

B.P. Sharma Vs Union of India

Court: Delhi High Court

Date of Decision: April 6, 1995

Citation: (1995) 2 AD 439 : (1995) 34 DRJ 536

Hon'ble Judges: R.C. Lahoti, J

Bench: Single Bench

Advocate: R.L. Pal and Sudha Srivastava, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) These are applications under Order 9 Rule 13 CPC and Section 5 of the Limitation Act respectively seeking setting aside of the ex parte judgment and decree dated 27.7.94 whereby an award was made a rule of the court and

condensation of delay in moving the said application.

(2) Canvassing in favor of the applications the learned counsel for respondent No.1 Ms Sudha Srivastava forcefully contended that the award made by the Arbitrator is contrary to clause 10C of the agreement and would vitiate the award

in view of the law laid down by the Supreme Court in Vishwanath Sood Vs. Union of India (UOI) and Another, (followed by this Court in Sudhir Bros vs. Dda suit No.201-A!93 decided on 27.1.1995) and so the applications deserve

to be dealt with sympathy. On the contrary, Mr Rajesh Lakahanpal learned counsel for the petitioner has sought for instantaneous dismissal of" the applications, they being" wholly devoid of merit. The question of merits in the main case

being irrelevant at this stage, I would confine myself to be disposal of the applications.

(3) The case raises an issue of importance as to meaning of "notice to the parties of the filing of the award" within the meaning of Section 1(2) of the Arbitration Act, 1940 and article 119(b) of the Limitation Act,1963.

(4) First, the facts in brief. The petitioner contractor had taken the ""work of construction of Cd chambers from T-type.M/H No. 3 at Lajpat Rai Marg Ring Road to Nehru Place Exchange New Delhi vide agreement No. 54/EE-111/81-

82. Their arose disputes between the parties which were referred to adjudication by arbitrator Shri J.Pal, Superintending Engineer. The employer was the Chief Engineer (Civil) Telecom (NW) Zone, New Delhi.

(5) The Arbitrator having made and published, his award on 18.12.92, notice intimating the same as required by Section 14(1) of the Arbitration Act was given to the parties along with a covering letter dated 1.2.93. The sole arbitrator

filed the award in the court. The following two addresses are mentioned as footnote to the covering letter showing that the intimation was given by the arbitrator to the following parties:

1.Shri B.P. Sharma Engineer Civil Contractor, 60 Darya Ganj, New Delhi 110002

2.Executive Engineer (Civil) Telecom Civil Division I, Chanakaya Puri Post Office Building New Delhi 100021

(6) Proceedings under Sections 14, 17 and 29 of the Arbitration Act were initiated before this Court on a petition filed by the contractor. In the cause title, the Executive Engineer (Civil) above said is neither impleaded, nor shown as a

party. Union of India through the Secretary, Ministry of Communication, Sanchar Bhawan, 20 Ashoka Road, New Delhi and Shri J.Pal Arbitrator have only been shown as respondents. It appears that on this petition it was only

respondent No.2 the arbitrator, who was served and he filed the arbitration proceedings in the court along with a covering letter as stated hereinabove. On 19.5.93, the Joint Registrar directed notice of the filing of the award to issue to

the parties without process fee.

(7) In the record, there are two processes (notices) available which appear to have been served and have been held tantamounting to service of "notice of filing of the award" on the respondent. The proforma and the contents of the two

notices are identical except for the date of issue and the date on which the suit was coming up for hearing. It will be useful to reproduce the notice. It is as under:

High Court OF Delhi In the matter of Suit No. 130/93 Application No.....under B.P. SharmaPetitioner Versus U.O.I.....Respondents. To Union of India through Secretary, Ministry of Communications Sanchar Bhawan, 20 Ashoka Road, New Delhi. WhereasShri J. Pal.....the Arbitrator has filed the award dated.....18.12.92..... delivered by the said Arbitrator/Umpire with arbitration proceedings in Court in disputes inter-se you.....Respondent..... and.....Petitioner..... for being made a rule of the Court. The suit is fixed for hearing on 21.9.93. at 11 Am before the Jt. Registrar. You are hereby called upon to file objections, if any, in accordance with law to the said award within 30 days of the service of this notice. Take notice that your failure to do so as stated above would entail the consequences enjoined by law. Dated this 24th ..day of ...May..... 1993. Sd/ Superintendent (0) for Registrar

(8) There is another notice dated 22.3.94 for the date of hearing 13.7.94 which is identical in all other respects with the above said notice excepting the date of issue and date of hearing. On both the notices the process server has made

an endorsement that the notice was tendered to a clerk in Sanchar Bhawan, which is the Secretariat of Ministry of Communication and the concerned clerk returned the notice after stating that it was not accompanied by a copy of the

case (meaning thereby copies of the pleadings of the opposite party)

(9) On 27.7.94 when the case came up before the court, the court formed an opinion that proper notice of the filing of the award was offered to the representative of the Union of India but the same was not accepted and as there was no

law which required copy of the award or any application to be sent along with the notice of the filing of the award, notice would be deemed to have been served on the Union of India on April 7,1994, the date on which it was tendered to

the clerk As the limitation for filing the objections had expired the court proceeded to make the award a rule of the court followed by a decree.

(10) It appears that on 4.8.94 the petitioner sent a communication to the Executive Engineer (Civil) Telecom informing him of the award having been made a rule of the court and demanding payment of the decretal amount. Thereafter the

respondent No.1 was put on enquiry. On 12.10.1994 these applications under consideration have come to be filed.

(11) Though the learned counsel for the parties have argued at length on whether or not there is a sufficient cause for condensation of delay in filing the application under Order 9 Rule 13 CPC and for setting aside the ex parte decree but

in my opinion the bull's eye is else where. Section 14 (1) & (2) of the Arbitration Act and Article 119 (b) of the Limitation Act are reproduced hereunder:

ARBITRATION Act ,1940.

14.Award to be signed and filed:-

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the court shall thereupon give notice to the parties of the filing of the award.

Limitation Act, 1963 Description of suit Period of Time from which limitation period begins to run. 119. Under the Arbitration Act, 1940 (a) *** ** (b) for setting aside an award Thirty days The date of service or getting an award remitted for of the notice of the reconsideration, filing of the award

(12) Section 14(2) above said obliges the court to give notice to the parties of the filing of the award. From the date of service of such notice the limitation under Article 119(b) would commence. "Parties" here means, not parties to the suit or petition, but parties to the arbitration proceedings.

(13) What is a "notice of the filing of the award"? The phrase is not to be found defined in the Arbitration Act or the Limitation Act. One has to go by the root principles of law and basic tenets of justice in interpreting the meaning of the said phrase. Provisions of issuing summons and notice by the court is based on the maxim audi alteram partem, i.e. hear the other side, do not condemn anyone unheard. Summons and notice issued by the courts are never an eye-wash

merely nor meant to satisfy the ends of a formality only. The idea is to make it known to the party intended to be served as to why and in what connection and for what purpose he is being called to the court.

(14) Punjab & Haryana High Court Arbitration Rules are applicable to Delhi High Court and I may quote rules 6, 11 and 17 of the said rules which are relevant.

6. Notice of application to person affected by award- Upon any application by petitioner under the Act, the Judge shall direct notice thereof to be given to all persons mentioned in the petition, and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted.

11. Notice of filing award- When the award has been filed in Court, the Court shall forthwith issue notice of such filing to the parties interested in the award.

17. Application of CPC and the High Court Rules and Orders- In the cases not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908, and the High Court Rules and Orders, mutatis

mutatis, shall apply to all the proceedings before the Court and to all appeals under the Act.

[UNDERLINING by me]

The Rules 6 and 11 clearly indicate that the notice contemplated by the Rules is not merely to the parties of the case, the notice has to be given to "the persons likely to be affected by the proceedings" and to "the parties interested in the award.

(15) It is true that the notice of the filing of the award need not be accompanied by a copy of the award, but it must give to the person noticed a clear indication of the subject matter of the arbitration and the award made. Unless such particulars are given in the notice, it would not meet the requirement of the notice of filing of the award.

15.1. It is well known that the Government in the very nature of its functioning, acts through some one, commonly known as officer-in-charge in a particular litigation. In the case at hand it was the Executive Engineer (Civil) who was the

in-charge of the case and was throughout conducting the proceedings before the Arbitrator which had pended for about three years. The covering letter filed by the Arbitrator along with the award and record of arbitration proceedings

contained details of the contract out of which the disputes and arbitration proceedings had arisen as also a brief indication of arbitration case. The Executive Engineer (Civil) Telecom Civil Division-1, Chanakayapuri, Post Office Building

New Delhi was shown in the covering letter as a party likely to be effected by the proceedings or a party interested in the award. Notice of the filing of the award should have been given to the Executive Engineer above said. The notice

could have been accompanied by a copy of the covering letter filed by the Arbitrator or else the notice should have given the requisite particulars already stated hereinabove. That having not been done the notice issued on the address of

the Secretary Ministry of Communication did not satisfy the requirement of the notice of the filing of the award. The receiving clerk in the Secretariat was justified in refusing to accept the notice unless it gave particulars of the case or was

accompanied by some petition or application to give an idea of the case. In fact the notice tendered to the clerk was not at all a notice of filing of the award.

15.2 The learned counsel for the Uoi has brought to the notice of the court a telephone directory of Northern Telecom Region of the Department of Telecommunication containing a list of hundreds of officers in the department, four

officers of the manager level, two directors, two superintending engineers and several executive engineers. A clerk or for that matter even the secretary, Telecommunication could not have understood and found out the case or the official

concerned to whom the notice related and so could not have marked it to be dealt with by him along with the record of the case. Presumably it is the executive engineer concerned who must have been in possession of the records of the

case and unless noticed he could not have been expected to draft the objections and file the same in the court.

(16) I am of the considered opinion that to be a notice of filing of the award within the meaning of Section 14(2) of the Arbitration Act and Article 119(b) of the Limitation Act it must set out sufficient particulars so as to give an idea of the

parties, the subject matter of the arbitration proceedings and /or the dispute adjudicated upon by the Arbitrator by its award, or must be accompanied by some such paper as would give a correct idea of these things.

(17) The notice has to be served not merely on the parties to the suit in the sense in which phrase is known to the CPC but also on the parties interested in the award and likely to be effected by the proceedings before the court. In the

case of Government it would be the officer-in-charge of the case or proceedings, the one who was conducting the case before the arbitrator.

(18) It is the above said interpretation which would serve the cause of justice. Otherwise unscrupulous claimant would well have the notice of the filing of the award issued to the Secretary of a big department and have it served on the

receiving clerk in his office, and have the award made a rule of the court on expiry of 30 days there from while the secretary would not within 30 days be in a position with such a skeleton notice to find out the record and or the officer-in-

charge of the case who only could take action on the notice..

(19) The analogy of the provisions of CPC is applicable to proceedings under the Arbitration Act. Under Order 5 Rule 2 Cpc, a summons in the suit is required to be accompanied by a copy of the plaint or by a concise statement of the

case. How a notice of filing of the award can be deemed to be a good notice though not accompanied by any paper or by a concise statement of the subject matter of the proceedings?

(20) I am clearly of the opinion that the notice which was issued to respondent No.1 and referred to hereinabove did not satisfy the requirement of Section 14(2) of the Arbitration Act and Article 119(b) of the Limitation Act. Therefore,

in the eye of law, there was no notice issued and served on the respondent.

(21) What is the effect ? In this very case while pronouncing upon the maintainability of the applications filed by the respondent No.1, I have held vide order dated 3.1.1995:

12. The Court acquires jurisdiction to pronounce judgment in terms of award followed by decree only on satisfaction of dual conditions : (i) parties . to the award having been served with a notice of filing of the same, and (ii) a period of

30 days having elapsed from the date of service of such notice. If either of the two conditions is missing, the decree would not be legal and shall be liable to be set-aside in revision (see Sheikh Esuf Rowther alias A.S. Mohammed Yusuf

and Others Vs. Sheikh Davad Rowther and Another, , Koduri Krishnmma VS. Koduri Chennayya & Am. Air 1949 Mad 276 , Palaparthi Venkataramayya and Others Vs. Duggina Papayya and Others, AchaberPande VS. Kuldip

Singh Air 1925 Ran 103 , Ravjibhai Kashibhai Vs. Dahyabhai Zaverbhai Patil, , Mani Ram VS. Ram Asray Air 1921 Oudh 148 . Before pronouncing , judgment followed by decree it is obligatory upon the Court to satisfy itself - of the

availability of the dual conditions referred to hereinabove. No man shall suffer for the fault of the Court. If one of the two conditions is missing, the Court may set- aside the decree by exercising its inherent power and thereby cure illegality

in its proceedings on its attention being invited there to (see Soorajmull Nagarmal Vs. Golden Fibre and Products, and Shrichand Prasad Vs. Mohan Singh, .

(22) In my opinion, the facts as set out in the two applications by respondent No.1 do attract the applicability of the statement law quoted hereinabove. This is a fit case where I must exercise my inherent power and thereby cure illegality

in the proceedings, the facts impelling exercise of such jurisdiction having been brought to its notice. The orders of this Court are not subject to any revisional jurisdiction.

(23) It is not necessary to exercise jurisdiction under Order 9 Rule 13 Cpc, the same being redundant.

(24) For the foregoing reasons, the judgment and decree dated 27.7.94 are set aside.

(25) The Union of India is given a notice of the filing of the award today. The formality of issuing a notice afresh in accordance with the principles laid down herein above need not be undergone inasmuch as respondent No.1 has already

filed objections under Sections 30 and 33 of the Arbitration Act vide is 11818/94 which shall now be set down for hearing on merits.