

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Arbitration and Conciliation Act, 1996

F.A.O. NO.284 OF 2005 and C.M. NO.13564 OF 2005

Date of decision: 4th December, 2008

BSNL ...

Appellant
Through: Mr. Asad Alvi, Advocate.

Versus

V.K. Tyagi and Ors. ...

Respondents
Through: Mr. Raman Kapur, Advocate.

H.R. MALHOTRA, J.

1. This appeal arises from the impugned judgment dated 3.8.2005A rendered by Additional District Judge, Delhi dismissing the objections of the appellant herein filed under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground that such objections were filed beyond period of 90 days and as such could not be entertained.

2. Feeling dissatisfied with the impugned judgment, the appellant has preferred the instant appeal. It is urged by learned counsel for the appellant that the judgment rendered by the trial judge is erroneous in law as he did not take into consideration that the limitation period ought to have started from the date when correction in the award was made and a copy of the corrected award was supplied to both the parties. It is urged that the award was made and published on 4.10.2004 and admittedly the copy of the award was delivered to the parties through their counsel.

3. Later, the arbitrator noticed certain errors in the award and made corrections suo moto on 11.10.2004, intimation of which corrections was sent to both the parties and received by the appellant on 13.10.2004. The appellant preferred objections on 12.1.2005 and that the same were filed within a period of 90 days and as such according to learned counsel for the appellant, the trial judge ought to have taken into consideration all these aspects which he failed to do so. Learned counsel for the appellant to support his contention referred to Section 33 of the Arbitration and Conciliation Act, 1996 and urged that the arbitrator was to make the corrections within 30 days from the receipt of such request and that such correction was to form part of the arbitral award.

4. On the other hand Sh. Kapur, learned counsel for the respondents urged that since in the case in hand corrections were made not on the request of either of the parties but on the arbitrators own initiative, therefore, provisions of Section 34 (3) of the Arbitration and Conciliation Act would be applicable in this case which categorically states that if request is made by either of the parties for making corrections in the award in terms of Section 33 then period of 90 days would start from the date on which that request had been disposed of by the arbitral tribunal but in the present case no such request was made and the arbitrator made corrections on its own and, therefore, the appellant/objector was not entitled to extension of time for the purposes of filing of objections.

5. To refute such arguments, learned counsel for the appellant placed reliance on an authority cited in AIR 1993 Bombay 284 titled M/s. Jutex Vs. Telecom Divisional Manager and others and referred to para 7 in particular wherein while dealing with the limitation aspect the court held as under :- It must be seen that when the Arbitrator thought that his award earlier given needs to be corrected, he should have atleast given a notice to the petitioner. Having not done so, the Arbitrator suo motu could not correct the award. For the purpose of record it may be mentioned that whereas the Arbitrator earlier held certain number of calls as having been made by the petitioner the corrected award shows 3523 calls in excess of the previous figure. Since this was not merely a correction of arithmetical mistake, it was clearly incumbent upon the Arbitrator to have given a notice to the petitioner when the Arbitrator thought it wise to issue a corrigendum to the award earlier made. Therefore, the corrected award also needs to be set aside as having been made without any notice to the petitioner and to that extent also stands vitiated.

6. I have considered the authority. The said authority is not applicable to the case in hand as in to that case notice was required to be given as correction was not merely of arithmetical mistake but of important nature and, therefore, it was incumbent upon the arbitrator to have given a notice to the appellant.

7. Looking to the nature of correction made by the arbitrator in this case that too suo moto which appears at page 36 of the paper book, indicates that the nature of correction made was one of typographical error and not of any arithmetical correction. Therefore, the appellant was not entitled to extension of time merely because of correction of formal nature was made not varying the award, as such it cannot be said that the appellant automatically became entitled to extension of time because of correction of the errors.

8. Even otherwise, provisions of Section 34 (3) of the Arbitration and Conciliation Act would be applicable to the present case as the correction was not made on the request of either of the parties but the arbitrator made such correction on its own initiative. It is, thus, clear that copy of the award was received by the appellant on 4.10.2004 and this being so, he was under legal obligation to prefer objections to such award within 90 days which he did not do so as such, the trial judge rightly dismissed the objections of the appellant, same being barred by time.

9. No infirmity, impropriety or illegality is noticed in the impugned judgment and as such the judgment being in order, requires to be maintained. Consequently, the appeal is dismissed maintaining the impugned judgment. No order as to costs.

Sd./-
H.R. MALHOTRA,J

DECEMBER 04, 2008