

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 16th OF JULY, 2024

ARBITRATION APPEAL No. 57 of 2024

GANPAT

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISION
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 60 of 2024

RAMLAL

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 61 of 2024

MUKESH

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 63 of 2024

NARAYAN

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 64 of 2024

SUGANDHILAL

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 65 of 2024

SOURABH KUMAR MINOR GUARDIAN SUGANDHILAL

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 66 of 2024

MUNNALAL

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 67 of 2024

VIJAY KUMAR

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 68 of 2024

MUKESH

Versus

**LAND ACQUISITION OFFICER AND SUB DIVISIONAL
OFFICER AND OTHERS**

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)

(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)

(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 69 of 2024

JAGDISH AND OTHERS
Versus
LAND ACQUISITION OFFICER AND SUB DIVISIONAL OFFICER AND OTHERS

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)
(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)
(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 70 of 2024
HARIRAM DECEASED THROUGH LRS. DEVILAL AND OTHERS

Versus
LAND ACQUISITION OFFICER AND SUB DIVISIONAL OFFICER AND OTHERS

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)
(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)
(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

ARBITRATION APPEAL No. 84 of 2024
IBRAHIM S/O YASIN DECEASED THROUGH LRS. GULSHAN BEE

Versus
LAND ACQUISITION OFFICER AND SUB DIVISIONAL OFFICER AND OTHERS

Appearance:

(SHRI AKASH SHARMA- ADVOCATE FOR APPELLANT)
(SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NO.1/STATE)
(MS. ANITA SHARMA – ADVOCATE FOR RESPONDENT NO.2)

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JUDGEMENT

- 1] Heard finally, with the consent of the parties.

2] This order shall also govern the disposal of Arbitration Appeal Nos. 60, 61, 63, 64, 65, 66, 67, 68, 69, 70 and 84 of 2024, as in all the cases, identical issue regarding limitation in filing the application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act of 1996') is involved. For the sake of convenience, the facts as narrated in Appeal No.57 of 2024 are being taken into consideration.

3] This appeal has been filed under Section 37(1)(C) of the Act of 1996 against the order dated 06.04.2024, passed in M.J.C. No.12 of 2023 by Additional First District Judge, Sardarpur, District Dhar whereby in a proceedings under Section 34 of the Act of 1996, the application filed by the respondent No.2 National Highway Authority of India under Order 7 Rule 11 of C.P.C. for rejection of the case, has been allowed and the application filed under Section 34 of the Act of 1996 has been rejected on the ground that the same is barred by limitation as provided under Section 34(3) of the Act of 1996. It is held by the District Court that the application has been filed after a delay of 73 days, over and above 120 days as provided under Section 34(3) of the Act of 1996.

4] Shri Akash Sharma, learned counsel for the appellant has submitted that the appellant is a rustic villager and is not aware of the provisions of the Act of 1996, and when he received the certified copy of the award, the appeal was filed within reasonable period of time. Counsel has also drawn the attention of this Court to the award passed by the District Magistrate, Dhar under the provisions of National Highways Act, 1956 (in short 'the Act of 1956') in respect of the land

acquisition proceedings of village Amodiya, Tehsil Sardarpur, District Dhar wherein the copy of the award has been sent only to the Sub-Divisional Officer for further processing of the same, however, no copy has been sent to the appellant Ganpat. Thus, it is submitted that the Collector, Dhar has not complied with the mandatory provisions of Section 31(5) of the Act of 1996, which provides that a copy of the award is required to be furnished to all the parties concerned. It is submitted that since the copy of the award itself was not furnished to the appellant, after the certified copy of the same was provided to him by some acquaintance, the appeal has been preferred soon thereafter.

5] Counsel has submitted that the award was passed on 14.09.2022, whereas Section 34 application was filed on 18.04.2023, which the learned Judge of the District Court has held to be barred by 73 days. It is also submitted that in the absence of proper compliance of Section 31(5) of the Act of 1996, the application for condonation of delay ought to have been allowed by the learned Judge of the District Court. In support of his submission, Shri Akash Sharma has also relied upon decision rendered by the Supreme Court in the case of **Union of India Vs. Tecco Trichy Engineers & Contractors** reported as (2005) 4 SCC 239 paras 8, 10 and 13. Similarly in the case of **Benarsi Krishna Committee and others Vs. Karmyogi Shelters Private Limited** reported as (2012) 9 SCC 496 also the Supreme Court has held that the provisions as contained in Section 31(5) of the Act of 1996 are mandatory. It is also submitted that a question of limitation is always a mixed question of facts and law and ought to have been tried

by the learned Judge of the District Court after framing issues. Thus, the case is also liable to be remanded back.

6] On the other hand, the application is opposed by Ms. Anita Sharma, learned counsel for the respondent No.2, and it is submitted that no case for interference is made out as the appellant has miserably failed to file the application within time as prescribed under Section 34(3) of the Act of 1996, and no further arguments can be advanced for the appellant that the said copy was not received by the appellant on the date, which is mentioned in the certified copy itself. It is also submitted that after the application under Order 7 Rule 11 of CPC was filed, in its reply, the appellant has come up with a new story that the certified copy of the order was obtained by some Nirmal Jaat only, who provided the same to the appellant by him, however, there is no affidavit of Nirmal Jaat filed along with the application either before the District Court or before this Court.

7] In support of her submissions, that the provisions of Section 34(3) of the Act of 1996 have to be construed strictly, Ms. Sharma has also relied upon the decisions rendered by the Supreme Court as also by this Court in the cases of **Bhimashankar Sahakari Sakkare Karkhane Niyamita Vs. Walchandnagar Industries Ltd. (WIL)** passed in **Civil Appeal No.6810 of 2022 dated 10.04.2023**; **Union of India Vs. Popular Construction Co.** passed in **Civil Appeal No.6997 of 2001 dated 05.10.2001**; **Sharman Sagar Vs. Indian National Highway Tribunal and Ors.** passed in **Arbitration Appeal No.279 of 2023 dated 16.01.2024**; **Principal Secretary through Water Resource Department, M.P. and Ors. Vs. M/s. Rambihari**

Enterprises & Anr. passed in Arbitration Appeal No.211 of 2023 dated 12.06.2023; National Highway Authority of India Vs. Sudheer Kher passed in Arbitration Appeal No.43 of 2019 dated 24.06.2019; and Bharatiya Rashtriya Rajmarg Pradhikaran Vs. Neeraj Sharma and others passed in Appeal under Section 37 of Arbitration and Conciliation Act No.8 of 2020 dated 24.05.2024 (Allahabad High Court).

8] Shri Vaibhav Bhagwat, learned counsel appearing for the State has also opposed the appeal and it is submitted that no case for interference is made out as the appellant has not filed the application u/s.34 of the Act of 1996 within the prescribed period of limitation time and in fact it is also not mentioned by him as to by how many days, the application was barred by limitation. Thus, it is submitted that such a vague application, has rightly been rejected by the learned Judge of the District Court.

9] Heard. Having heard the learned counsel for the parties and perused the record, it is found that the arbitration award was passed by the Collector, Dhar on 14.09.2022, and its copy was delivered to Sub-Divisional Officer only for its compliance, but no copy was sent to the appellant/s. Against the said award, the application under Section 34 of the Act of 1996 was filed on 18.04.2023, along with an application under Section 5 of Limitation Act, 1963. Although, Section 5 of the Limitation Act has no application under the provisions of the Act of 1996, however, assuming the same to be u/s.34(3), on perusal of the same, it is also found that the appellant has simply stated that after receiving the certified copy of the award dated 14.09.2022, and after

excluding the period spent in preparation of the appeal, the same has been filed within time, which deserves to be condoned as the same is based on *bona fide* reasons.

10] At this juncture, it would be apt refer to the relevant provisions of the Act of 1996, which read as under:-

“Section 31. Form and contents of arbitral award.

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(5) After the arbitral award is made, a signed copy shall be delivered to each party.

Section 34. Application for setting aside arbitral award.

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(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.”

(Emphasis supplied)

11] So far as the interpretation of the aforesaid s.31(5) is concerned, it has been held by the Supreme Court in the case of *Tecco Trichy Engineers & Contractors (supra)* as under:-

8. The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date,

the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

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12. The learned Single Judge of the High Court as also the Division Bench have erred in holding the application under Section 34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of sub-Section (3) of Section 34. There was a delay of 27 days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under sub-Section (1) of Section 34 of the Act filed on behalf of the appellant deserves to be heard and decided on merits.

13. The appeal is allowed. The application under Section 34(1) filed on behalf of the appellant shall stand restored in the High Court, to be heard and decided in accordance with law by the learned Single Judge. No order as to costs.”

(Emphasis Supplied)

12] Also, in the case of *Benarsi Krishna Committee (supra)* it is held by the Supreme Court as under:-

“16. The view taken in *Pushpa Devi Bhagat’s* case (supra) is in relation to the authority given to an Advocate to act on behalf of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the Award has to be delivered to the party. Accordingly, when a copy of the signed Award is not delivered to the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr. Ranjit Kumar in Nilakantha Sidramappa Ningshetti’s case (supra) was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also.

17. In the instant case, since a signed copy of the Award had not been delivered to the party itself and the party obtained the same on 15th December, 2004, and the Petition under Section 34 of the Act was filed on 3rd February, 2005, it has to be held that the said petition was filed within the stipulated period of three months as contemplated under Section 34(3) of the aforesaid Act. Consequently, the objection taken on behalf of the Petitioner herein cannot be sustained and, in our view, was rightly rejected by the Division Bench of the Delhi High Court.

18. Consequently, the Special Leave Petition must fail and is dismissed.”

(Emphasis supplied)

13] Thus, in the light of the aforesaid provisions of law, and the dictum of the Supreme Court, this court is required to appreciate the facts of the case in hand where the copy of the award was admittedly not delivered to the appellants.

14] On perusal of the record of all the 11 connected appeals, it is found that in all the cases the application to obtain the certified copy of the award passed by the District Collector, Dhar was filed on 26.09.2022, and in all the cases, certified copy of the award was obtained on 07.10.2022 only. Considering the fact that 11 appeals have been filed by 11 different persons, it is difficult to assume that all of them went to the office of the District Collector on the same day to apply for the certified copy of the award, and then went to collect the same on the same day *i.e.* on 07.10.2022. It clearly indicates that only one person must have applied for and received the certified copies of the awards passed by the District Collector, Dhar and in such circumstances, even if such person has not filed his affidavit, considering the fact that the case has arisen out of land acquisition proceedings in which the high stakes of poor villagers/cultivators are involved, in the absence of the proper compliance of Section 31(5) of the Act of 1996 which provides that, '*After the arbitral award is made, a signed copy shall be delivered to each party* ', this Court is of the considered opinion that benefit of doubt ought to have been given to the appellants to hold that they have filed the application under Section 34 within the prescribed period of limitation.

15] This Court is also of the considered opinion that when the collector himself appears to be ignorant of law, and has not complied

with the mandatory provisions of Section 31(5) of the Act of 1996, by not delivering the copy of the award to the appellant, it is unreasonable and unjustifiable for the court to shift entire burden of proof on the appellant, who hails from a remote village of district Dhar, to show that the application u/s.34 was filed in time. Thus, under the facts and circumstances of the case, it can be safely presumed that the appellant filed the appeal within the extended period of 30 days over and above the 90 days as provided u/s.34(3) of the Act of 1996.

16] So far as the decisions cited by the learned counsel for the respondent no.2 are concerned, except the case of **Bharatiya Rashtriya Rajmarg Pradhikaran Vs. Neeraj Sharma and others (supra)**, all the other cases are distinguishable on the ground that in those cases the issues of non-compliance of Section 31(5) was not involved.

17] So far as the case of **Neeraj Sharma (supra)** is concerned, this Court finds that the said case had also arisen out of a land acquisition proceedings, and the award was also not delivered to the appellant as provided u/s.31(5) of the Act of 1996, but the learned Judge of the Allahabad High Court while relying upon a decision rendered by the Chhattisgarh High Court in the case of **Union of India Vs. Bhola Prasad Agrawal** reported as **2022 SCC OnLine Chh 1644**, has made the following observations:-

“11. However, interpreting Section 31(5) too literally in all cases may lead to unjust outcomes, undermining the fundamental objectives of arbitration. The literal adherence to this provision might be used strategically by parties to delay the enforcement of the

award, thus defeating the principle of expeditious dispute resolution that arbitration seeks to promote.

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14. A literal interpretation, which ignores the practical reality that the party was aware of the arbitral award and acted upon it, would be contrary to the spirit of the Arbitration Act. This was aptly summarized by the Bombay High Court in *Akola Janta (supra)* when it remarked that a narrow view of Section 31(5) of the Arbitration Act would defeat the Arbitration Act's purpose if it allowed a party to delay proceedings unjustly by claiming non-receipt of a signed copy despite having knowledge of the award's contents.

15. In *Bhola Prasad (supra)*, the High Court of Chhattisgarh while dealing with a case wherein the signed copy of the award was not delivered to the appellant therein in accordance with Section 31(5) of the Arbitration Act, held that the Court under Section 34(2) of the Arbitration Act was justified in dismissing the application as time barred since the appellant therein despite non delivery of the signed copy of the arbitral award was aware of its contents. Relevant paragraph is extracted herein:

"21. True, in the instant case, the Appellant had not received or was not delivered signed copy of the award as contained in Section 31(5) of the Arbitration Act, but, when Respondent 1 moved the application before Respondent 2 for enhancement of the compensation on the basis of the arbitral award dated 7.3.2018 the Appellant became aware of passing of the arbitral award and on 20.1.2019 on which he got legal opinion from the Advocate he became aware that he had to file an appeal/objection against the arbitral award. Meaning thereby, on 20.1.2019 itself, the Appellant was very well aware that he had to prefer an appeal/objection against the arbitral award. True, as per the provisions of Section 31(5) of the Arbitration Act, it is necessary to deliver a signed copy of the arbitral award to each of the parties after passing of the arbitral award, but, in the instant case, it has not been done so by the Arbitrator. This Court is of the view that provision of delivery of a signed copy of the arbitral award to each of the parties to the proceeding is meant for the purpose that the parties should be aware of the contents of the award passed and if any of them has grievance, he can proceed further in accordance with law. As observed earlier, the Appellant had already become aware of the award when Respondent 1 moved the application before Respondent 2 for enhancement of the compensation on the basis of arbitral award dated 7.3.2018 and a legal opinion on this had also been obtained by the Appellant from the Advocate on 20.1.2019. Therefore, mere non-delivery of a signed copy of the award as contained in Section 31(5) of the Arbitration Act does not create any prejudice to the Appellant. Accordingly, in my considered view, the District Judge has rightly rejected the appeal/application moved under Section 34(2) of the Arbitration Act on the ground of limitation.

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18. Courts have often highlighted that a purely literal interpretation, ignoring the practical realities and broader legislative objectives, can lead to unjust outcomes. A strict literal interpretation could enable parties to delay or obstruct the arbitration process by claiming non-receipt of a signed copy despite being aware of the award's contents and having acted upon it. The legislative intent behind Section 31(5) of the Arbitration Act is to ensure that parties are adequately informed about the award to take necessary legal actions within prescribed timelines. Therefore, an interpretation that considers the party's actual awareness and actions, even if a signed copy was not formally received, aligns better with the legislative intent and the principles of justice and equity.

19. The Learned District Judge, Mathura, was justified in dismissing the appellant's application under Section 34 of the Arbitration Act as time-barred. The appellant's awareness of the award and its subsequent actions negate the claim of non-receipt of a signed copy. The principle of estoppel further prevents the appellant from contradicting their previous acknowledgment of the award. A balanced interpretation of Section 31(5) of the Arbitration Act supports the Learned District Judge's decision, ensuring procedural fairness and upholding the Arbitration Act's objectives of expeditious dispute resolution. The appellant's claim of patent illegality in the Learned District Judge's judgment lacks substance. The decision to dismiss the Section 34 application as time-barred was grounded in the appellant's evident awareness of the award and their subsequent actions.”

(Emphasis supplied)

18] A perusal of the aforesaid order also reveals that it is also distinguishable, as in the said order, the court has emphasized on the knowledge of the award, whereas, in the case at hand, this court has already held that it is not exactly known as to when the award came to the knowledge of the appellant because the certified copy of the award was obtained by some other person, and it is also not the case that any undue delay was caused in filing the application u/s.34 of the Act of 1996 as the delay was of 73 days only. Thus, in the facts and circumstances of the case, this Court is of the considered opinion that

the aforesaid decision of Allahabad High Court is also of no avail to the respondents.

19] Resultantly, the appeal is allowed, and the impugned order dated 06.04.2024 is hereby set aside, and it is held that the application u/s.34 of the Act of 1996 filed by the appellant was within limitation. Consequently, the matter is remanded back to the District Court for its decision on the merits of the case.

20] **Parties are directed to appear before the District Judge on 31.07.2024. Office is also directed to remit the record of the case to the concerned Court.**

21] With the aforesaid directions, the appeal stands *allowed* and *disposed of*.

22] Let a copy this order be placed in the record of other connected appeals.

23] Let a copy of this order be also sent to the Principal Secretary, Government of M.P. for its communication to all the District Collectors in the State to ensure that mandatory provision of Section 31(5) of the Act of 1996 is properly complied with, and all the parties be served a copy of the arbitral award.

(SUBODH ABHYANKAR)
JUDGE

Pankaj