

State of West Bengal Vs. Afcons Infrastructure Ltd.

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SooperKanoon Citation : sooperkanoon.com/879571

Court : Kolkata

Decided On : Sep-18-2007

Reported _____ **in** _____ :

AIR2008Cal6,2008(1)ARBLR340(Cal),(2008)1CALLT161(HC),2008(2)CHN68

Judge : S.S. Nijjar, C.J. and ;Pinaki Chandra Ghose, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 33, 34 and 34(3);
;Limitation Act - Sections 4 to 24 and 29(2)

Appeal No. : APOT No. 466 of 2007

Appellant : State of West Bengal

Respondent : Afcons Infrastructure Ltd.

Advocate for Def. : Jayanta Mitra and ;Debal Banerjee, Sr. Advs. and ;Bijon Majumdar, Adv.

Advocate for Pet/Ap. : Indrajit Sarkar and ;Shyam Lal Ganguly, Advs.

Disposition : Appeal dismissed

Judgement :

1. We have heard the counsel for the appellant. The order passed by the Trial Court would show that the petition for setting aside the Award was not filed by the State within a period of 90 days as stipulated under Section 34(3) of the [Arbitration](#)

[and Conciliation Act, 1996](#). In fact, the petition was received in the Central Filing Section on 19th of June, 2007 when the period of 90 days expired on 14th of June, 2007. The petition was, however, filed within a period of one month after the expiry of 3 months time from the date of the Award dated 18-2-2007 corrected on 13-3-2007. Taking note of the aforesaid fact, the Trial Court granted liberty to the petitioner to file an application seeking condonation of delay for the period between the time when 90 days expired and the date when the application was filed in Court. It was also directed that liberty so granted would remain in effect if the petitioner chose to act in terms thereof within a period of two weeks from the date of the Order, that is, 31st of July, 2007. Even this direction was not complied with by the Appellant-State. Ultimately, on the next date, the learned single Judge has observed that the liberty granted by the Order dated 31st July, 2007 being spurned, A. P. 201 of 2007 stood dismissed.

2. Having dismissed the petition, the Trial Court has, however, observed that the order will not stand in the way of the petitioner's applying for condonation of delay and challenging the Award if the appellant-petitioner is otherwise entitled to in law.

3. Learned Counsel for the appellant vehemently argues that the arbitration petition has been filed by the appellant within the extended period of one month after the expiry of the initial period of three months. This course is permissible in view of the proviso to Section 34(3) of the [Arbitration and Conciliation Act, 1996](#). Therefore, the learned Trial Court ought not to have dismissed the arbitration petition and insisted upon filing an application for condonation of delay. Learned Counsel further submitted that in case the arbitration petition is now dismissed only on the ground that it is beyond limitation it would be causing injustice to the State as a huge amount of Rs. 3 crores is involved.

4. On the other hand, Mr. Jayanta Mitra, learned Senior counsel for the respondent submits that strictly speaking no application is permissible for condonation of delay under Section 34(3) of the 1996 Act. According to the learned Counsel, the wordings of Sub-section (3) of Section 34 is such that applicability of Section 5 of the Limitation Act is clearly excluded. In support of his submission, the learned Counsel has relied on a judgment of the Supreme Court

in the case of Union of India v. Popular Construction Co. : AIR 2001 SC4010 .

5. We have considered the submissions made by the learned Counsel for the parties. We have narrated the relevant facts which would clearly indicate the arrogant attitude which has been displayed by the State. Even though, strictly speaking, the appellant could not have been granted any further time for filing an application under Section 5 of the Limitation Act, the Court still granted an opportunity to file such an application. Even this direction was not complied with by the State-appellant leaving the Trial Court with little alternative but to dismiss the arbitration petition. We are mindful of the legal position with regard to the law of limitation and the principles that govern the grant of leave to move an application beyond limitation. In the case of Collector, Land Acquisition Anantnag and Anr. v. Mst. Katiji and Ors. reported in : (1987)ILLJ500SC the Supreme Court has laid down clearly the principles to be followed in considering the application for condonation of delay. Undoubtedly, in the aforesaid case it has been held that application for condonation of delay of the State are to be treated on the same footing as applications filed by the other litigants. It has also been held that the State ought not to be given step motherly treatment. It has been observed as follows:

Making a justice oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit

and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

6. In our opinion, these observations would not be applicable in the facts and circumstances of this case, Here the Court granted liberty to file (sic) application for condonation of delay which has not even been contemplated in the [Arbitration and Conciliation Act, 1996](#). As noticed above, Section 34(3) of the 1996 Act excludes the applicability of Section 5 of the Limitation Act. Considering the provisions of Section 34(3) of the 1996 Act, the Supreme Court in the case of Union of India v. Popular Construction Co. : AIR 2001 SC4010 (supra) observed as follows:

7. There is no dispute that the 1996 Act is a 'special law' and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. The question that is-is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:

34. Application for setting aside arbitral award.--(1)(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 applicant 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.⁸ 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 to 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'

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that 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.

7. These observations, in our opinion, are a complete answer to the submissions made by the learned Counsel for the appellant-State. We are also unable to accept the submissions of the learned Counsel for the appellant that statutory provisions of law have to be waived merely because a huge liability is to be fastened on the State by reason of dismissal of the arbitration petition.

8. The petition being barred by limitation has to be dismissed in view of the provisions of Section 34(3) of the 1996 Act. We see no merit in the appeal. The appeal is dismissed.

Certified copy of this order be made available to the parties, if applied for, upon compliance of usual formalities.