

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.594 of 2024

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The Employees State Insurance Corporation through the State Medical Commissioner, Regional Office, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001.

... .. Appellant/s

Versus

Life Line Hospital and Research Centre, represented through Hemant Kumar, S/o Sri Niranjan Prasad Singh, At Nipania Main Road, Ward No. 01, P.S. Begusarai, Barauni, District- Begusarai, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Ranjan, Advocate
For the ESIC : Mr. Bipin Bihari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 19-02-2026

Heard Mr. Ravi Kumar, learned counsel for the Employees State Insurance Corporation (henceforth for short 'the ESIC' and Mr. Bipin Bihari for the Lifeline Hospital and Research Centre (for short 'the Hospital').

2. The present petition has been preferred for the following relief/s:

(i) for the quashing impugned order dated 12/03/2024 passed in Misc. (Arbitration) Case No. 19/2022 whereby and wherein the learned Civil Judge (Sr. Div.)¹, Patna Ms. Sarika Vahalia was pleased to reject the petition filed under Section 34(2)/2(a) of the Arbitration and Conciliation Act, 1996 to be



read with Section 151 of the Code of Civil Procedure;

(ii) to set aside the Award dated 01.12.2021 passed by the learned sole Arbitrator, Sri Bidhu Bhushan Pathak (former District and Sessions Judge) in Arbitration Case no. 3/2021 by which the claim of the claimant/ opposite party/ respondent was allowed and the respondent/ petitioner/ appellant has been directed to pay the claim amount for Rs. 79, 83, 169/- (seventy nine lacs eighty three thousand one hundred sixty nine) along with interest @ 07% p. a., from the date of filing of the claim application till its realization in case it is not paid within time schedule i.e., 3 months from the date of Award then the petitioner has to pay the aforesaid claim amount with interest @9% p. a., till the amount is paid apart from Rs. 75,000/-(seventy five thousand) was awarded litigation cost, whereas, the total Awarded amount comes to Rs. 80, 58, 169/-



(eighty lacs fifty eight thousand one hundred sixty nine) which was inter alia challenged by the respondent/ petitioner/ appellant on the ground of gross error resulting into patent illegality since the claim amount was allowed with interest solely on the basis of the amount which were disallowed in terms of the Memorandum of Agreement (M.O.A) dated 14.06.2017 by the respondent petitioner/ appellant which was specifically stated in the Counter Affidavit/statement of defence/supplementary statement of defence, whereas, it was not considered by the learned Arbitrator as well as the learned Court below apart from other valid grounds raised therein resulting into gross injustice committed by the court below.

(emphasis added)

3. The short story leading to the present case is/are that both 'the ESIC' and 'the Hospital entered into an agreement on 14.06.2017 empanelling 'the Hospital' to provide Primary/Secondary/Tertiary Medical care to the insured persons



on cashless basis.

4. Further, clause 35 of the memorandum of agreement takes about the dispute or difference between the parties to be referred to the Arbitrator.

5. As the story further unfolds, 'the Hospital' submitted the bills which was/were negated by 'the ESIC'. This followed the **Request Case No. 41 of 2020** by 'the Hospital' before the Patna High Court. The then **Hon'ble the Chief Justice** on **10.02.2021** after recording that '**the ESIC**' failed to appear in the matter, disposed it of appointing **Mr. Bidhu Bhushan Pathak** as the **sole Arbitrator** where the parties were directed to appear on **01.03.2021**.

6. Accordingly, the parties appeared before the sole Arbitrator. Thereafter, on **01.12.2021**, the sole Arbitrator allowed the claim of 'the Hospital' directing '**the ESIC**' to pay Rs. **79,83,169/-** alongwith 7% interest from the date of filing of the claim petition till its realization. The amount calculated was recorded as Rs. **80,58,169/-**.

7. The relevant part of the Award dated **01.12.2021** is recorded hereinbelow:



AWARD

“This Arbitration Case No 03/2021, arising out of Request Case No 41/2020, stands allowed to the extent that Employee's State Insurance Corporation (ESIC) is directed to pay the claim amount for Rs. 79.83.169/- (Seventy Nine Lac. Eighty three Thousand, One Hundred Sixty Nine) along with interest @ 07% p.a., from the date of filing of the claim application as well as till its realization. In case, it is not paid within time schedule i.e. 3 months from the date of Award then the Employee's State Insurance Corporation (ESIC) has to pay the entire claim amount as indicated above with interest a 9% pa. till the amount is paid and claimant shall also be entitled to recover the amount due under the due process of law. There shall not be cost payable to the advocate rather Advocate fee shall be paid by their respective party



but litigation cost Rs 75.000/- (Seventy Five thousand) is also awarded as a litigation cost which shall also be the part of award.

Accordingly total Award amount comes to Rs.80.58.169/-(Eight Lacs Fifty Eight thousand One hundred Sixty Nine), payable by respondent (Employee's State Insurance Corporation to the claimant (Life line Hospital and Research Center) in view of the terms as mentioned here above.

(BIDHU BHUSHAN PATHAK)

SOLE ARBITRATOR

(emphasis added)

8. Aggrieved, the appellant approached the Civil Court, Patna in **Miscellaneous (Arbitration) Case No. 19 of 2022 (Employees State Insurance Corporation through State Medical Commissioner vs. Life Line Hospital and Research Centre)**. It was taken up by the **learned Civil Judge (Sr. Division) 1st, Patna** and vide reasoned order **12.03.2024**, the aforesaid case was dismissed. The learned Judge gave her findings which reads as follows:



“For the determination of this case I have perused the entire case record and specially award of dated 1st December 2021 passed by the arbitrators. The petitioner has raised objection u/s 34 of (v) Arbitration. That Section 34 of the Arbitration and Conciliation Act, 1996 is a recourse which provides that an application under section 34 be necessary preferred for setting aside such award in accordance with sub-section(2) and sub-section (3). The Sub-section (2) and sub-section (3) are hereby reproduced for the perusal as under

Sub- section (2) - An arbitral award may be set aside by the Court only if-

(a)The party making the application establishes on the basis of the record of the arbitral tribunal that (i) a party was under some incapacity; or

(ii) the arbitration agreement is not



valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be



set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot, derogate, or failing such agreement was not in accordance with this part; or

(b) the Court finds that -

the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, other arbitral award is in conflict with the public policy of India.

Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if (i) the making of the award was induced or affected by



fraud or corruption or was in violation of section 75 or sec 81; or

3. it is in contravention with the fundamental policy of Indian law; or

4. it is in conflict with the most basic notions of morality or justice

Explanation 2.. For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2- A) An arbitral award arising out of arbitration other than international commercial arbitrations may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.



That from the bare perusal of section-34 and its subsection-2 and 2A, It is evident that section 34 and its sub-section- 2 & 2-A confines the ground for making an application under this section and only those application which constitutes the ground as stipulated under Section 34 and its sub-section 2 & 2-4 are maintainable and can be entertained by this leaned Court. To sum up, According to this Section 34, an award can be Challenged only under the grounds mentioned in section-34 (2) and no such ground as mentioned in section-34 (2) and (2-A) has been raised by this. Petitioner and hence the instant application filed under section-34 (2) and (2-A) by this Petitioner lacks merit and fit to be dismissed outright the ground, taken by the petitioner under heading



GROUND, at para (1) to (xxvi), is nothing but a prayer for the re-examination of evidences which is not permissible under section-34 sub-section-2A which bars re-appreciation of evidences Further this petitioner has taken erroneous application of the law while passing award, as a ground, for setting aside the award, which is also not permissible under section-34 sub-section-2A of the Arbitration and Conciliation Act.1906 which bars setting aside the award on ground of erroneous application of law. The validity of the arbitration agreement is not in dispute in the instant application of the petitioner. It is also not in dispute that the Petitioner was not under some incapacity. It is also admitted fact that the Petitioner was properly informed by the learned



Arbitrator about the arbitral proceeding and accordingly the petitioner duly presented its case before the Learned Sole Arbitrator. It is also not in dispute that the arbitral proceeding was in accordance with the agreement of the parties and the appointment of sole arbitrator was as per the agreement of the parties. It is also not in dispute that the dispute was capable of settlement by arbitration under the law for the time being in force and the arbitral award is not in conflict with the public policy of India. The Petitioner/Respondent has not claimed that the making of the award was induced or affected by fraud or corruption or the making of award is in violation of section 75 or section 81 of the Arbitration and conciliation Act, 1996. Further the



Petitioner/Respondent has not brought any material facts on record for establishing that the arbitral award is in contravention with the public policy of Indian law or is in conflict with the most basic notion of morality or justice. It is also evident from the bare perusal of the instant application under reply that the Petitioner/Respondent has not challenged the arbitral award on account of award suffering from patent illegality and hence under the circumstances as indicated herein, the instant application of the Petitioner/Respondent, does not substantiate any ground as stipulated under section-34 (2) and (2-A) of the Arbitration and conciliation Act, 1996, for challenging the arbitral award, passed on 01-12-2021, by the learned sole arbitrator Shree Bidhu



Bhushan Pathak (Former District & session Judge) in arbitration case no. 03/2021 and hence the instant application of the Petitioner/Respondent lacks merit and fit to be dismissed outright That from the bare perusal of the instant application of the Petitioner/Respondent it is evident that the petitioner has sought relief on account of re-examination of evidences which is not permissible under section-34 (2-A)

(emphasis added)

That the Hon'ble Apex Court by its order dated 09-09-2021 in the matter of DELHI AIRPORT METRO EXPRESS PVT. LTD Vs DELHI METRO RAIL CORPORATION LIMITED reported in, (2022) 1 Supreme Court Gases 131. has very-lucidly held at para-26 that "Section-



5 and Section-34 of the 1996 Act would make. it clear that judicial interference with the arbitral award is limited to the grounds in section 34. While deciding application filed under section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of section 34, refraining from appreciation or re-appreciation of matters of fact as well as law." The Hon'ble Apex Court further very lucidly held at para- 29 that "Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral tribunal would not fall within the expression" patent illegality". Likewise, erroneous application of law can not be categorized as patent illegality. In addition, contravention of law not linked to public policy or public



*interest is beyond the scope of the expression "patent illegality". **What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award...**"*

Upon above mentioned facts and circumstance, after hearing of both side counsels and perusal of entire case record this court rejects the petition of applicant u/s 34 of Arbitration Act. This court is not inclined to effect the award as it stand as it is. The case is disposed off accordingly.

*Civil Judge (Sr. Div) 1" Patna Sadar
12.03.2024.*

(emphasis added)

9. The learned Civil Judge vide a reasoned order dated **12.03.2024** came to the conclusion that the appellant do



not successfully cross the Section 34(2) & 2-A bar of the **Arbitration and Conciliation Act, 1996** (henceforth for short '**the Act**') while rejecting the claim of the appellant. While doing so, it also took note of the Hon'ble Supreme Court's observation that the courts are prohibited from re-appreciating the evidence to conclude that the awards suffer from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award.

10. Being aggrieved with the said order dated 12.03.2024, the present appeal by 'the ESIC'.

11. It is to be noted that the order was passed on **12.03.2024** and the appeal was filed on **19.08.2024**. The office has pointed out that the limitation came to an end on **21.06.2024** and since the petition has been filed on **19.08.2024**, there has been delay of **59 days** in filing the appeal. In that background, this Court deems it appropriate to take up the **I.A. No. 02 2025** first filed by the appellant for condoning the delay in filing the appeal.

I.A. No. 02 of 2025:

12. The aforesaid Interlocutory Application has been preferred for condoning the **delay of 59 days** in filing of the **Miscellaneous Appeal**. The reason has been given that on



12.03.2024, the order came to be passed in the **Miscellaneous Miscellaneous (Arbitration) Case No. 19 of 2022** whereafter, the file was allotted to the Panel Counsel, Mr. Ravi Kumar during annual vacation. However, the learned counsel was out of station and as such the delay occurred.

13. The content of the **Interlocutory Application no. 02 of 2025** is incorporated hereinbelow:

“that the instant petition is being filed to condone the delay of 59 days in filing the Miscellaneous Appeal referred above on the ground that the conducting panel Counsel Mr. Ravi Kumar was out of station during annual vacation starting from 20/05/2024 and partly due to want of necessary documents required during the course of drafting of the memo of Appeal resulting into delay of 30 days occurred for filing the Appeal after the opening day, 19.06.2024 which is prayed to be condoned in the interest of justice.

19/6/24;

2. that the appellant has not preferred



any petition earlier to this petition involving the same relief;

3. that it is respectfully being submitted that the instant Appeal, in which this petition is arising, has been preferred against impugned order dated 12/03/2024 passed in in Misc. (Arbitration) Case No. 19/2022 whereas, the case file was allotted during annual vacation of the Hon'ble High Court, Patna, to the panel Counsel Mr. Ravi Kumar; however, he was out of station during vacation and after his arrival during the course of drafting of the appeal, due to want of some necessary documents relating to the case, as a result of which delay occurred in preferring the appeal against the impugned order as computation of limitation (90 days) was made from the date of last order (12/03/2024) which has been annexed as part of the impugned



order in the appeal whereas, the delay occurred in filing the Appeal due to the circumstances which were beyond the control of the appellants, hence the delay may be condoned to meet the end of Justice;

4. that in the light of the submissions made above, the delay in preferring the Appeal may kindly be condoned in the facts and circumstances of the case;

It is therefore prayed that your Lordships be graciously Pleased to admit this petition and after hearing the parties be pleased to allow the petition and condone the delay in the interest of justice.

14. This Court has taken note of the fact that the order in question was passed on **12.03.2024**. Patna High Court remained functional for the next ten weeks and summer vacation started only on **20.05.2024** (18th May and 19th May being Saturday and Sunday respectively). Thus, between **12.03.2024** till **20.05.2024** though the High Court remained



functional, 'the ESIC' has not stated a single word on the steps it took for filing the appeal.

15. Further, the High Court reopened after the summer vacation on **19th of June, 2024** and the appeal came to be filed ten weeks thereafter on **19.08.2024**. Again, the details which could give sufficient cause for the delay in filing the appeal is missing.

16. The contents of the Interlocutory Application makes it clear that vague ground has been taken. No sufficient cause for the delayed filing appeal is clearly missing.

17. Mr. Ravi Kumar, learned counsel for the appellant submits that '**the ESIC**' is an Insurance Corporation/ an organization where the decisions taking process takes time and as such, it cannot be equated with an individual inasmuch as the file moves from one place to the another and in that background, the delay of 59 days (after the lapse of 90 days) in filing the appeal has to be ignored and the limitation petition is fit to be allowed.

18. 'The Hospital' is represented through Mr. Bipin Bihari and with the help of the counter affidavit, learned counsel submits that whether it is a private individual or a Company/State of Government and/or the Insurance



Corporation, all have to abide with the law mandated in filing the appeal and when sufficient cause has not been given in the petition for condoning the delay, the same has to be rejected.

19. Paragraph-4 of the counter affidavit read as follows:

4. That it is respectfully submitted that the present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 5 of the Limitation Act, 1963. The applicable limitation for such an appeal is governed by Section 13 (1) of the Commercial Courts Act, 2015. The relevant provisions state: Section 13(1): "Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order."

Section 13(1A): "Any person



aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order...". It is further clarified that such appeals lie only from orders enumerated under Order XLIII of the Code of Civil Procedure or Section 37 of the Arbitration Act). In the present case, the impugned order was passed on 12-03-2024 but the appeal was filed on 19-08-2024 after an inordinate delay of 90 days beyond the prescribed limitation period of 60 days.

20. In support of his contention, learned counsel for 'the Hospital' has taken this Court to an order of the **Hon'ble**



Apex Court in the case of **Government of Maharashtra (Water Resources Department)** represented by **Executive Engineer vs. M/s Boarse Brothers Engineers & Contractors Pvt. Ltd.** in **Civil Appeal No. 995 of 2021(@SLP (Civil) No.665 of 2021)** with reference to **paragraph 57** which read as follows:

*57. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in **Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 [Postmaster General"]**, as follows:*

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed



with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery. and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available.



The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentality that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light



*and should not be swirled for the
benefit of a few."*

(emphasis added)

21. Further paragraph-61 of the Hon'ble Apex Court
order read as follows:

*61. Given the aforesaid and the
object of speedy disposal sought
to be achieved both under the
Arbitration Act and the
Commercial Courts Act, for
appeals filed under section 37 of
the Arbitration Act that are
governed by Articles 116 and 117
of the Limitation Act or section
13(1A) of the Commercial Courts
Act, a delay beyond 90 days, 30
days or 60 days, respectively, is to
be condoned by way of exception
and not by way of rule. In a fit
case in which a party has
otherwise acted bona fide and not
in a negligent manner, a short*



delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

22. Learned counsel concludes by submitting that in the aforesaid circumstances, both the I.A. as also the appeal have to be dismissed.

23. This Court has gone through the facts of the case, the submissions of the parties as also the judgment provided by the learned counsel representing the sole respondent. The Court is in full conformity with the submissions put forward by the sole respondent.

24. Section 5 of the Limitation Act, 1963 read as under:

5. Extension of prescribed period in certain cases--- Any appeal or any application, other than an



application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period

Explanation. The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

25. Admittedly, the case was contested before the learned Civil Judge, Patna whereafter the order was delivered on **12.03.2024**. The appellant/'the ESIC' had complete knowledge of the order dated 12.03.2024.

26.The ordersheet shows that the requisites for the



certified copy of the order dated 12.03.2024 was filed on 23.03.2024 and the ordersheet was presented on 02.04.2024. Nothing has been recorded in the Interlocutory Application/no cause has been given on the delay in handing over the file during the Summer Vacation.

27. It clearly shows that a vague alibi has been taken that the delay occurred in filing the appeal due to the circumstances which were beyond control of the applicants.

28. This Court has already recorded the contents of the limitation petition which clearly shows how casually it has been drafted and filed inasmuch as the details from the date of the passing of the order (12.03.2024) till the filing of the appeal (19.08.2024) has not been narrated to show that genuine efforts were taken by 'the ESIC' but the circumstances beyond control led to the delay in filing the appeal.

29. Those sitting in the office and matters in such cases merely complete the formality of filing an appeal without any accountability and fully knowing its fate. This Court is further guided by the order passed by the **Hon'ble Apex Court** in **Government of Maharashtra** (supra) case wherein the Supreme Court clearly recorded that merely because the Government is a litigant, different yardstick for condonation of



delay cannot be carried out.

30. Hon'ble Apex Court further observed that reasonable and acceptable explanation for the delay must be there and further it must be showed that bonafide effort was taken otherwise, there is no need to accept this casual explanation that the file was kept pending. Here the Court has taken note of the fact that the file was allotted to the panel counsel during the summer vacation, the learned counsel returned after some time and filed the appeal.

31. This Court wonders whether 'the ESIC' was genuinely interested in challenging the order of the learned Single Judge. Whatever may be the reason, the explanation put forward in the Interlocutory Application No.02 of 2025 for condoning the delay is not convincing and as such, has to be rejected.

32. **I.A. No. 02 of 2024** is dismissed.

M.A. No. 594 of 2024

33. This Court has recorded the facts of the order dated **01.12.2021** passed by the **sole Arbitrator** as also the reasoned order dated **12.03.2024** passed by the **learned Civil Judge, Patna in Misc. (Arbitration) Case No. 19 of 2002**. Learned Civil Judge has given valid and cogent reason for not



interfering with the order passed by the sole Arbitrator. However, in view of the fact that the delay in filing the appeal has not been condoned and the **I.A. No. 02 of 2025** has been dismissed, in that background, **M.A. No. 594 of 2024** is also dismissed.

34. Interlocutory Application(s), if any, also stand dismissed.

35. Before parting, this Court would like to put on record its word of appreciation for Ms. Sarika Vahalia, learned Civil Judge (Senior Division) 1st, Patna for penning down a reasoned and speaking order.

36. Let a copy of the order be sent to the learned Principal & District Judge, Patna for handing it over to the concerned judge.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.02.2026
Transmission Date	

