

Mic Electronics Limited and ors. Vs. Union of India and ors.

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SooperKanoon Citation : sooperkanoon.com/442055

Court : Andhra Pradesh

Decided On : Nov-12-2001

Reported in : 2002(1)ALD191; 2001(6)ALT249

Judge : B. Sudershan Reddy, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 3, 4 to 24, 30, 33, 34 and 43; [Limitation Act, 1963](#) - Sections 5 and 29(2); [Constitution of India](#) - Article 227; Limitation (Amendment) Act, 1996 - Sections 29(2); [Code of Civil Procedure \(CPC\), 1908](#) - Order XXI; [Arbitration Act, 1940](#)

Appeal No. : CRP Nos. 2532, 2533, 2542 and 2546 of 2001

Appellant : Mic Electronics Limited and ors.

Respondent : Union of India and ors.

Advocate for Def. : C.V. Ramulu, SC for Central Govt.

Advocate for Pet/Ap. : Nooty Rama Mohana Rao, Adv.

Disposition : Petitions allowed

Judgement :

1. This batch of Civil Revision Petitions filed under Article 227 of the [Constitution of India](#) challenging the orders passed by the learned Chief Judge, City Civil Courts, Hyderabad may be disposed of by a common order, since a common

question of law arises for consideration of this court.

2. The learned Chief Judge allowed the applications filed by the Union of India and others under Section 5 of the [Limitation Act, 1963](#) read with Section 43 of the [Arbitration and Conciliation Act, 1996](#) (for short 'the Arbitration Act, 1996') to condone the delay in filing the original petitions (O.Ps.) under Section 34 of the Arbitration Act, 1996 to set aside the Awards dated 10-7-2000 in arbitration cases on the file of the Arbitrator and accordingly condoned the delay of 80 days in filing the original petitions.

3. It may be necessary to briefly notice the relevant facts leading to filing of the instant Civil Revision Petitions in this court.

4. The petitioners entered into a contract with the Department of Tele Communications, Government of India on 28-12-1995 for manufacture and supply of Multi Access Rural Radio (MARR) Systems in the Ultra High Frequency Range with accessories. The systems contracted have been manufactured and supplied. It appears that certain disputes have arisen between the contracting parties with regard to payments that are liable to be made for the supplies effected beyond 17th March, 1997. We are not concerned with the further details of the nature of the dispute. It is the case of the petitioners that the Government of India has unilaterally taken a decision to pay for the systems supplied after 17-3-1997 at a particular price than the contracted price and consequent to the said decision effected the recoveries from the petitioners. The petitioners challenged the said decision in a batch of writ petitions in this court impugning the legality and validity of the decision taken by the department on 6-6-1997 and 23-6-1997. This court disposed of the said writ petitions directing the parties to make an appropriate reference of their claims/disputes to be resolved through the medium of Arbitration and for the said purpose appointed Mr. Justice P.A. Chowdary, a retired Judge of this court to act as sole Arbitrator. The said decision was challenged in a batch of writ appeals. A Division Bench of this court rejected the said Writ Appeals and accordingly confirmed the judgment rendered by the learned single Judge.

5. Thus the reference of the dispute between the parties came to be laid before the Arbitrator for resolution. The learned Arbitrator having entered upon the

reference passed the Award on 10-7-2000. The details of the Award need not be noticed.

6. The Award of the Arbitrator was communicated to the parties. The respondents herein preferred O.Ps., under Section 34 of the Arbitration Act, 1996 along with the applications to condone the delay of 80 days in filing the said O.Ps.

7. The learned Chief Judge allowed the applications and condoned the delay in filing the O.Ps., filed by the respondents to set aside the Award dated 10-7-2000 passed by the Arbitrator. It is those orders which are impugned in these civil revision petitions.

8. Sri Nooty Rama Mohan Rao, learned counsel for the petitioners contends that the impugned orders passed by the learned Chief Judge in allowing the applications filed by the respondents herein under Section 5 of the [Limitation Act, 1963](#) read with Section 43 of the Arbitration Act, 1996 suffer from incurable legal infirmities. The learned counsel contends that the learned Chief Judge has no jurisdiction to entertain and order the applications to condone the delay of more than thirty days in preferring the original petitions under Section 34 of the Arbitration Act, 1996. The learned counsel contended that the provisions contained in Section 5 of the [Limitation Act, 1963](#) have no application to the proceedings under Section 34 of the Arbitration Act, 1996 as the same are liable to be treated to have been impliedly excluded, since Section 34 of the Arbitration Act, 1996 has provided for the period of limitation within which an application under Section 34 of the Arbitration Act, 1996 has to be taken out. It is contended that Section 34 of the Arbitration Act, 1996 itself is a self-contained code. Section 34 of the Arbitration Act, 1996 regulates the exercise of the discretion in the matter of condonation of delay by a competent court for a period of thirty days only 'but not thereafter'. In the circumstances, it is contended that the competent court of jurisdiction, for the good reasons, in an appropriate case may condone the delay of thirty days in filing the application under Section 34 of the Arbitration Act, 1996 and, under no circumstances, the court can condone the delay of more than thirty days in filing such petitions.

9. The learned Senior Central Government Standing Counsel, Sri C.V.Ramulu, contended that the impugned orders passed by the learned Chief Judge do not suffer from any legal infirmity requiring any interference of this court in exercise of its jurisdiction under Article 227 of the [Constitution of India](#). It is submitted that the orders have not resulted in causing any injustice to any of the parties.

10. The short but an important question that arises for determination in these cases is whether the provisions of Section 5 of the [Limitation Act, 1963](#) are applicable to an application challenging the Award under Section 34 of the Arbitration Act, 1996?

11. Section 34 of the Arbitration Act, 1996 provides for a period of limitation for filing a petition for setting aside the arbitral award. It reads thus:

34. Application for setting aside arbitral award :--

2)

3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the court is satisfied that the application 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 thirty days, but not thereafter.

12. A plain reading of the provision would make it clear that no application for setting aside the arbitral award can be made after three months from the date on which the party making the application had received the arbitral award or, if a request has been made under Section 33, from the date on which that request has been disposed of by the arbitral tribunal. However, the court in an appropriate case may extend the said period of three months for filing the application for a further period of thirty days 'but not thereafter'. The provision undoubtedly is mandatory in its nature. The competent court has no jurisdiction to extend or condone the delay in filing the application beyond the period of thirty days. The

court in its discretion may extend or condone 30 days delay only in filing the application under Section 34 of the Arbitration Act, 1996.

13. But the question that falls for consideration is as to whether the Arbitration Act, 1996 expressly excludes the applicability of Section 5 of the [Limitation Act, 1963](#) to a proceeding under Section 34 of the Arbitration Act, 1996?

14. It is required to notice that Section 29(2) of the [Limitation Act, 1963](#) makes the provisions of Sections 4 - 24 applicable to special laws like the Arbitration Act, 1996. There cannot be any dispute that the Arbitration Act, 1996 is a special law. It may be relevant to notice the Section 29(2) of the Limitation Act, 1996. It reads:

'Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 - 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.'

15. A fair reading of the section would make it clear that the provisions of Sections 4 - 24 will apply when :

(i) There is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and

(ii) The special or local law does not expressly exclude those sections.

16. In *Kaushalya Rani v. Gopal Singh*, : [1964]4SCR982 , the Supreme Court observed that 'the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation.' The Supreme Court characterised the Section 29(2) of the Limitation Act as 'supplemental in its character'. For the purpose of determining any period of limitation prescribed by any special law, it has made the provisions of the Limitation Act, referred in Clause (a) of Sub-section (2) of Section

29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and Clause (b) of that subsection expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law.

17. In *Bharat Coking Coal Ltd. v. L.K. Ahuja and Co.*, : [2001]1SCR1152 , the Supreme Court held that 'an application for condonation of delay is permissible to file objections under Section 30 of the Arbitration Act by resorting to Section 5 of the Limitation Act.' it is held by the Supreme Court that 'Section 5 of the [Limitation Act, 1963](#) is applicable to all applications under the provisions of the [Arbitration Act, 1940](#) other than those under Order XXI of the Code of Civil Procedure.'

18. In *Union of India v. Hanuman Prasad and Brothers*, 2000 (7) Supreme 69, the Supreme Court observed:

'In our view, on the facts and circumstances of the case it could not have been said that there was no sufficient cause for the appellant to get the delay of 2 months 22 days in filing objections under Section 30 of the [Arbitration and Conciliation Act, 1996](#) condoned in the interest of justice. We also find that Section 5 of the Limitation Act was wrongly held inapplicable to the proceedings before Court regarding making the award a rule of the Court. Consequently, on these grounds, the impugned orders of the High Court as well as of the trial Court are set aside. The trial Court is directed to take up objections under Section 30 of the [Arbitration and Conciliation Act, 1996](#) on record and to decide the same in accordance with law on merits within a period of two months from the receipt of a copy of the order at its end. We make it clear that we make no observation on the merits of the objections under Section 30 of the Act which have to be decided by the trial Court on its own.'

19. The learned Chief Judge relied upon the said decision and accordingly allowed the applications.

20. In *Union of India v. M/s. Popular Construction Co.*, 2001 (7) Supreme 354, the Supreme Court distinguished the decision in *Hanuman Prasad and Brothers* (supra) and held that the decision in *M/s. Hanuman Prasad & Brothers* is an

authority for the proposition that Section 5 of the Limitation Act applies to the objections to an award under Section 30 of the [Arbitration Act, 1940](#) and not to Section 34 of the [Arbitration and Conciliation Act, 1996](#). The decision in M/s. Hanuman Prasad & Brothers (supra) is explained and distinguished in the following manner:

'The appellant then sought to rely on a decision of this court in Civil Appeal No. 1953 of 2000 Union of India v. Hanuman Prasad and Brothers (2000 (7) Supreme 69) to which one of us (Ruma Pal, J) was party. It is contended that the decision is an authority for the proposition that Section 5 of the Limitation Act applied to objections to an award under the 1996 Act. It is true that in the body of that judgment, there is a reference to the 1996 Act. But that is an apparent error as the reasoning clearly indicates that the provisions of Section 30 of the [Arbitration Act, 1940](#) and not Section 34 of the 1996 Act were under consideration. In order to clarify the position, we have scrutinized the original record of Civil Appeal No. 1953 of 2000 decided on 6th March 2000. We have found that that was indeed a case which dealt with an award passed and challenged under the [Arbitration Act, 1940](#). No question was raised with regard to the applicability of the Limitation Act to the 1940 Act. The only issue was whether the High Court should have refused to condone the delay of 2 months and 22 days in filing the objection to the Award. This Court found that sufficient cause had been shown to condone the delay and accordingly set aside the decision of the High Court. This decision is as such irrelevant.'

21. The Supreme Court in M/s. Popular Construction Co. (supra) laid down that the language of Section 34 of the Arbitration Act, 1996 in clear terms excludes the application of Section 5 of the Limitation Act in a proceeding under Section 34 of the Arbitration Act, 1996. The Supreme Court observed that 'the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and un-extendable by Court under Section 5 of the Limitation Act.' It is explained that had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 - 24 of the Limitation Act because 'mere provision of a period of limitation in howsoever peremptory or

imperative language is not sufficient to displace the applicability of Section 5.'

22. But advertent to the language of Section 34 of the Arbitration Act, 1996, the Supreme Court laid emphasis on the crucial words in Section 34 of the Arbitration Act, 1996 and the crucial words are 'but not thereafter' are used in the proviso to Sub-section (3). In the circumstances, the Supreme Court concluded that this phrase 'would amount to an express exclusion within the meaning of Section 29(2) of the Limitation 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.

23. The Supreme Court authoritatively laid down the law in M/s. Popular Construction Co. (supra) and declared that the provisions of Section 5 of the [Limitation Act, 1963](#) are not applicable to the application challenging the award under Section 34 of the Arbitration Act, 1996. The decision of the Supreme Court in M/s. Hanuman Prasad & Brothers (supra) is an authority for the proposition that Section 5 of the Limitation Act is applicable to the proceedings before the court regarding making the award a rule of the court under the [Arbitration Act, 1940](#). The decision is not an authority for the proposition that Section 5 of the Limitation Act would be applicable to the proceedings under Section 34 of the Arbitration Act, 1996.

24. For the aforesaid reasons, the orders passed by the learned Chief Judge are vitiated by the errors apparent on the face of the record. The learned Judge committed an error in condoning the delay in filing the original petitions to set aside the Awards under Section 34 of the Arbitration Act, 1996. The impugned orders are accordingly set aside.

25. It is needless to observe that the original petitions filed by the Union of India and others shall accordingly stand dismissed.

26. The Civil Revision Petitions are allowed, but in the circumstances, each party to bear their own costs.