by DUSIB on 22.03.2016). The present petition was filed on 23.08.2016.

4. In the present petition, it is asserted that the impugned award was received by DUSIB on 26.05.2016 and on the said basis DUSIB asserts that the present petition was filed within time. It is noteworthy that DUSIB has also filed the covering letter from the arbitrator forwarding a copy of the impugned award as well as an envelope in which the same was forwarded, to establish that the impugned award was received by DUSIB only on 26.05.2016.

5. The respondent has objected to this petition as being barred by limitation. The respondent during the course of hearing pointed out that DUSIB had received the impugned award much earlier on 22.03.2016; nonetheless, it sent a letter dated 24.05.2016 to the arbitrator requesting him to announce the award. In response to the same, the arbitrator once again forwarded the impugned award to DUSIB. It was contended on behalf of the respondent that the letter dated 24.05.2016 was plainly mischievous as DUSIB had already received a copy of the impugned award and the said letter was written only to extend the period of limitation.

6. On the respondent contending that DUSIB had received the impugned award much earlier, DUSIB was called upon to file an affidavit.

7. In compliance with the aforesaid, an affidavit was filed on behalf of DUSIB. DUSIB did not dispute that it had received the copy of the impugned award in March, 2016. However, it contended that the period of limitation would not commence from the date of receipt of the copy of the

impugned award; according to DUSIB, the said delivery did not comply with the provisions of Section 31(5) of the Act as the copy of the award forwarded by the arbitrator was not a signed copy.

8. It is at the outset necessary to observe that the impugned award was sent by the arbitrator under the cover of the letter dated 14.03.2016. The letter was signed in original, that is, in the handwriting of the arbitrator. The photocopy of the impugned award enclosed with the letter, was also stamped in original on each page, by the stamp of the arbitrator bearing his name at the place where the signatures of the arbitrator appeared. It is also relevant to mention that the copy of the impugned award received by DUSIB on 26.05.2016 - on the basis of which the present petition is filed - is also a photocopy, which is similarly stamped.

9. Although it is stated in the petition that DUSIB had received the impugned award on 26.05.2016 in an envelope(a copy of which is annexed with the petition), the case subsequently set up is that DUSIB has never received a signed copy of the award and, therefore, the period of filing the petition has not begun, even as of date.

10. Thus, the principal questions to be addressed is whether the service of the award, which is made under the cover of a letter that is signed by the arbitrator and bears the original stamp of the arbitrator, is sufficient compliance of the provisions of Section 31(5) of the Act and whether it is open for DUSIB to raise this contention.

11. Mr Sharma, the learned counsel appearing for DUSIB relied upon the decisions of the Supreme Court in *State of Maharashtra and Others v. ARK Builders Private Limited: (2011) 4 SCC 616* and *Hindustan*

Construction Company Ltd. v. Union of India: AIR 1967 SC 526, in support of his contention that the copy of the award must be signed in the handwriting of the arbitrator and delivered to the parties in compliance of the requirement of Section 31(5) of the Act.

12. In ***ARK Builders Private Limited (supra)***, the original award was handed over to the claimant (the respondent) after the award was made and admittedly, no copy of the same was provided to the appellant as it had failed to pay the costs for arbitration. The appellant sought to challenge the award after a copy of the same was forwarded by the claimant for demanding payment in terms of the award. In order to challenge the award, the appellant sent a messenger, with a letter requesting for a copy of the award, to the arbitrator. The arbitrator endorsed the said letter stating that the original award had been given to the claimant and the copy of the award, which was sent along with the appellant's letter, was authenticated by the arbitrator. The appellant filed an application under Section 34 of the Act impugning the said award within nine days of the arbitrator making the aforesaid endorsement. In the aforesaid facts, the Supreme Court rejected the challenge as to the maintainability of the application under Section 34 of the Act and held that the period of limitation prescribed under Section 34(3) of the Act would start running only on the date, a signed copy of the award is delivered to and/or received by the party making the application for setting it aside under Section 34(1) of the Act. The Supreme Court also referred to its earlier decision in the case of ***Union of India v. Tecco Trichy Engineers & Contractors: (2005) 4 SCC 239*** wherein the Court had held that "*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”.

13. It cannot be disputed that for the delivery of the arbitral award to a party to be effective, the same has to be ‘received’ by the party and the period of limitation would also be calculated from the aforesaid date. Indisputably, the period of limitation would commence from the date when the impugned award is served on DUSIB, in the manner as prescribed under Section 31(5) of the Act. Thus, a signed copy of the award is required to be delivered. Unlike in the case of **ARK Builders Private Limited** (*supra*), in the present case, there is no dispute as to the delivery of a copy of the award by the arbitrator. The only question is whether the copy of the impugned award delivered to DUSIB by the arbitrator was a signed copy.

14. The covering letter enclosing the impugned award was signed in original and also bore the stamp of the arbitrator. The copy of the award enclosed with the letter was stamped with the name of the arbitrator in original on every page. The stamp was, plainly, to authenticate the copy of the award and DUSIB does not dispute that copy of the award authenticated by the arbitrator was received by DUSIB; its only contention is that the copy of the award was not signed in the handwriting of the arbitrator.

15. The requirement of delivering a signed copy of the award must be considered in the context of the scheme of the Act.

16. Section 31 of the Act contains provisions as regards the form and contents of the arbitral award. Sub-section (1) requires that the award shall

be in writing and shall be signed by the members of the arbitral tribunal. Sub-section (3) of Section 31 expressly provides that the arbitral award shall state the reasons upon which it is based unless the parties have agreed otherwise or the award is a consent award under Section 30 of the Act. Sub-section (4) of 31 requires that the date of the award and place of arbitration be stated on the award. Sub-section (5) of Section 31 of the Act requires that after the arbitral award is made, a signed copy shall be delivered to each party. The emphasis is clearly on the delivery of the award to each party. In the scheme of the Act, delivering the award in terms of Section 31(5) of the Act would terminate the arbitral proceedings under Section 32(1) of the Act. This is undoubtedly important as the period for limitation would commence on the award being delivered. The expression 'signed copy' clearly indicates the legislative intent that a copy authenticated by the arbitrator is served on each party. The purpose of enacting the said provision is clearly to ensure that the parties receiving the award are in a position to act on the same.

17. Obviously, the award would require to be signed by the arbitrator in original, however, it is not necessary that the copy of the award also bear the full signatures in original in writing of the arbitrator. The words "signed copy of the award" would include a copy of the award duly authenticated by the arbitrator by his mark. A rubber stamp of the signature of the arbitrator or digitally signed copy would be equally compliant with the provisions of Section 31(5) of the Act. In today's time, where much of the correspondence is by e-mails and in electronic form, other methods of authentication (other than signatures in own handwriting) have been adopted universally. It would not be apposite to read the expression

“signed copy of the award” in a restrictive manner so as to only imply a copy bearing the original signatures of the arbitrator in his handwriting.

18. Section 3(56) of the General Clauses Act, 1897 defines ‘sign’ as under:

“(56) - "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions;”

19. It is seen that the said definition is an inclusive one and includes, ‘mark’ within the definition of the word ‘sign’. Thus, the expression “signed copy of an award” would take within its meaning a copy that bears the ‘mark’ of the arbitrator which authenticates a copy. The mark would clearly include a mark in writing as well as a rubber stamp of the name of the arbitrator or any other mark that is adopted by the arbitrator as his own.

20. In *Black's Law Dictionary, Eighth Edition*, the word ‘sign’ has been defined as under:-

"1. To identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it <both parties signed the contract> 2. To agree with or join <the commissioner signed on for a four-year term>."

21. The word ‘signature’ has been defined in the *Black's Law Dictionary, Eighth Edition*, as under:

"Signature. 1. A person's name or mark written by that person or at the person's direction - Also termed sign manual. [Cases: Signatures 1-5. C.J.S. *Signatures* §§1-16] 2. *Commercial Law*. Any name, mark, or writing

used with the intention of authenticating a document.
UCC §§ 1-201(b)(37), 3-401(b) - Also termed *legal signature*. [Cases: Sales 29. C.J.S. Sales § 76]"

22. It is also well accepted in the United States of America that a signature may be made by use of a mark. In *Corpus Juris Secundum*, it is stated that:

““Mark”, as a *signature*, has been defined as a character, usually a cross, made as a substitute for a *signature*. Generally, in the absence of a statute providing otherwise, *signature* may be made by the use of a mark.”

(See: 80 C.J.S. Signatures § 10)

23. In the context of signature of a grantor on a deed, it is stated that:

“In the absence of particular statutes it is not essential that the *signature* on a deed be actually written. Any mark purporting to be a *signature* will suffice, as long as the signor adopts that mark as his or her own. Likewise, a *signature* printed or stamped is ordinarily sufficient if adopted as such by the grantor.”

(See : 26A C.J.S. Deeds § 63)

24. In *Mondragon et. al. v. Mondragon*: 257 South Western Reporter, the Supreme Court of Texas had, in the context of the statute that required that contracts for real estate to be in writing, and "*signed by the party to be charged therewith*", held that "*a signature made by a rubber stamp, typewriter or printing....*" would also be binding if the same is adopted by the grantor.

25. In *National Agricultural Co-operative Marketing Federation of Indian Ltd. v. M/s. R. Piyarelall Import and Export Ltd.*: AIR 2016 Calcutta 160, a Division Bench of the Calcutta High Court upheld the

decision of the Single Judge rejecting the petition under Section 34 of the Act for setting aside an award on the ground of limitation. In that case, the arbitration was conducted under the aegis of the Indian Council of Arbitration. The arbitral award was duly signed by all the three arbitrators and a certified copy of the award was forwarded to each of the parties by the Registrar of the Indian Council of Arbitration but the photocopy of the signed award was not signed in original by the arbitrators. In that context, the Court held as under:-

“24.....it was not the intention of legislature that all the copies of the award, dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.

25. Had it been the legislative intent that all copies of the award required to be furnished to the respective parties to a multiparty arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain the original signatures of the arbitrators, Parliament would, perhaps, not have used the expression ‘signed copy of the award’ but used the expression ‘a copy of the award, duly signed by the arbitrators’, in Section 31(5) of the 1996 Act.”

26. The decision of the Supreme Court in ***Hindustan Construction Company Ltd.*** (*supra*), which is relied upon by DUSIB, was rendered in the context of Section 14(2) of the Arbitration Act, 1940, which reads as under:-

“2. The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the court and upon payment of the fees and charges due in

respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with depositions and documents which may have been taken and proved before them, to be filed in court, and the Court shall thereupon give notice to the parties of the filing of the award.”

27. In that case, the Supreme Court observed that “*when a notice is issued by a court to the arbitrators or umpire, it is their duty to file in court either the award in original or a signed copy thereof as directed by the court*”. In that case, the original award had not been filed; the umpire had sent a letter stating that he was forwarding the award signed and duly certified by him and along with the letter was a document which began with the words “*now I hereby reproduce a true copy of the said award which is as follows:*”. The award was reproduced and at the end, the umpire had written the words “*certified as correct copy of the award dated 27th May, 1961*”. The controversy arose whether the said award was a signed copy as contemplated under Section 14(2) of the 1940 Act. It is in that context that the Supreme Court held that a true reproduction of the award which bears the signature of the umpire, would satisfy the requirements of Section 14(2) of the Act. The Court was not concerned with the question whether any other mark adopted by the arbitrator could also be considered as a signature. Clearly, a copy of the award bearing the signatures of the arbitrator in his handwriting would be signed copy of the award; but that does not mean that the signatures in the handwriting of the arbitrator is the only method of signing a copy of the award. The said decision cannot be considered as an authority for the proposition that the signed copy must necessarily bear the arbitrator’s signatures in his handwriting and no other method of signing the award is permissible. A decision is only an authority

for what it decides. It is relevant to mention that the Supreme Court referred to Section 3(56) of the General Clauses Act, 1897 wherein the word, 'Sign' has been explained to also include 'mark'. The Supreme Court expressly held that so long as the signatures of the arbitrator or umpire appear on the copy of the award filed in court and shows that the person signing has authenticated the accuracy or correctness of the copy of the document, it would be a signed copy of the award. Here again, the emphasis was on the arbitrator authenticating the copy of the award.

28. It is also relevant to mention that the said case relates to filing of an award dated 27.05.1961. At the material time, the use of photocopies, computer, print-outs and transmission by emails was practically unknown. Thus, even if it is assumed that in the context of the 1940 Act, a signed copy may have implied a copy which bears the original signatures of the arbitrator, the same does not mean that the Act also mandates the same. There are now other acceptable methods of authenticating documents. Even Courts are now issuing certified copies of orders which are digitally signed. Thus, the expression "signed copy" cannot be interpreted in the context of what it meant almost seventy seven years ago.

29. In view of the above, a rubber stamp bearing the name of the arbitrator placed on every page for the purpose of authentication would also be sufficient compliance coupled with the fact that the award was delivered under the letter which was signed in the handwriting of the arbitrator.

30. This Court is also of the view that DUSIB ought not to be permitted to raise this contention since it is plainly an afterthought. In its petition,

DUSIB has made an unequivocal statement that it had received the award on 26.05.2016. A copy of the envelope in which the impugned award was received is also enclosed with the petition. At the time of filing the petition, it was not the DUSIB's case that it had not received the impugned award and, thus, the period of limitation had not begun. On the contrary, the assertion made in the petition is that since the award was received on 26.05.2016, the petition is within the period of limitation. Thus, DUSIB had accepted an award forwarded by the arbitrator and bearing the stamp of the arbitrator as a delivery of a signed copy of the award under Section 31(5) of the Act and it cannot be now heard to contend otherwise.

31. There was also no occasion for DUSIB to have issued a letter dated 24.05.2016, which reads as under:-

"Sir,

Kindly refer to this office letter No. D-84/RP Cell/16 dated 14.03.2016 on the subject cited above. In this regard, it is informed that final hearing in the instant matter was conducted on 27.11.2015. However, till date Award in respect of the arbitration case concerned has not been announced.

It is, therefore, once again requested to kindly announce the Award and inform this Department accordingly.

An early response in the matter shall be highly appreciated."

32. It is apparent from the above that DUSIB did not request for a signed copy of the award but requested that the arbitrator announce the award thus giving an impression that it was not aware of the announcement of the impugned award. It is in response of the aforesaid letter that the arbitrator once again forwarded the copy of the impugned award to

DUSIB. DUSIB has also averred that impugned award was sent on 14.03.2016 to an officer of DUSIB and was not sent at the DUSIB's address as mentioned in the statement of claim. However, this contention was not canvassed before this court and rightly so. It is seen that by a letter dated 14.03.2016, the arbitrator was requested by DUSIB to announce the award. The said letter indicates the address of DUSIB as Punerwas Bhawan, I.P. Estate, New Delhi-110002 and that is the address on which the copy of the impugned award was forwarded by the arbitrator on 14.03.2016. The only explanation given by DUSIB for ignoring the said letter is that DUSIB has an online system of communication and its computer systems had broken down during the relevant period.

33. Apart from the fact that there is no evidence regarding the same, a break-down of computer systems cannot be accepted as an excuse for delay in filing the present petition. More importantly, a court does not have jurisdiction to entertain a petition which is filed beyond the period of thirty days after expiry of three months from the date of receipt of the award.

34. Thus, the petition is dismissed as it has been filed beyond the period as specified under Section 34(3) of the Act. The pending application also stands disposed of.

VIBHU BAKHRU, J

MAY 04, 2017
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