

Food Corporation Of India And Ors vs E.Kuttappan on 21 June, 1993

Equivalent citations: 1993 AIR 2629, 1993 SCR (3)1028, AIR 1993 SUPREME COURT 2629, 1993 (3) SCC 445, 1993 AIR SCW 3399, (1993) 4 JT 90 (SC), 1993 (2) ARBI LR 266, (1993) 3 SCR 1028 (SC), 1993 (3) SCR 1028, 1993 (2) UJ (SC) 367, 1993 (4) JT 90, (1993) 2 KER LT 541, (1993) 2 SCJ 652, (1993) 2 ARBILR 266, (1993) 22 ALL LR 470, (1993) 3 ANDH LT 18, (1993) 2 CURCC 645, (1993) 2 CURLJ(CCR) 207, (1993) 51 DLT 175

Author: M.M. Punchhi

Bench: M.M. Punchhi, A.M. Ahmadi

PETITIONER:

FOOD CORPORATION OF INDIA AND ORS.

Vs.

RESPONDENT:

E.KUTTAPPAN

DATE OF JUDGMENT 21/06/1993

BENCH:

PUNCHHI, M.M.

BENCH:

PUNCHHI, M.M.

AHMADI, A.M. (J)

CITATION:

1993 AIR 2629

1993 SCR (3)1028

1993 SCC (3) 445

JT 1993 (4) 90

1993 SCALE (3)49

ACT:

%

Arbitration Act. 1940:

S.14-Award-Limitation for filing objection-Held, period of limitation for filing objection begins from the date of court's accepting placement of award before it so far as party, placing award before court is concerned.

HEADNOTE:

The respondent filed two suits against the appellant-, under

s. 20 of the Arbitration Act, 1940 for appointment of an arbitrator. The arbitrator was appointed who made awards. On respondent's request the Arbitrator forwarded the awards to former's counsel who in turn filed the same in Court on 25.10.1988 directed issuance of notice to counsel for the parties for 7.11.1988. and accordingly intimated the appellants. The court on 3.11.1988 directed issuance of notice to counsel for the parties for 7.11.1988. The respondent filed objections under s. 14 (2) of the Act on 5.12.1988 computing the period of limitation from 7.11.1988. Appellants' plea of limitation against respondent's objections was rejected by the trial court. The revisions filed by the appellants were dismissed by the High Court. The appellants filed the appeals by special leave.

The appellants contended that though under s. 14(2) of the Act notice of filing of the award was required to be sent by the Court, with the placing of the award before the court and court's accepting its placement into it on 25.10.1988 the factual filing of the award had been made and sequally notice to the respondent through his counsel, and the subsequent order dated 3.11.1988 directing notice for 7.11.1988 was of no consequence.

Allowing the appeals, and setting aside the orders of the High Court and the trial Court, this Court

HELD : 1.1. The period of limitation for the purposes of filing the objection, in so far as the respondent was concerned, had begun on October 25, 1988 (i.e. the date of placing the award before the court by respondent's counsel) and, therefore, the objections filed by the respondent on December

1029

6, 1988 were barred by time, those having been filed beyond the prescribed period of thirty days.

1.2. The mute language inherent in the action of the court in accepting the placement of the award into it on 25.10.1988 did convey to the party placing the award before it, the factum of the award being filed in court. The mere fact that at a subsequent state, the court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to the award being made the rule of the court is an act of the court which cannot in law prejudice the rights of the parties

Indian Rayon Corporation Ltd. v. Raunag and Company Pvt. Ltd. [1988] 4 SCC 31 & Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti and others. [1962] 2 SCR 551, relied on.

Hansanalli Abdallai Malabari v. Shantilal Bhaidas Marfatia and other AIR [1962] Gujarat 317 & The State of Bihar and others v. Liason and Contracts and, another, AIR 1983 Patna 101, referred to.

2.1. The obligation of filing the award in court is a legal imperative on the Arbitrator. The agency of the party or its lawyer employed by the, Arbitrator for the purpose

normally need be specific but can otherwise be deducted, inferred or implied from the facts and circumstances of a given case. It needs, however, shedding the impression that when a lawyer files the award in court when given to him by the Arbitrator his implied authority to do so, shall not be presumed to exist.

2.2. In the instant case, it was the respondent who by his letter had requested the Arbitrator to send to his lawyer the award for filing it into court and to whom the Arbitrator obliged on such request. When the Arbitrator chose to accede to the request of the respondent in specific terms, he by necessary implication authorised the respondent's counsel to file the award and the connected papers in court on his behalf.

Kumb Mawji v. Union of India [1935] SCR 878, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 3139-40 of 1993.

From the Judgment and Order. dated 4.1.90 of the Kerala High Court in C.R.P Nos. 1520 and 1527 of 1989.

B. Sen Vivek Gambhir, Surinder Karnail and S.K. Gambhir for the Appellants.

M.P. Vinod and M.K.D. Namboodiri for the Respondent. The Judgment of the Court was delivered by PUNCHHI. J. Leave granted.

These two appeals are directed against the common judgment and order sated January 4, 1990 passed by a learned Single Judge of the Kerala High Court Ernakulam in Civil Revision Petitions No. 1520 and 1527 or 1989.

The facts giving rise thereto are few and meaningful. The respondent filed two suits against the appellants praying under Section 20 of the Arbitration Act hereinafter referred to as 'the Act') for an appointment of an Arbitrator to resolve the disputes said to have arisen out of contracts inter-se. One B.S. Hegde was appointed as an Arbitrator. He made awards on October 3, 1988. On that date itself, the Arbitrator on his own had given notice to the parties under Section 14(1) of the making and signing of the awards. The respondent, on October 4, 1988, requested he Arbitrator by means of a letter to forward the awards to his counsel for filing, he same in the Court. On October 12, 1988, the Arbitrator forwarded the awards and the entire record to the advocate of the respondent by a forwarding letter with copy of the letter to the appellant. On October 25, 1988, respondent's counsel filed the awards in the Court and intimated to the appellant to that effect on October 26, 1988. Later the Court per its order dated November 3, 1988, directed the issuance of notice to the counsel appearing for the parties for November 7, 1988. The respondent filed objections under Section 14(2) of the Act on December 5, 1988, computing the period of limitation of thirty days under Article 119

of the Limitation Act 1963 from November 7, 1988, the date for which counsel for the parties were summoned by the court to be told of the filing of the awards. The appellants raised in defence the plea of limitation against the respondent's objections and conversely prayed for making the awards the rule of the court. The trial court did not find favour with the objections of the appellant and proceeded to hear the objections of the respondent against the awards. The High Court declining to interfere in the two revisions separately filed by the appellants to press for the objection of limitation has led the appellant Food Corporation of India to come before us in these appeals.

Sub-section (1) of Section 14 of the Act says that when the Arbitrator or umpire have made the award, they shall sign it and shall give notice in writing to, the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. Sub-section (2) provides that the Arbitrator or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing a the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken any proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award. Article 119 of the limitation At, 1963 provides that an application under the Arbitration Act, 1940, for setting aside the award or getting an award remitted for reconsideration, the period of limitation is 30 days computable from the date of service of the notice of the filing of the award. Now what do the words "give notice" mean in the context, has been subject of judicial expanance as also to the effect of filing of award in Court by a party (instead of the Arbitrator) with or without the express or implied authority of the Arbitrator. For the former, take the cases of [1962] 2 SCR 55-[1988] 4 SCC 3 1, and AIR (1962) (Gujarat) 317, and for the latter take the cases of [1953] SCR 879 and AIR 1983 Patna 101. In the case of Nilkantha Shidramappa Ningashetti v. Kashinath Somarna Ningashetti and others [1962] 2 SCR 55 1, the Arbitrator had filed the award in court on February 18, 1948 and three days later on February 21, 1948, the Civil Judge adjourned the matter "for parties say to the Arbitrator's report", to March 22, 1948. The point which fell for consideration was that when no specific notice in writing had been issued by the court under Section 14 of the Act to the parties, where from shall the period of limitation be reckoned for filing an objection against the award. This Court observed on page 555 of the report as follows:-

"Sub-section (1) of Section 14 of the Arbitration Act, 1940 (X of 1940) requires the arbitrator or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information that an award has been filed is sufficient compliance with the requirements of sub- section (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. Notice'

does not necessarily mean 'communication in writing'. 'Notice', according to the Oxford Concise Dictionary, means intimation, intelligence, warning and has this meaning in expressions like 'give notice, have notice' and it also means 'formal intimation of something, or instructions to do something and has such a meaning in expressions like 'notice to quit, till further notice'. We are of opinion that the expression 'give notice' in sub-s. (2) of s. 14, simply means giving intimation of the filing of the award. which certainly was given to the parties through their pleaders on February 21, 1948. Notice to the pleader is notice to the party, in view of r.5 of O.111, Civil Procedure Code, which provides that any process served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been, given, to or served on the party of person."

In the case of *Indian Rayon Corporation Ltd. v. Raunag and Company Pvt. Ltd.* [1988] 4 SCC 31, this Court before applying the ratio of *Nilkantha's* case supra, analysed the facts to state that the award therein had been filed in the High Court on February 4, 1977. The respondent therein had affirmed an affidavit on November, 29, 1977 stating that the award had been filed in the court on February 4, 1977 and made prayer on that basis that a notice be issued and served on the appellant so that the judgment in terms of the award could be passed. The court then went on to hold in view of the facts that the notice was served on the appellant on February 4, 1978 because on that date the appellant had acknowledged by affidavit that the award had been filed in the High Court of Calcutta but it had been filed in a wrong court. According to the appellant, he had later got notice of the filing of the award communicated to him by the court on which date he would have limitation reckoned. But this Court held that limitation was to be computed from February 4, 1978 and on that basis objection to set aside the award made in September 8, 1981 was held to be time barred. Ratio of *Nilkantha's* case was applied to reiterate that the expression 'give notice' in Section 14(2) simply meant giving information of filing of the award and such intimation need not be given in writing and could otherwise be communicated. In *Hansanalli Abdulalli Malabari v. Shantilal Bhaidas Marfatia and others* AIR 1962 (Gujarat) 317, a learned Single Judge of the Gujarat High Court has taken the view that when written notice is sent under Section 14 (2) of the Act, that would be the starting point for the period of limitation. If there is no written notice then the date on which oral or informal or constructive intimation was given to the parties by the Court of the fact that the award stood filed would be the starting point for limitation' The Court took the view that since there cannot be two starting points for the period of limitation, one from the date of oral intimation and the other from the date of service of notice, the latter, if existing, would prevail over the former. In *Kumbha Mawji v. Union of India*, [1953] SCR 878, this Court had the occasion to examine the question whether a party filing an award in court without the authority of the Arbitrator or the Umpire, could be said to have "filed the award on his behalf" in terms of Section 14 (2) of the Act. This Court took the view that where the award or a signed copy thereof is in fact filed into court by a party, he should have before hand the authority of the Arbitrator or umpire for doing so. It was also ruled that it cannot be assumed that the mere mending over of the awards to the parties necessarily implied the authority of the Arbitrator or of the Umpire to file the into Court on his behalf and that such authority has to be specifically alleged and proved. It was taken that the Arbitrator or the Umpire may not in a given

situation be aware that the award should be filed in to court by himself only or under his authority. In that case implied authority could not be proved. A Division Bench of the Patna High Court in *The State of Bihar and others v. Liason and Contracts and another*, AIR [1983] (Patna) 101, overlooking the judgment in *Kumbha Mawji's case supra*, took the view that where the pleader of the defendants had filed the award in court and the court had not issued separate notices of the filing of the award under Section 14, then it could not be said by the defendants that they had no knowledge of the filing of the award merely because no separate notice had been issued to them under Section 14. No notice was held, required to be issued to any of the parties as the fact of filing of the award must be deemed to be within their knowledge on the basis that their own pleader had filed the award and, hence the objections if any should have, been filed within the prescribed period of thirty days.

Assimilating the legal thoughts afore-expressed and applies to the facts afore-stated. it becomes manifest that when the Arbitrator had sent the award and other papers to the respondent through his counsel, unless he had authorised the respondent or his counsel on his behalf to the filing of it in court, it cannot be assumed that when the respondent or his counsel filed the award and other connected papers in court it was not done for and on behalf of the Arbitrator. ,Instantly it was the respondent who by his letter had requested the Arbitrator to send to his lawyer the award for filing it into court and to whom the Arbitrator obliged on such request. In our view, when the Arbitrator chose to accede to the request of the respondent in specific terms, he by necessary implication authorised the respondent's counsel to file the award and the connected papers in court on his behalf. The law enjoined on the Arbitrator to file the award in Court for which purpose he could even be directed by the court. The obligation of filing the award in court is a legal imperative on the Arbitrator. The agency of the party or its lawyer employed by the arbitrator for the purpose normally need be specific but can otherwise be deduced, inferred or implied from the facts and circumstances of a given case. It needs, however, shedding the impression that when a lawyer files the award in court when given to him by the Arbitrator his implied authority to do so, shall not be presumed to exist. In the instant case, no one raised the plea that the filing of the award in court by the respondent's lawyer was without the authority of the Arbitrator and the courts below were not engaged on that question. The matter was agitated on the basis of knowledge of award from that fact.

On the strength of afore-mentioned two cases of this court, i.e. *Nilkantha's case* and *Indian Rayon's case*, it was claimed on behalf of the appellants that though the legal requirement is that the notice be sent by the court, some other act of the court is enough to foist awareness of the filing of the award in court, where from the period of limitation was to commence. Instantly, it was urged that when the award had factually been placed before the court and the court had accepted its placement into it on October.

25. 1988 itself, the factual filing of the award had been made and sequally notice to the respondent through his counsel. Even though the court had subsequently on November 3, 1988 issued notice for November 7, 1988, the former act, according to the appellant, was enough compliance of court sending the notice and the latter act was of no consequence. It does not lie in the mouth of the respondent to say that though he filed the award in court through his counsel, with or without the implied or express authority of the Arbitrator, he did not have the corresponding knowledge of the

filing of the award, when the award was readily received by the court. It seems to us that the mute language inherent in the action of the court did convey to the party placing the award before it, the factum of the award being filed in court. The mere fact that at a subsequent stage, the court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to the award being made the rule of the court is an act of the court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, in so far as the respondent was concerned, had begun on October 25, 1988, the objections filed by it on December 6, 1988 were obviously barred by time, those having been filed beyond the prescribed period of thirty days. If this be the logical conclusion, the appeals shall merit acceptance, holding the objections. filed by the respondents to be time barred. Thus, so concluding, we allow these appeals, set aside the common judgment and order of the High Court, and that of the trial court, holding the objections filed by the respondents to be time barred. The trial court will proceed further in these matters in accordance with law. The parties to bear their own costs.

R.P.

Appeals allowed.