

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 412 of 2019****Order reserved on 04.07.2019****Order delivered on 17.07.2019**

1. Bihari Lal Sidar (wrongly mentioned in court below as Bihari Lal Patel), S/o. Gulab Singh, aged about 63 years.
2. Madan Singh, S/o. Gulab Singh, aged about 59 years.
3. Yogendra Singh, S/o. Gulab Singh, aged about 49 years.

All petitioners are R/o. Amlibhauna Ward. No. 42, District Raigarh (Chhattisgarh).

---Petitioners**Versus**

1. Chief Engineer National Public Works Department and others Raipur C.G., Taluka : Raipur, District Raipur (Chhattisgarh) .
2. The Sub-Divisional Officer [High Way PWD Raigarh, Tahsil Raigarh, District Raigarh (Chhattisgarh).
3. Additional Commissioner [Bilaspur] C.G. Taluka Bilaspur, District Bilaspur.
4. Sub-Divisional Officer/Land Acquisition Officer, Raigarh, District Raigarh (Chhattisgarh).

- --Respondents

For petitioners	: Mr. N. K. Malviya, Advocate.
For respondent No. 1 & 2	: Mr. Vaibhav P. Shukla, Advocate.
For respondent No. 3 & 4	: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

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1. The petitioners' land was subjected to acquisition under the provisions of National Highways Act, 1956 (henceforth "NH Act, 1956"). Thereafter, after following due process of law, a land acquisition award was passed on

01.01.2017. Being aggrieved and dissatisfied with the award, they challenged the award before the Arbitrator-cum-Additional Commissioner, Bilaspur appointed by the Central Government under Section 3G(5) of the NH Act, 1956.

2. Learned Arbitrator-cum-Additional Commissioner, Bilaspur so appointed passed an arbitral award on 27.02.2018 partly enhancing the amount under award. Questioning that award, application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (henceforth "Act, 1996") was preferred before the District Judge, Raigarh on 14.11.2018 on the basis of certified copy of the award dated 27.02.2018 by respondents No.1 and 2 herein prayed for setting aside of the award/order so passed by learned arbitrator.
3. The petitioners appeared before the court and filed a preliminary objection that such an application is barred by the provision contained in Section 34 (3) of the Act, 1996 and the said application is not maintainable as the petitioners have already filed the copy of award before the Sub-Divisional Officer, Raigarh on 14.03.2018, as such, the application is hit by provisions contained in Section 34(3) of the Act, 1996.
4. Respondents No. 1 & 2 filed their reply stating *inter alia* that signed copy of award passed by the Arbitrator was never supplied to them in compliance of Section 31(5) of the Act, 1996; and therefore they applied for certified copy of the award on 04.08.2018 and copy of the award was

delivered to them on 11.09.2018 and, thereafter, on 14.11.2018 they filed an application under Section 34(3) of the Act, 1996, which is within the period of limitation prescribed under Section 34(3) of the Act, 1996.

5. Learned District Judge, Raigarh, by its impugned order, rejected the objection and held that application is within the period of limitation as signed copy of the award dated 27.02.2018 was never delivered to the respondents herein and after obtaining certified copy of the award, they filed an application under Section 34(2) of the Act, 1996, within the period of limitation, against which instant writ petition under Article 227 of the Constitution of India has been preferred.
6. Shri Malviya, learned counsel appearing for the petitioner would submit that the application as framed and filed under Section 34(2) of the Act, 1996 is not maintainable because the respondents knew about the passing of the award as it was informed to them by letter dated 14.03.2018 and they have also calculated the revised compensation on the basis of award passed by the arbitrator, which is apparent from page No. 38 of the details of re-calculation of compensation on the basis of revised award passed by the Arbitrator. He placed reliance upon the judgment of the Supreme Court in the matter of **State of Maharashtra v. Ms. Ark Builders Pvt. Ltd.**¹ in support of his submissions and submits the impugned order is liable to be set aside.

¹ (2011) 4 SCC 616

7. Shri Vaibhav P. Shukla, learned counsel appearing for respondents No. 1 & 2 would support the impugned award and submit that signed copy of the impugned award was never supplied to them and they anyhow got the information and applied for certified copy on 04.08.2018, which was received by them on 11.09.2018 and they filed an application under Section 34(2) of the Act, 1996 on 14.11.2018, which is within the period of limitation.
8. I have heard the learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.
9. The arbitral award was passed by the Arbitrator appointed by Central Government under Section 3G(5) of the Act of 1956 on 27.02.2018 and in that arbitral award the provisions of Arbitration & Conciliation Act, 1996 would be applicable by virtue of provisions contained in 3G(6) of the Act of 1956 and, therefore, arbitrator while making an award under 3G(5) of the Act of 1956 was required to deliver a signed copy of award to both the parties, such a provision is mandatory provision contained in Section 31 (5) of the Act of 1996, which was admittedly not complied with by the arbitrator while making an award in the instant case on 27.02.2018 and signed copy of the award was not delivered to the respondent No. 1 and 2 herein. It is case of the respondent No. 1 and 2 herein that they got the information about the passing of the award by the arbitrator and applied for

the certified copy on 04.08.2018 and which was received by them on 11.09.2018 and thereafter they filed an application on 14.11.2018 which is within the period of limitation prescribed under Section 34(3) of the Act of 1996. The said explanation has been accepted by the learned District Judge. The provisions contained in Section 31(5) of the Act of 1996 to supply copy of signed award to each of the parties to the arbitral proceedings is mandatory. Sections 33 and 34 of the Act of 1996 further provides limitation period for taking recourse under said provisions from the date of receipt of copy of such arbitral award. Section 36 of the Act of 1996 provides that award passed by the arbitrator can be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court. In other words receipt of the signed copy of the arbitral award is an important event in an arbitral proceedings. Under Section 34(1) application for setting aside the arbitral award may be made by an application for setting aside such an award in accordance with sub-sections (2) and (3) of Section 34(3) of the Act, 1996. Section 34(3) of the Act, 1996 provides that 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. The photocopy of award allegedly filed by the petitioner cannot be held to be signed copy of award within the meaning of Section 31 (5) of the Act of 1996 as it was not bearing the signature of arbitrator. However, certified copy of award supplied by the office of Arbitrator-cum-Additional Commissioner, Bilaspur

certifying the copy of award so passed can be treated as signed copy of award; within the meaning of Section 31(5) of the Act of 1996 as it is duly certified to be the true copy of award and, as such, application filed under Section 34(2) of the Act of 1996 on 14.11.2018 after receiving the certified copy of award on 11-9-2018 is well within the period of limitation provided for filing application under Section 34(2) of the Act of 1996.

10. In view of the above-stated legal analysis, I do not find any illegality and perversity in the order passed by learned District Judge rejecting the preliminary objection about the maintainability of the application under Section 34(2) filed by respondent No. 2 herein.

11. Consequently, writ petition is liable to be and is accordingly dismissed.

No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

