

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

(Through Virtual Mode)

Reserved on: 04.03.2025
pronounced on 02.04.2025

Arb P. No. 03/2025

Chief Engineer PW(R&B) Department and another ...Petitioner(s)

Through: Mr. Syed Musaib, Dy.AG

VERSUS

M/s Abdul Salam Mir

...Respondent(s)

Through: Mr. Showkat Ali Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER

1. The petitioners, through the medium of the instant petition, have challenged arbitral award dated 01.03.2024 made by the Arbitral Tribunal presided over by Hon'ble Mr. Justice Mohammad Yaqoob Mir (Former Chief Justice, High Court of Meghalaya), by invoking powers of this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The respondent-claimant has raised a preliminary objection with regard to the maintainability of the petition on the ground of limitation. It has been contended that the petition has been filed by the petitioners beyond the prescribed period of limitation, inasmuch as, the award has been made by the learned Arbitrator on 01.03.2024, whereas the petition has been filed before this Court on 04.02.2025.

3. I have heard learned counsel for the parties on the question of limitation and I have also gone through record of the case.

4. It appears that certain disputes had arisen between the parties in relation to a contract awarded pursuant to tender notification dated 09.06.2015. It also appears that respondent-claimant had invoked arbitration clause vide various letters issued to the petitioners, last of which was dated 05.10.2018. Despite invocation of the arbitration clause, the petitioners did not refer the disputes to the arbitrator as a consequence whereof, the respondent/claimant was compelled to file a petition under Section 11(6) of the Arbitration and Conciliation Act before this Court. Hon'ble the Chief Justice vide order dated 25.02.2021 passed in AA No. 09/2019 referred the matter to the Arbitrator and appointed Hon'ble Mr. Justice Mohammad Yaqoob Mir (Former Chief Justice, High Court of Meghalaya) as the sole Arbitrator.

5. It appears that the learned Arbitrator entered upon the reference on 13.03.2021 and passed the impugned award on 01.03.2024. It is pertinent to mention here that in terms of Section 31(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "*Act of 1996*"), a signed copy of the award was delivered by the learned Arbitrator to the respondent-claimant on the same day, but copy of the award was not delivered to the petitioners on the ground that they had failed to pay the outstanding amount of fee and the incidental charges. The learned Arbitrator invoked powers under Section 39 of the Act of 1996 and observed that copy of the award would be delivered to the petitioners as and when outstanding amount of fee is deposited/paid by the petitioners. It also appears that on 17.10.2024 the petitioners paid the balance amount of fee to the learned Arbitrator and accordingly, on 18.10.2024 a

signed copy of the award was delivered to the petitioners, whereafter the instant petition under Section 34 of the Act of 1996 came to be filed on 04.02.2025.

6. Learned counsel for the respondent-claimant has contended that time for filing a petition under Section 34 of the Act of 1996 would start running against the petitioners from the date of the award i.e., 01.03.2024 and not from the date when copy of the award was actually delivered to the petitioners i.e., 18.10.2024. It has been contended that the petitioners cannot take advantage of their default in payment of fee to the learned Arbitrator and get extension in limitation period for challenging the said award. According to the learned counsel, the petitioners had the knowledge of passing of the award on 01.03.2024 itself and, as such, they could challenge the award only within 06 months from the said date or at the most within 08 months from the said date. In support of his argument, the learned counsel has relied upon the judgment of Supreme Court in case *Krishna Devi @ Sabitri Devi (Rani) vs. Union of India and others*, Civil Appeal No. 47 of 2025 decided on 01.03.2025.

7. *Per contra*, learned counsel for the petitioners has contended that as per the provisions of sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996, limitation period for challenging an award of the arbitral Tribunal starts to run from the date on which the party making the application receives the arbitral award and not from any previous date. Thus, according to the learned counsel, the instant petition under Section 34 of the Act of 1996 has been filed well within the prescribed period of limitation.

8. So far as the facts relating to the present issue are concerned, the same are not in dispute. It is an admitted fact that the learned Arbitrator has made the

award on 01.03.2024 and it is also admitted that due to non-payment of fee by the petitioners, the learned Arbitrator retained signed copy of the award meant for the petitioners and delivered the same to them only on 18.10.2024, when the petitioners paid the outstanding amount of fee to the learned Arbitrator. The only question which is required to be determined in this case is as to whether the limitation period for filing the present petition would start running from 01.03.2024 or from 18.10.2024.

9. If we have a look at the provisions contained in sub-section (3) of Section 34 of the Act of 1996 (as applicable to UT of J&K), it provides that an application for setting aside the award has to be made within six months from the date on which the party making an application had received the arbitral award. Proviso to said provision (as applicable to the UT of J&K) further lays down that if the applicant was prevented by sufficient cause from making the application within the said period of six months the application can be entertained within a further period of 60 days, but not thereafter. Thus, the provisions contained in sub section (3) of Section 34 of the Act of 1996, as applicable to the UT of J&K, provide a maximum period of eight months for laying challenge to the arbitral award. From a bare perusal of sub-section (3) of Section 34 of the Act of 1996, it is clear that period of limitation would start to run from the date the party making the application has received the arbitral award. It is pertinent to mention here that even the J&K Arbitration and Conciliation Act, 1997 which was applicable to UT of J&K prior to extension of Act of 1996 to this part of the country, contains a similar provision providing for maximum of 08 months of limitation for challenging an award and the limitation period is to run from the date a copy of the award is made

available to the party, who intends to challenge the award. So in both the eventualities, whether we make provisions of J&K Arbitration and Conciliation Act, 1997 or the provisions of Arbitration and Conciliation Act, 1996 applicable to the present case, the period of limitation for challenging the award is six months plus 60 days from the date a copy of the award is received by the party challenging the same.

10. So far as the ratio laid down by the Supreme Court in *Krishna Devi's case* (supra) is concerned, the said case relates to the provisions contained in Arbitration Act, 1940. It is to be noted that as per sub-section (1) of Section 14 of the Arbitration Act, 1940, the arbitrator or umpire was obliged to give a notice in writing to the parties of making and signing of the award and as per sub-section (2) the arbitrator or umpire was obliged to file the award in the Court where after the Court had to give a notice to the parties of filing of the award. Article 119(b), Schedule-1 of the Limitation Act provides for limitation for challenging an award made in terms of Arbitration Act, 1940. As per this provision, the limitation period prescribed for challenging the award is 30 days and the same is to run from the date of service of notice of filing of the award. It is in these circumstances that the Supreme Court held that once a party comes to know about the filing of the award before the Court, limitation period starts to run against him and it was also observed that formal date of notice of the award holds no significance, when a party challenging the award was sufficiently aware about the filing of the award. The provisions contained under Section 14 of the Arbitration Act, 1940 read with Article 119 (b) of the Limitation Act are markedly distinct from the provisions contained in sub-section (3) of Section 34 of the Act of 1996, inasmuch as, in the former case,

the limitation period starts to run from the date of notice of filing of the award, whereas in the latter case it starts to run from the date of receipt of copy of the award. Thus, the ratio laid down by the Supreme Court in *Krishna Devi's case* (supra) cannot be made applicable to the present case.

11. The other contention raised by the learned counsel for the respondent-claimant is that the petitioners could not have taken advantage of their own default in making payment of fee to the learned Arbitrator and get the period of limitation extended in their favour.

12. It is true that the petitioners defaulted in making the payment of fee to the learned Arbitrator before the date of the award, but it is also a fact that requirement of delivering a signed copy of the award to a party is mandatory. The same is clear from the provisions contained in Section 31(5) of the Arbitration and Conciliation Act. While provision contained in Section 31(5) of the Arbitration and Conciliation Act appears to be procedural in nature, yet it has broad connotations. The Supreme Court has, in the case of *Union of India vs. Tecco Trichy Engineers & Contractors*, 2005(4) SCC 239 emphasized the importance of delivery of a signed copy of the arbitral award on the parties. The relevant observations of the Supreme Court made in the said Judgment are quoted herein below: -

“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. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring

certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

13. From the above, it is clear that delivery of an arbitral award to a party is of paramount importance so far as initiating of various processes under the Arbitration and Conciliation Act are concerned. Delivery of copy of the arbitral award sets in motion the limitation period, it confers certain rights upon the parties and it terminates the arbitral proceedings. The party against whom award is made is conferred with right of challenging the same within the prescribed period of limitation, whereas the party in whose favour the award is made is conferred with right of enforcing his entitlement under the award against the losing party. Thus, delivery of a signed copy of the award to the parties is the mandatory requirement which is substantive in nature.

14. In the present case, the learned Arbitrator has, while retaining a copy of the signed award meant for the petitioners, seemingly exercised the powers under Section 39 of the Arbitration and Conciliation Act, 1996. Here it would apt to notice the said provision, which reads as under:

“ 39. Lien on arbitral award and deposits as to costs.

(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral

tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.”

15. While sub-section (1) quoted above provides that Arbitral Tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration. Sub-section (2) gives jurisdiction to the Arbitral Tribunal to refuse to deliver its award except on payment of costs demanded by it. In such an eventuality, a party who has not paid the costs to the Arbitral Tribunal has option of filing an application before the Court and depositing the costs, whereafter the Court upon consideration of the matter has the power to release in favour of the Arbitral Tribunal, the costs as the Court may consider reasonable and refund the balance amount to the applicant.

16. In the instant case, the petitioners instead of approaching the Court in terms of sub-section (3) of Section 39 of the Act of 1996, deposited the costs with the Arbitral Tribunal on 17.10.2024 without disputing the quantum of costs demanded by the learned Arbitrator, whereafter a copy of the signed award was delivered by the learned Arbitrator to the petitioners.

17. There is a distinction between making of award and delivering an award. Making an award refers to the period when Arbitral Tribunal finalizes its decision resolving disputes between the parties. An award is deemed to have been made when it is signed by the Arbitrator. Delivering of an award refers to formal communication or handing over of the signed award to the parties in terms of Section 31 (5) of the Act 1996. The time to challenge the award under Section 34 of the Act starts only from the date the award is delivered to the parties and not from the date when it is made.

18. The Supreme Court has, in the case of **State of Maharashtra & others vs. ARK Builders (P) ltd. (2011) 4 SCC 616** held that limitation period for setting aside arbitral award is to be reckoned not from date copy of award is received by objector from any source but from date copy of award duly signed by arbitrator is delivered to/received by objector. Para (15) of the said judgment is relevant to the context and the same is reproduced as under:

“15.The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.”

19. From the above observation of the Supreme Court, it is clear that if law prescribes that copy of award is to be communicated or sent to parties concerned in a particular way and also sets a period of limitation for challenging award by aggrieved party, then the period of limitation commences from date on which award was received by the party concerned in the manner prescribed by law. Thus, merely because the petitioners defaulted in paying the fee of the learned Arbitrator for a few months, cannot alter the situation in favour of the respondent/claimant. Once the law prescribes a particular mode for starting limitation for challenging the award, the same has to be followed in all situations. Even otherwise, if the respondent/claimant desired to avoid the delay, it was open to it to pay the share of the fee payable by the petitioners to the learned Arbitrator in terms of proviso to Section 38 of the Act of 1996. The

same could have been taken care of by the learned Arbitrator while awarding costs in terms of Section 31 A of the Act of 1996. Thus, it is not a case where the respondent was rendered remediless because of default of the petitioners.

20. Since delivery of a signed copy of the award to the parties in terms of Section 31(5) of the Act of 1996 is a mandatory requirement and the period of limitation to challenge the award starts to run against the party challenging the award from the date of delivery of the signed copy of the award to such party, therefore, in the instant case, the period of limitation would start to run against the petitioners from 18.10.2024 and not from the date of award viz. 01.03.2024.

21. The present petition has been filed by the petitioners on 04.02.2025 i.e, well within six months of date of delivery of the signed award to them and as such, there is no delay in filing the present petition. The objection raised by the respondent/claimant to the maintainability of the petition is, therefore, overruled.

22. The main petition be listed for consideration on 30.04.2025.

(Sanjay Dhar)
Judge

JAMMU
02.04.2025
Bir

Whether order is reportable: Yes