



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.847 OF 2024

M/s. Amit Engineers

...Petitioner

V/s.

Union of India and Anr.

...Respondents

*Ms. Minakshi Jyoti with Mr. Anmol Jain i/b. Dr. Prem S. Motiramani
for the Petitioner.*

Mr. Narayan R. Bubna for the Respondents.

CORAM: SANDEEP V. MARNE, J.

DATED: 8 DECEMBER 2025.

Judgment:

1) Petitioner has filed the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging the Award of the sole Arbitrator dated 31 May 2021. By the impugned Award, the learned Arbitrator has rejected all the claims raised by the Petitioner.

2) The Petitioner is a government contractor, undertaking various contracts for the Railways. The Respondent-Central Railway invited tenders for the work of 'Annual Maintenance Contract of RMPUs' of M/s. Sidwal Fedders Liayd, Amit Engineers, Amber Enterprises and Daulatram industries make fitten in AC coaches in

Mumbai, Bhusawal (at MMR), Nagpur, Solapur and Pune Division for a period of three years at contract value of Rs.5,74,72,366/-. Petitioner's tender for 34% above the tendering cost was accepted and the Petitioner was awarded work order for 36 months commencing from 15 September 2010 to 14 September 2013. The Petitioner continued performing the work during currency of the contract and for a period of four months in excess and claims to have carried out work till 31 December 2013 to the extent of Rs.6,05,01,881.00. The disputes arose between the parties with regard to claims raised by the Petitioner. The Petitioner invoked arbitration clause by letter dated 9 August 2012 and subsequently by letter dated 30 October 2014. The General Manager appointed Shri D.J. Sengupta, Deputy Chief Accounts Officer(G), Central Railway, Mumbai CST as a sole Arbitrator to resolve the disputes vide letter dated 12 August 2015. The Petitioner filed statement of claim dated 24 December 2015. Since the Respondent failed to file statement of defence, the Petitioner prayed for making the Award by filing application dated 28 May 2016. Respondent thereafter filed statement of defence on 2 July 2016. The learned sole Arbitrator conducted one arbitration meeting on 17 June 2017. Since no further dates were fixed, the Petitioner requested the Arbitrator to fix the date of hearing by letter dated 4 April 2018. According to the Petitioner, since no hearing was conducted after 17 June 2017, mandate of the Arbitrator came to an end in the year 2018 and accordingly, the Petitioner intimated the General Manager about status of arbitration proceedings by letter dated 3 March 2021 and requested for substitution of the Arbitrator.

3) Instead of substituting the arbitrator, the General Manager directed the sole Arbitrator by letter dated 16 March 2021 to finalise the arbitration proceedings. Since the General Manager failed to substitute the arbitrator, the Petitioner filed Commercial Arbitration Petition (L) No.8695 of 2021 (subsequently numbered as 814 of 2024) on 24 March 2021 for appointment of arbitrator, who was not in employment of the Respondent. The Petition was filed under Sections 14 and 15 r/w Section 11 of the Arbitration Act. However, the learned sole Arbitrator fixed date for final hearing of arbitral proceedings on 28 April 2021. The date was rescheduled by the Arbitrator vide his letter dated 26 April 2021 from 28 April 2021 to 20 May 2021. The Petitioner objected to the learned sole Arbitrator in proceeding ahead with the arbitral proceedings and informed him about filing of Commercial Arbitration Petition No.814 of 2024 and requested the Arbitrator not to proceed ahead of arbitral proceedings on account of expiry of the mandate. According to the Petitioner, without conducting hearing on 20 May 2021, the learned sole Arbitrator made Award dated 31 May 2021, which was received by the Petitioner on 5 June 2021. The Arbitrator rejected all the claims of the Petitioner. Aggrieved by the Award dated 31 May 2021, the Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

4) During pendency of the present Petition, Commercial Arbitration Petition No.814 of 2024 was decided by this Court by appointing a former Judge of this Court as the sole Arbitrator to adjudicate upon the disputes and differences between the parties.

5) Ms. Minakshi Jyoti, the learned counsel appearing for the Petitioner would submit that the impugned Award is liable to be set

aside as the same is passed after termination of mandate of the learned sole Arbitrator. She would submit that the Arbitrator has proceeded to make the Award despite being categorically informed that his mandate was terminated due to undue delay and that Petition was filed in this Court under Section 14 of the Arbitration Act for his substitution. She would also submit that undue delay without any reasonable explanation is a fit ground for setting aside the impugned arbitral Award. In support of her contention, she would rely upon judgment of the Apex Court in *Lancor Holdings Limited V/s. Prem Kumar Menon and Others*¹ contending that Award passed after termination of the mandate of the Arbitrator is *non est*. In support of her contention of setting aside the award on the ground of inordinate and unexplained delay, she would rely upon Division Bench judgment of Delhi High Court in *Sarvesh Security Services Pvt. Ltd. V/s. Institute of Human Behaviour Resource and Allied Sciences (IBHAS)*². She would submit that the fact situation in the present case is similar to the one in *HR Builders through GPA Holder V/s. Delhi Agricultural Marketing Board*³ where the Single Judge of Delhi High Court has set aside the award after substitution of the arbitrator.

6) Lastly, Ms. Jyoti would submit that substituted Arbitral Tribunal has been constituted by this Court by order dated 22 September 2025 and that therefore the impugned Award be set aside so that disputes between the parties can be resolved by a newly constituted Arbitral Tribunal.

¹ 2025 SCC OnLine SC 2319

² FAO(OS) (COMM) 164/2025 decided on 15 October 2025

³ OMP(COMM) 88/2021 decided on 29 October 2024

7) Mr. Bubna, the learned counsel appearing for the Respondent would oppose the Petition submitting that the Award has been made by the learned Arbitrator after considering the cases putforth by both the parties. That invocation of Arbitration was before insertion of Section 29A in the Arbitration Act by Amendment Act of 2015. That there was no time limit for making the Award and that therefore it cannot be contended that mandate of the Arbitrator had come to an end. That all the judgments relied upon by the Petitioner pertain to the arbitration invoked after insertion of Section 29A in the Arbitration Act. He would submit that the Petitioner did not inform this Court while passing order dated 22 September 2025 that Arbitral Award was already made on 31 May 2021. That the disputes between the parties were adjudicated by making the Award on 31 May 2021 and therefore constitution of fresh arbitral tribunal in ignorance of Award dated 31 May 2021 is meaningless. He would accordingly pray for dismissal of the Petition.

8) Rival contentions of the parties now fall for my consideration.

9) The grounds on which the Award dated 31 May 2021 passed by the learned sole Arbitrator is sought to be invalidated are inordinate delay in making the Award and the Award being made after expiry of the mandate.

10) I first proceed to examine the objection of inordinate delay in passing the arbitral award. The arbitration clause was invoked by the Petitioner on 31 October 2014, and the learned sole Arbitrator

was appointed by the General Manager of the Respondent on 12 August 2015. The statement of claim was filed by the Petitioner on 24 December 2015. The Respondent delayed filing of statement of defence, which was belatedly filed on 2 July 2016. The learned Arbitrator conducted only one hearing on 17 June 2017 and thereafter failed to conduct any proceedings nor held any meetings for a considerable period of time. According to the Petitioner, the Arbitral Tribunal abandoned the proceedings despite Petitioner's request for fixing of date of hearing in the proceedings vide letter dated 4 April 2018. It appears that the Arbitral Tribunal failed to fix any date of meeting after 17 June 2017. It appears that there was some hiatus on account of Covid-19 pandemic and after waiting for considerable time and after not receiving any response from the learned Arbitrator, the Petitioner approached the General Manager seeking substitution of the Arbitrator by letter dated 3 March 2021.

11) After receipt of request for substitution, the General Manager ought to have substituted the Arbitrator. The Petitioner had not requested the General Manager to direct the learned Arbitrator to fix date of hearing. However, the General Manager misconstrued Petitioner's request vide 3 March 2021 and proceeded to direct the Arbitrator to expedite the arbitral proceedings and to finalise the same vide his letter dated 16 March 2021. This action on the part of the General Manager appears to be clearly erroneous as it is this letter of the General Manager dated 16 March 2021, which made the Arbitrator to hurriedly pass the award on 31 May 2021, as discussed in the latter part of the judgment.

12) The learned Arbitrator apparently learnt about Petitioner's substitution request after he received General Manager's letter dated 16 March 2021 and he hurriedly issued letter dated 22 March 2021 fixing the date for final hearing on 28 April 2021. In the meantime, since the General Manager failed to substitute the Arbitrator, the Petitioner was constrained to file Commercial Arbitration Petition (L) No.8695 of 2021 (which was later numbered as 814 of 2024) under Section 14 and 15 r/w 11 of the Arbitration Act. The Petition was filed on 24 March 2021, few days after the General Manager's letter to the Arbitrator. Petitioner objected to the Arbitrator fixing the date of hearing and communicated to him vide letter dated 7 April 2021 about filing of Petition for his substitution.

13) However, no hearing was actually conducted on 28 April 2021 and the Arbitral Tribunal changed the date to that of 20 May 2021. Petitioner has specifically averred in the Petition that even on 20 May 2021, no hearing took place. The Arbitral Award is silent as to whether any hearing was conducted on 20 May 2021. The Arbitral Award reflects hearings only on 13 September 2016, 27 October 2016 and 7 June 2017. Thus, no hearing was admittedly held on 20 May 2021. Without hearing the parties, the Arbitral Tribunal straightaway proceeded to make Award dated 31 May 2021. Thus, the Award is made without conducting any hearing and without affording any opportunity of hearing to the parties. This in my view is sufficient ground for setting aside the impugned Award.

14) The impugned Award is also riddled with discrepancies where the arbitrator appears to have twisted the factual details about

conduct of proceedings. In paragraph 2A of the Award, the learned Arbitrator has held that '*hearings were held on many occasions i.e. 13 September 2016, 27 October 2016, 7 June 2017*'. Describing three dates of meetings when no real business was conducted as 'many occasions' by the learned Arbitrator exposes his unfair mind and non-judicious approach, again constituting a valid ground for setting aside the Award.

15) Going by Arbitrator's own dates indicated in paragraph 2A of the Award, the last hearing was conducted on 7 June 2017 and the Award is made on 31 May 2021 i.e. after a period of four long years. The only justification by the Arbitral Tribunal is the lockdown imposed on account of Covid-19 pandemic. However, there was no pandemic during 7 June 2017 till 15 March 2020. In fact, when the Award was made on 31 May 2021, Covid-19 related restrictions were in vogue. Thus, the Arbitral Tribunal, which has cited the pretext of Covid-19 pandemic for not conducting arbitration proceedings, has actually delivered the Award when the pandemic restrictions were operational. The Tribunal which had not conducted any meetings for 4 long years, hurriedly fixed the hearing on 28 April 2021, rescheduled the same to 20 May 2021, never conducted the said meeting and exhibited undue haste in making the Award on 31 May 2021. The Arbitrator has clearly misconducted by (i) describing just three meetings held in 2016 and 2017 as 'many occasions', (ii) citing the pretext of non-existent Covid-19 restrictions for his own inefficiency, but hurriedly making the award when lockdown restrictions actually existed and (iii) deliberately and hurriedly making the award after

getting wind of the fact that his substitution was sought. The Award is therefore liable to be set aside.

16) Thus, there can be no doubt to the position that the Award has been made after undue delay and without any reasonable explanation. The invocation of arbitration is prior to introduction of Section 29A in the Arbitration Act, which provision now takes care of delay in making Awards. However merely because the arbitral proceedings commenced prior to 2015 amendments, it does not mean that the Tribunal had the liberties of making award after undue delay. In *Lancor Holdings Limited* (supra) the Apex Court has examined the issue of effect of undue and unexplained delay in pronouncement of the Arbitral Award in proceedings prior to 2015 amendment of the Act. The issue for consideration is captured in Para 1 and 2 of the judgment as under:

Two questions arise for consideration in these appeals:—

- (i) What is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity?
- (ii) xxx

2. The issue of delay in the delivery of an arbitral award is relevant now only in the context of the **period prior to insertion of Section 29A in the Arbitration and Conciliation Act, 1996**(for short, ‘the Act of 1996’), which put in place stringent timelines for passing of an arbitral award. During that earlier era, the question as to whether long delay in the passing of the award would impact its validity, to the extent of that award being set aside on that ground under Section 34 of the Act of 1996, was considered by different High Courts.

(emphasis added)

17) The Apex court has made following observations in paragraph 20 of the judgment:-

20. That being said, we must also recognize that, in the usual course, long delay in the passing of arbitral awards is not the norm. However, when an instance of undue delay in the delivery of an arbitral award occasionally crops up, given the weighty preponderance of judicial thought on the issue with which we are in respectful agreement, we are of the considered opinion that each case would have to be examined on its own individual facts to ascertain whether the delay was of such import and impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. We are also conscious of the fact that there must be a balance between the pace of the arbitration, culminating in an arbitral award, and the satisfactory meaningful content thereof. In this regard, in his seminal article, titled 'Arbitrators and Accuracy'¹⁹, Professor William W Park says thus:

'Although good case management values speed and economy, it does so with respect for the parties' interest in correct decisions. The parties have no less interest in correct decisions than in efficient proceedings. An arbitrator who makes the effort to listen before deciding will enhance both the prospect of accuracy and satisfaction of the litigants' taste for fairness. In the long run, little satisfaction will come from awards that are quick and cheap at the price of being systematically wrong.

Therefore, keeping in mind these competing interests, it is only in cases where the negative effect of the delay in the delivery of an arbitral award is explicit and adversely reflects on the findings in the said award, that such delay, and more so, if it remains unexplained, can be construed to be a factor to set aside that award. Once all the requirements, referred to supra, are fulfilled in a given case and the arbitral award therein is clearly riddled with the damaging effects of the delay, it can be construed to be in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996, or Section 34(2A) thereof as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to laying a challenge to a delayed and tainted award under Section 34 thereof. Both provisions would operate independently as the latter is not dependent on the former. This being the legal position, we would have to examine whether the present arbitral award suffers from any such malady owing to the delay, whereby its very validity would stand vitiated. Further, we would also have to see whether the award is liable to be set aside for falling short, as it did not resolve the disputes between the parties but their positions stood altered irreversibly owing to the interim orders passed during the arbitral proceedings. Lastly, if the award is liable to be set aside, the relief to be granted.

18) The Apex Court has answered the issue by concluding as under:

63. To conclude, the questions framed for consideration in these appeals are answered as under:

(i) What is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity?

- Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

19) Thus, mere delay in making the Award, by itself, does not constitute a ground for annulling the Award. It is only in cases where the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein and if the delay remains unexplained, the award can be set aside on the ground of delay.

20) Applying the parameters discussed by the Apex Court to the facts of the present case, the delay is unexplained. The explanation put forth by the Arbitrator for the delay is factually incorrect as indicated above. The Arbitrator has not heard the parties before making the Award. No evidence is recorded. No arguments are heard.

The findings recorded in the Award clearly exhibit the effect of delay on the mind of the arbitrator, who has merely completed the formality of delivery of award after learning that his substitution was sought. In my view therefore delay would be a fit ground in the present case for annulling the Award.

21) In the present case, the Arbitrator was specifically informed by the Petitioner about termination of his mandate. After the Petitioner requested General Manager to substitute the Arbitrator by letter dated 3 March 2021 Petitioner filed Arbitration Petition No.814 of 2024 on 24 March 2021 and specifically informed the Arbitrator not to proceed with the arbitral proceedings vide letter dated 7 April 2021. Thus, the Award is made even after specific intimation of expiry of the mandate of the Arbitrator. The Division Bench of Delhi High Court in *Sarvesh Security Services Pvt. Ltd.* (supra) has dealt with the case where the mandate had expired on 1 November 2024 and the Award was made on 4 November 2024. The Delhi High Court has set aside the arbitral Award. No doubt, invocation in *Sarvesh Security Services Pvt. Ltd.* was after insertion of Section 29A of the Amendment Act of 2015. However, the judgment deals with the effect of termination of mandate on the award.

22) In *HR Builders through GPA Holder* (supra) relied upon by Ms. Jyoti, the fact situation was exactly identical as that of the present case. In that case, invocation of arbitration was before insertion of Section 29A by Amendment Act of 2015. There was inordinate delay in making the Award. Final arguments were concluded on 16 January 2018 and the Petitioner therein had filed Petition under

Sections 14 and 15(2) of the Arbitration Act to ventilate the grievances regarding inordinate delay. The Petition was filed on 25 February 2020. Seven months after filing of the said Petition, the impugned Award was made on 21 September 2020. In the facts of that case, the learned Single Judge of Delhi High Court has set aside the Award on account of inordinate delay in passing the same. The Delhi High Court has upheld the apprehension of the Petitioner therein that the Award was made as a reaction to filing of Petition under Section 14(2) of the Arbitration Act. In the present case also, the learned sole Arbitrator has hurriedly made Award dated 31 May 2021 after being informed by the Petitioner about filing of Arbitration Petition No.814 of 2024 vide letter dated 7 April 2021. Fact situation in the present case is almost similar to the one involved in *HR Builders through GPA Holder* (supra).

23) In the present case, the Arbitrator has clearly misconducted. The Arbitrator has acted in gross violation of principles of natural justice. He has also given false pretext of Covid-19 pandemic to explain delay when there was no pandemic. He has decided arbitral proceedings without conducting any real hearing. He has merely completed the formality of making the Award because the General Manager asked him to do so by letter dated 16 March 2021. When proceedings remained pending for 6 long years, the Arbitrator immediately obliged the General Manager by making Award in few days of receipt of letter. The Arbitrator has thus not acted as an independent adjudicator. Though his appointment was few days prior to incorporation of sub-section (5) in Section 12 of the Arbitration Act, this does not mean that as an arbitrator, he, in his other capacity as ex-

railway official, was to act on the *ipse dixit* of the General Manager. In fact, the case like the present one highlights why the Legislature was required to step in by inserting sub-section (5) in Section 12 of the Act making such types of arbitrators ineligible. Be that as it may. The manner in which the Arbitrator has conducted himself in the proceedings does not appeal to this Court. The Award is in conflict with public policy doctrine. The delay in pronouncement of the Arbitral Award is also unexplained, and the effect of delay is clearly seen on the findings of the arbitrator. The delay in pronouncing the Award is just an additional facet and the Award is otherwise unsustainable and liable to be set aside under Section 34 of the Arbitration Act.

24) This Court has constituted the new Arbitral Tribunal vide Order dated 22 September 2025, which is yet another reason why the Award needs to be set aside so that there is proper adjudication of claims of Petitioner and defences of the Respondent.

25) The Petition accordingly succeeds. The impugned Award dated 31 May 2021 is set aside. The Petition is accordingly **allowed**. Considering the facts and circumstances of the case, there shall be no orders as to costs.

[SANDEEP V. MARNE, J.]