IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OMP(M) No. 89 of 2023

Reserved on 22.4.2024.

Decided on : 30.4 2024.

State of H.P. & another ...Petitioners.

Versus

M/s Jagson International Ltd. ....Respondent.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting? Yes.

For the petitioners: Mr. Y.P.S. Dhaulta & Mr. Amandeep Sharma, Addl. A.Gs.

For the respondent: Mr. R. K. Bawa, Sr. Advocate with Mr. Y.P. Sood, Advocate.

Satyen Vaidya, Judge.

Petitioners are seeking condonation of delay in filing application under Section 34 of the Arbitration and Conciliation Act (for short 'the Act') against award dated 11.11.2022, passed by the Arbitrator.

2. The copy of award was received by the petitioners on the date of passing of award itself i.e.

11.11.2022. The application under Section 34 of the Act was presented in the Registry on 13.3.2023.

3. Subsequently, on 27.3.2023, the instant application seeking condonation of delay was filed with the averments that since, after passing of the award dated 11.11.2022 general elections were conducted by the Election Commission and most of the senior officers were on election duty till 8.12.2022, the decision regarding challenge to the impugned award could not be taken. It has further been averred that even after 8.12.2023, long time was taken in formation of the government and again for such reason, the decision to challenge the award could not be taken and in such process, delay of 30 days has occurred in filing the petition.

4. The prayer for condonation of delay has been opposed on behalf of the respondent. It has been submitted that as per the Act, the maximum period within which, the application under Section 34 of the Act can be filed is 120 days. The respondent has calculated that the application of the petitioners under Section 34 of the Act

was preferred after 122 days and hence the application was not maintainable. It has further been stated that the period beyond three months as provided in Section 34 (3) of the Act can be extended upto a maximum period of 30 days that too subject to the satisfaction of the Court that the applicant was prevented by sufficient cause from making the application within the said period of three months. As per respondent, no cause much less any sufficient cause has been shown by the petitioners seeking extension of time beyond three months. Another plea that has been raised on behalf of the respondent at the time of hearing of the application is that the limitation of 30 days beyond a period of three months had expired on 11.3.2023, which was a public holiday being Second Saturday. The next ensuing day i.e. 12.3.2023 also was a public holiday. Placing reliance on the judgment passed by the Hon'ble Supreme Court in ***Bhimashankar Sahakari Sakkare Karkhane Niyamita vs. Walchandnagar Industries Ltd. (WIL) 2023 SCC Online SC 382***, it has been

submitted that the benefit of public holidays cannot be given to the petitioners.

5. I have heard learned counsel for the parties and have also gone through the record carefully.

6. There is no dispute that the award was passed by the Arbitrator on 11.11.2022 and the petitioners had received the copy of award on the same day. Sub-section (3) of Section 34 of the Act reads as under:-

> *"(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".*

7. As per aforesaid provision, a party seeking to file application under Section 34 (1) of the Act against an arbitral award has to do it within a period of three months. The period can be further extended by another 30 days

after expiry of three months, subject to the applicant satisfying the Court that he was prevented by sufficient cause from making the application within the period of three months. It is more than settled that filing of an application under Section 34 of the Act after the initial prescribed period of three months and extended period of 30 days cannot be entertained in any event.

8. Since the copy of award was received by the petitioners on 11.11.2022, therefore, three months would expire on 11.2.2023. The application of the petitioners can be entertained if it is found to have been filed within 30 days after 11.2.2023, subject to satisfaction of this Court that the applicants were prevented by sufficient cause from making the application within three months. As per record, the application under Section 34 of the Act has been filed in the instant case on 13.3.2023, which would be the 30th days after expiry of period of three months.

9. The contention of the respondent that the application was filed by the petitioners after 122 days

appears to be based on wrong calculation. The respondent has calculated a period of 90 days in place of three months as prescribed in sub-Section (3) of Section 34 of the Act, which is not correct way of calculation. Three months would mean expiry of three calendar months and hence the period of three months in the instant case had expired on 11.2.2023. Thus, the period for which condonation has been sought by the petitioners is of 30 days. In this view of the matter, there is no impediment to consider the merit of instant application for condonation of delay.

10. Now coming to the reason assigned by the petitioners for occurrence of delay in filing the application, it has been submitted that due to elections till 8.12.2022 and thereafter on account of delay in formation of Government, the decision to file the application could not be taken. The reason so assigned by the petitioners in my considered view is as vague as it can be. No details have been provided as to who was competent to take decision to file the application and what was the role of such a person

either in conduct of election or thereafter in formation of the Government.

11. In addition to above, the respondent has specifically submitted that the petitioners had issued notice under Section 34 (5) of the Act on 7.2.2023 reflecting their intention to file the application under Section 34 of the Act. The petitioners have also filed a copy of notice issued by them to the respondent under Section 34 (5) of the Act as Annexure P-5 with the application, which is available at page No. 206 of the paper book. The date of the notice so issued is 7.2.2023.

12. For showing the sufficient cause as required under the proviso to Section 34 (3) of the Act, the petitioners were obligated to reveal their bonafidies coupled with plausible reason in not filing the application within the prescribed time. The petitioners have miserably failed to show any cause much less the sufficient cause. Even the vague averments with respect to impediment caused in decision making by the elections and thereafter formation of Government also stand belied by the fact that on

7.2.2023, the petitioners themselves had issued a notice under Section 34 (5) of the Act, meaning thereby that the decision had already been taken by 7.2.2023 to file the application under Section 34 of the Act, still the application was not filed till 13.3.2023 and there is absolutely no explanation as to why the same was not filed immediately after 7.2.2023.

13. *In* ***State of Madhya Pradesh*** *Vs.* ***Bherulal (2020) 10 SCC 654****, Hon'ble Supreme Court has observed as under:-*

> *"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/ petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the*

appeals/petitions have to be filed as per the Statues prescribed.

3. *No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (LAO V. Katiji). This position is more than elucidated by the judgment of this Court in Post Master General V. Living Media (India) ltd. (2012) 3 SCC 563 where the Court observed as under:(Post master General case, SCC pp. 573-74, paras 27-30):*

"27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the

Government or a wing of the Government is a party before us.

28) *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*

29) *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process. The government departments are under a special*

obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay." Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "due to unavailability of the documents and the process of arranging the documents". In paragraph 4 a reference has been made to "bureaucratic process works, it is inadvertent that delay occurs."

The same reiteration is again found in ***State of Odisha and ors****. Vs.* ***Sunanda Mahakude (2021) 11 SCC 560****, in which it has been observed as under:-*

"3. A reading of the aforesaid shows that there is no reason much less sufficient and cogent reason assigned to explain the delay and the application has also been preferred in a very casual manner. We may notice that there are number of orders of this State Government alone which we have come across where repeatedly matters are being filed beyond the period of limitation prescribed. We have been repeatedly discouraging such endeavours where the Governments seem to think that they can walk in to the Supreme Court any time they feel without any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them.

4. There is no doubt that these are cases including the present one where the Government machinery has acted in a inefficient manner or it is a deliberate endeavour. In either of the two situations, this court ought not to come to the rescue of the petitioner. No doubt, some leeway is given for Government inefficiency but with the technological advancement now the judicial view prevalent earlier when such facilities were not available has been over taken by the elucidation of the legal principles in the judgment of this Court in the Office of the Chief Post Master General & Ors. v. Living Media

India Ltd. & Anr. – (2012) 3 SCC 563. We have discussed these aspects in SLP [C] Diary No.9217/2020, State of Madhya Pradesh v. Bheru Lal decided on 15.10.2020 and thus, see no reason to repeat the same again.

5. In the present case, the State Government has not even taken the trouble of citing any reason or excuse nor any dates given in respect of the period for which condonation is sought. The objective of such an exercise has also been elucidated by us in the aforesaid judgment where we have categorized such cases as "certificate cases".

14. In light of the facts and exposition of law noted above, no cause much less sufficient cause has been shown by the petitioners in not filing the application under Section 34 of the Act within the prescribed three months. In result, the application fails and the same is accordingly dismissed.

(Satyen Vaidya)
Judge

30th April, 2024.
(kck)