

Arbitral awards: calculating the period of limitations

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Does the period of limitation for making an application to set aside an arbitral award (under section 34 of the Arbitration and Conciliation Act, 1996) begin from when a party receives a copy of the award by any means and from any source or from the date the arbitrator delivers a signed copy of the award?

Ruling in State of Maharashtra & Ors v Ark Builders Pvt Ltd, on 28 February, the Supreme Court held that under section 31(5) of the Arbitration Act, the delivery of an arbitral award is not a matter of mere formality but a matter of substance.

Only after section 31 is complied with does termination of proceedings under section 32 of the act arise. As such, the period of limitation prescribed under section 34(3) of the act would begin only from the date a signed copy of the award is delivered to or received by the party.

The facts of the case

An arbitral tribunal had failed to provide a copy of the award to the appellant, the state of Maharashtra, as the state had not paid the arbitration costs. However, the tribunal provided a copy to the respondent, Ark Builders, in whose favour the award was made. Ark Builders in turn forwarded a photocopy to the state of Maharashtra in order to claim payment in terms of the award.

The state of Maharashtra initiated proceedings to challenge the award, but could not make an application to do so, as they had not been sent a copy of the award from the arbitrator. Having given the original of the document to Ark Builders, the arbitrator sent the state of Maharashtra a photocopy of the award, certifying it as a true copy.

Using this copy of the award the state of Maharashtra subsequently challenged the award under section 34 of the act.

Arguments for and against

The state of Maharashtra argued that according to section 31(5) and 34(3) of the act the period of limitation would run from the date they had received a copy of the award from the arbitrator and not from when they had received it from Ark Builders.

As such, they argued that their application for setting aside the award was filed well within the period of limitation. In making its case the state of Maharashtra relied on *Union of India v Tecco Trichy Engineers & Contractors*.

In response, Ark Builders pointed out that a copy of the award had been received in the office of the state of Maharashtra much before a copy was received from the arbitrator.

Therefore, the period of limitation would start from the earlier date. Ark Builders also contended that the state of Maharashtra had sent a photocopy of the award to the arbitrator for his signature, just to make out a case to overcome the bar of limitation prescribed by section 34(3) of the act.

Rationale for the judgment

Considering whether there should be strict compliance with the procedure under the act, the court observed that the delivery of an arbitral award under section 31(5) is not a mere matter of formality, but that it is a matter of substance.

It held that in order for the delivery of the arbitral award to be effective, it has to be received by the party. Also, the delivery by the tribunal and

receipt by the party sets in motion periods of limitation for applications for correction and interpretation of an award under section 33(1), applications for making an additional award under section 33(4), and applications for setting aside an award under section 34(3).

As the delivery of the award has the effect of conferring certain rights and also sets in motion an end to the right to exercise those rights (on expiry of the period of limitation), the delivery of a copy of award by the tribunal and its receipt is an important stage in the proceedings.

The period of limitation prescribed under section 34(3) would start running only from the date a signed copy of the award is delivered to and received by the party.

If the law prescribes that a copy of the order or award is to be communicated, delivered or sent to the parties concerned in a particular way and if law also sets a period of limitation for challenging the order or award in question, then the limitation commences from the date on which the order or award was received by the party.

In coming to this decision the Supreme Court relied on the *Tecco Trichy Engineers & Contractors* case. A division bench of Delhi High Court took a similar view in *Karamyogi Shelters Pvt Ltd v Benarsi Krishna Committee & Ors*, where it was found that serving an award on the appellant's advocate was not sufficient.

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