

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NOS. 1209, 1210, 1217, 871 AND 755,
OF 2018**

WRIT PETITION NO.1209 of 2018

The Executive Engineer,
Electricity Department, Division VII,
Curchorem, Goa. ... Petitioner

V e r s u s

1. Bharat Conductors Pvt. Ltd.
Plot No.41, Phase III-A
Sancoale Industrial Estate,
Zuarinagar, Goa.
2. The Managing Director,
GHRSSIDC Ltd.,
Crafts Complex, Neuginagar,
Panaji, Goa. ... Respondents

Mr. Deep Shirodkar, Additional Government Advocate for the
Petitioner.

Mr. D. J. Pangam and Shri S. P. Munj, Advocates for the
Respondent no.1.

WRIT PETITION NO.1210 of 2018

The Executive Engineer,
Electricity Department, Division XI,
Vidhyut Bhavan,
Vasco da Gama, Goa. ... Petitioner

V e r s u s

1. Bharat Conductors Pvt. Ltd.
Plot No.41, Phase III-A
Sancoale Industrial Estate,
Zuarinagar, Goa. ... Respondents

Mr. D. J. Pangam and Shri S. P. Munj, Advocates for the Respondent no.1.

WRIT PETITION NO.1217 of 2018

The Executive Engineer,
Through Mr. Rajiv R. Samant,
50 yrs of age,
Div. V, Electricity Department,
Bicholim, Goa.

... Petitioner

V e r s u s

1. M/s. Cement Bricks Industries,
Through Mr. Shivkumar Patil,
Near Govt. Milk Dairy, Ganganagar,
Curti, Ponda, Goa.

2. The Managing Director,
Goa Handicraft Rural Small Scale
Industries Development Corporation,
Neuginagar, Panaji, Goa.

... Respondents

Ms. Neha Kholkar, Additional Government Advocate holding for
Ms. Amira Razaq, Government Advocate for the Petitioner.

WRIT PETITION NO.871 of 2018

The Executive Engineer,
Through Shri Sebastiao Fernandes
Div-V, Electricity Department,
Bicholim, Goa.

... Petitioner

V e r s u s

1. Bharat Conductors Pvt. Ltd.
Through T. C. Bhandari,
Plot No.41, Phase III-A
Sancoale Ind. Estate,
Zuarinagar, Goa.

2. The Managing Director,

Goa Handicraft Rural Small Scale
Industries Development Corporation,
Neuginagar, Panaji, Goa. ... Respondents

Mr. Sagar Dhargalkar, Additional Government Advocate for the
Petitioner.

Mr. D. J. Pangam and Shri S. P. Munj, Advocates for the
Respondent no.1.

A N D

WRIT PETITION NO.755 of 2018

The Executive Engineer,
Through Mr. Rajiv R. Samant,
50 yrs of age,
Div. V, Electricity Department,
Bicholim, Goa. ... Petitioner

V e r s u s

1. Bharat Conductors Pvt. Ltd.
Through T. C. Bhandari,
Plot No.41, Phase III-A
Sancoale Ind. Estate,
Zuarinagar, Goa.
2. The Managing Director,
Goa Handicraft Rural Small Scale
Industries Development Corporation,
Neuginagar, Panaji, Goa. ... Respondents

Ms. Susan Linhares, Additional Government Advocate for the
Petitioner.

Mr. D. J. Pangam and Shri S. P. Munj, Advocates for the
Respondent no.1.

Coram :- C. V. BHADANG, J.

Date :- 25th February 2019.

ORAL ORDER

1. All these petitions involve common and connected questions and they are being disposed off by this common order by consent of parties.

2. The challenge in these petitions is to the order passed by the learned District Judge, North Goa, thereby refusing to condone the delay ranging from 507 days to 680 days in filing an appeal under Section 37 of the Arbitration and Conciliation Act 1996 (*Act of 1996* for short).

3. The petitioner procured certain electrical items from the first respondent and the contract was executed through the second respondent. As the petitioner failed to make the payment towards the price of the electrical items, the first respondent filed an application before the Goa Micro and Small Enterprises Facilitation Council, DITC (*Facilitation Council* for short). That application was filed against the petitioner and the second respondent herein.

4. The petitioner filed a reply and claimed that the delay in effecting the payment was partly attributable to the excess supply and the bills could not be processed for payment,

unless and until the same was regularised and a corrigendum was issued for a revised quantity. Secondly, it was contended that the "Goods Verification Certificate" as to the verification of the materials supplied which is required for effecting payment could not be issued on account of the transfer/promotion, of the Junior Engineer, who was in charge of the stores and who is authorised to issue the Goods Verification Certificate. It was contended that the payment was made after the supply was regularised and after the issuance of a corrigendum and the overall delay is of about two and half months beyond the 45 days period which is mainly on account of the transfer/promotion of the Junior Engineer in charge of the stores. The petitioner (respondent no.2 before the Council) therefore pleaded for the waiver of the penal interest.

5. The Council by separate awards dated 03.07.2014, 16.10.2014 and 15.12.2014 granted the application as made by the first respondent along with interest as per Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (*Act of 2006*, for short).

6. Feeling aggrieved, the petitioners approached the learned District Judge purportedly under Section 37 of the Act

of 1996 along with separate applications for condonation of delay ranging from 507 days to 680 days.

7. The application was opposed on behalf of the first respondent.

8. The learned District Judge by the impugned order has refused to condone the delay.

9. I have heard the learned Additional Government Advocates appearing for the petitioner in these petitions as well as Mr. Pangam, the learned Counsel for the contesting respondent no.1. Perused record.

10. The learned Additional Government Advocates appearing for the petitioner in these petitions have raised the following contentions :

(i) It is submitted that the petitioner cannot be said to be a "buyer" within the meaning of Section 2(d) of the Act of 2006. It is submitted that the goods were received by the second respondent and, as such, the petitioner cannot be said to be a buyer and would not be liable for the payment.

(ii) It is submitted that as per Section 18(2) of the Act of 2006, the Council is required to conduct conciliation in the matter and only where the conciliation is not successful that the Council can take up the matter for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration. It is submitted that the Council had failed to initiate the conciliation proceedings and in absence thereof the Council could not have entered upon arbitration proceedings under Section 18(3) of the Act of 2006.

(iii) It is submitted that the delay in payment of the amount was on account of unavoidable circumstances namely the requirement of obtaining of the corrigendum for regularising the excess supply and on account of the transfer/promotion of the Junior Engineer in charge of the stores. It is thus submitted that the petitioners have a very good case on merits and the learned District Judge ought to have allowed the application for condonation of delay as sufficient cause was shown.

11. Mr. Pangam, the learned Counsel for the first respondent has submitted that the main application as framed and filed before the District Judge was not maintainable as it

was styled as one under Section 37 of the Act of 1996. It is submitted that the award of the Council in the arbitration proceedings could not be challenged under section 37 of the Act of 1996. It is submitted that even assuming that the said application was under Section 34 of the Act of 1996, still it was filed way beyond the period as prescribed in Section 34 of the Act of 1996. Reliance is placed on the decision of the Supreme Court in the case of **Union of India vs. Popular Construction (2001) 8 SCC 470**, to submit that there is no power to condone the delay beyond thirty days as is provided under the proviso to Section 34(3) of the Act of 1996. It is submitted that the petitioners cannot raise contentions on the merits unless and until the delay is condoned.

12. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. The learned Counsel for the first respondent is right in contending that the petitioners cannot raise contentions on merits of the award passed by the Council, unless and until they succeed in getting the delay condoned. The petitioners sought to challenge the award of the Council before the District Judge purportedly under Section 37 of the Act of 1996. However, nothing much turns on this, inasmuch as a wrong mentioning of a provision may not be

decisive and the application can be treated as one under Section 34 of the Act of 1996. As per Section 34 of the Act of 1996, recourse to an arbitral award may be made only by an application made to the Court within three months. As per the proviso to Section 34(3) of the Act of 1996, if the Court was 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". The said proviso fell for consideration of the Supreme Court in the case of **Union of India** (supra) in which the Supreme Court has held that the Court has no power to condone the delay beyond thirty days as is provided under the said proviso. This is what is held in para 12 of the judgment :

"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."

13. Thus, the learned District Judge was justified in refusing to condone the gross delay ranging from 507 days to 680 days and for this reason alone, the petitions have to fail without going into the merits of the award passed by the Council. However, as the learned Additional Government Advocates appearing for the petitioners have made certain submissions on merits as noticed above, I propose to briefly deal with them.

14. It may be mentioned that none of the contentions raised herein based on Section 18(2) and (3) of the Act of 2006 were ever raised before the Council. Before the Council the only contention raised was that the delay in payment was attributable to the excess supply and the transfer/promotion of the stores in charge because of which there was certain delay in obtaining the Goods Verification Certificate. Thus, the liability to pay the amount was not at all disputed before the Council. In fact, it is not in dispute that the petitioners have paid the principle amount and the dispute principally concerns the interest payable. It is also not possible to accept that the

petitioner is not a 'buyer' within the meaning of Section 2(d) of the Act of 2006, inasmuch as the electrical goods were purchased from the first respondent by the petitioner through the agency of the second respondent. If the goods were merely purchased through the second respondent as the nodal agency, the second respondent cannot become a buyer of the goods. I am also not inclined to accept the contention based on Section 18(3) of the Act of 2006 in the present case, inasmuch as, at no point of time, any such contentions were raised before and for all practical purpose, the petitioner had treated the proceedings as the arbitration proceedings, (which is also evident from the fact that the award of the Council was sought to be challenged with reference to the Arbitration and Conciliation Act, 1996) and further having regard to the fact that the liability to pay the amount was never disputed and in fact the principle amount is already paid. Thus, keeping the law point as urged on behalf of the petitioner open, I am not inclined to accept the contention of the petitioner as raised in the present petitions.

15. Mr. Deep Shirodkar, learned Additional Government Advocate for the petitioner in Writ Petition No.1209/2018 has submitted that the amount ought to have been paid from the funds allotted to the second respondent. I am afraid the

inter se dispute, if any, between the petitioner and the second respondent which is a corporation owned by the Government cannot be gone into in these petitions and, therefore, the dismissal of these petitions shall not govern the claim, if any, by the petitioner against the second respondent, if permissible in the facts and circumstances of the case and in law. I express no opinion on any such dispute even if there be any.

16. Looking from any angle, no case for interference is made out. The petitions are without any merit and are accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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