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HIGH COURT OF DELHI AT NEW DELHI

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FAO (OS) 248/2007

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GOVERNMENT OF INDIA Appellant
BHARAT SANCHAR NIGAM LIMITED
Through: Mr.K.C.Kaushik, Abhishek Yadav and
Mr.Rahul Kaushik, Advocates

Versus

M/S. ACOME & ORS. Respondents
Through Mr.Alok Krishna Aggarwal, Mr.Naveen
Chawla and Ms.Shruti Chandran, Advocates for
respondent No.1

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

- 1. Whether reporters of the local papers be allowed to see the judgment ?**
- 2. To be referred to the Reporter or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

JUDGMENT
15.07.2008

CM No.9426/2007(Delay)

For the reasons stated in the application, delay in filing the appeal stands condoned.

The application is disposed of.



FAO(OS)248/2007 & CM 9425/2007

1. We have heard the learned counsel appearing for both parties.
2. The short question which falls for our consideration in this appeal is whether the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short the Act) was barred by limitation.
3. In order to appreciate the controversy involved in this appeal it is necessary to give facts. The appellant, then Department of Telecommunications and now Bharat Sanchar Nigam Limited, placed two purchase orders both dated 1st June, 1988 for supply of PIJF cables for Mahanagar Telephone Nigam Limited on the respondent M/s. ACOME. Dispute arose between the parties as according to the appellant some of the supplies were defective while the respondent maintained that the supplies were good and were in fact utilized by the appellant.
4. The matter was referred to the arbitral tribunal consisting of three technical experts, namely, Mr.B.R.Nair (Chairman of the Tribunal), Mr.T.Narayanamoorthy, the arbitrator nominated by the respondent and Mr.Ranbir Khanna, the arbitrator nominated by the appellant. Majority arbitrators, namely, Mr. B.R.Nair and Mr.T.Narayanamoorthy, made and published award dated 1st February, 2002. The award was not signed Mr. Ranbir Khanna, the third arbitrator. However reasons for not signing the award are contained in the award itself. In paragraph 6 of the award the



majority arbitrators recorded that a draft award was prepared and circulated by the Secretariat and was discussed by the three arbitrators on 12th November, 2001. While the presiding arbitrator Mr.B.R.Nair and Mr.T.Narayanamoorthy were more or less in agreement, the third arbitrator, namely, Mr.Ranbir Khanna disagreed with them and expressed his disability to make and sign the award. In the minutes of the meeting held on 12th November, 2001, annexed to the majority award, the majority arbitrators recorded that Mr.Ranbir Khanna had opined on that day that no agreement could be reached on the award and, therefore, he was making his award in due course of time. As on the date of the publication of the majority award his award was still not available. Mr.Khanna gave his minority award on 18th September, 2002. Thereafter the appellant preferred the petition under Section 34 of the Act on 16th December, 2002 to challenge the majority award dated 1st February, 2002.

5. A preliminary objection was raised by the respondent that the petition was barred by limitation since the majority award was made on 1st February, 2002 and communicated to the appellant on the same date. Limitation for filing objections to the majority award started running against the appellant from 2nd February, 2002. Section 34(3) of the Act prescribes a limitation of three months starting from the date on which the party making an application for setting aside the award received the arbitral award. Upon sufficient cause being shown to the satisfaction of the Court, this period



could be extended by another thirty days but not thereafter. According to the respondent since the appellant was served with the copy of the award on 1st February, 2002, in any event the challenge thereto ought to have been raised by the appellant before 30th June, 2002 and not thereafter.

6. On the other hand, the contention of the appellant was that unless all the arbitrators give their reasoned award it cannot be said that there is an arbitral award. According to the appellant the limitation did not begin to run for filing objections to the majority award till the decision of the dissenting arbitrator, dated 18th September, 2002, was received by the appellant, which was received by the appellant on 24th September, 2002. If limitation is computed from that date, the petition under Section 34 is well within time.

7. The learned single Judge on exhaustive consideration of the Act held that the award of a multi-member arbitral tribunal comes into force on making and publishing of the majority award, provided the reason for omission of the signature of the minority arbitrator is contained in the majority award itself. Consequently, the petition under Section 34 of the Act was dismissed as barred by limitation.

8. At the outset we mention that even under the Arbitration Act, 1940 it has been consistently held that the award might be pronounced by majority of the arbitrators and failure of one of the arbitrators to sign the award does not affect the validity of the award. (See: **Ram Narain Ram & Others v.**



Pati Ram Tewari & Others : AIR 1916 Patna 156 and ***R.Dashratha***

& Others v. K.Ramaswamy Iyengar (Umpire) & Others : AIR 1956 Madras 134.)

9. Section 31 of the 1996 Act which is material for our purpose requires that an arbitral award must be in writing and signed by all the arbitrators whether the award is unanimous or not. An oral award is unknown to the 1996 Act. Sub-section (2) of the Section 31 deals with arbitral proceedings with more than one arbitrator. As per sub-section (2) bearing signatures of majority of all the members of the arbitral tribunal shall be sufficient so long as valid reasons for the omitted signature is made clear. Section 31 contemplates a single award and there is no plurality of award and signatures of majority of the members of the arbitral tribunal are sufficient so long as reasons for omission of the signatures of the minority arbitrator are contained in the majority award itself. Thus it is enough if the award is signed by the majority arbitrators and refusal of the minority arbitrator to sign will not affect its validity. Learned counsel for the respondent has referred to the following passage from Russel on Arbitration at page 271 of the 21st Edition (1997). In para 6-059 Russel states as follows:

“If however there is no chairman, then decisions, orders and awards must be made by all or a majority of the tribunal. Any member of the tribunal who does not assent to an award need not sign it and may set out his own views of the case in a “dissenting opinion”. This is for the parties’



information only and does not form part of the award, but it may be useful in terms of adding weight to the arguments of a party wishing to appeal against the award.”

The aforesaid commentary makes a reference to the specific provisions of the Arbitration Act, 1996 as in force in England. The scheme of the two Acts is similar and same principles of law would apply in the context of Indian Act.

10. Learned counsel appearing for the appellant, however contended that the delay occurred due to bonafide mistake of the legal advisor and even the Ministry of Law, Justice and Company Affairs, Department of Legal Affairs opined that the third arbitrator may be persuaded to pronounce his dissenting opinion, if any, whereafter the matter can be put up. Thereafter, Department of Legal Affairs opined that decision of the majority will prevail and as such the award of the majority dated 1st February, 2002 should be challenged immediately. Accordingly the appeal was preferred immediately. He submitted that the delay in filing was due to the bona fide mistake of the legal advisor and it is liable to be condoned under Section 5 of the Limitation Act, 1963. He placed reliance on the decision of the Supreme Court in ***M/s.Concord of India Insurance Co. Ltd v. Smt.Nirmala Devi and Others*** reported in (1979) 4 SCC 365. He has also referred to the decision of the Supreme Court in ***State of Goa v. Western Builders*** reported in (2006) 6 SCC 239 where according to him the Court held that the provisions of



Limitation Act, 1963 are applicable to an application under Section 34 of the Limitation Act. This argument is required to be stated only to be rejected. In ***Union of India v. Popular Construction Company*** reported in (2001) 8 SCC 470 it has been categorically held that the period of limitation cannot be extended by the Court beyond the period of thirty days and the bar of limitation is absolute. The decision in ***State of Goa v. Western Builders*** (supra), wherein the Court held that provisions of Section 5 of the Limitation Act, 1963 are not applicable to an application under Section 34 of the Act but provisions of Section 14 would apply to such an application, does not in any way support the appellant. Rather it supports the respondent. Since Section 5 of the Limitation Act is not attracted, the principles laid down in ***M/s. Concord of India Insurance Co. Ltd*** are also not applicable. In the result the appeal fails and is dismissed accordingly.

CHIEF JUSTICE

**S.MURALIDHAR
(JUDGE)**

JULY 15, 2008
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