

( 1 ) This writ application is directed against the order passed by the Deputy Commissioner, Papum Pare, Arunachal Pradesh condoning the delay in filing the application under Section 34 of the Arbitration Act, 1996 by which the respondents-State has prayed for setting aside an interim arbitral award. According to the petitioner, the application under Section 34 of the Act filed by the respondent-State is beyond the period of limitation and thus could not have been condoned by the Deputy Commissioner by the impugned order.

( 2 ) Since the only question involved in this writ proceeding is whether the application under Section 34 of the Act preferred by the respondent State is barred by limitation or not, it will be expedient to indicate the relevant dates of events leading to the filing of the instant writ petition. 1992-The petitioner entered into a Contract agreement bearing No. DD/03 of 1992-93 with the State of Arunachal Pradesh in the Public Works Department for executing the contractual work of construction of road bridges. The value of the work in question although was initially fixed at Rs. 77. 43 lakhs but on the basis of the post-tender negotiation by and between the parties, the price of the work was refixed at Rs. 1. 15 Crores. The work was to be completed within two calendar years from the date of commencing of the work. 10. 4. 1993-The Contractual work in question commenced. March, 1999-Works completed. According to the petitioner, delay in executing the work was due to deviation from the original scope of work and several obstructions and difficulties including delay in approval of the design and drawings and also in making payment against running accounts bills from time to time. The petitioner raised bill for the contractual work which according to the petitioner refused to be paid by the respondents on the basis of the certain absolute arbitral and untenable objection. Such refusal gave rise to dispute capable of being resolved by an arbitral Tribunal. The petitioner approached this Court by filing an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 which was numbered and registered as ARB No. 21/2000. 18. 10. 2001-Arbitration Case No. 21/ 2000 disposed of appointing Arbitrator to adjudicate the dispute between the parties. 17. 12. 2002-By an order passed in Misc. Case No. 73/2002 arising out of the said Arbitration Case No. 21/2000, earlier Arbitrator was replaced by the present Arbitrator. 12. 10. 2003-The Arbitrator passed an interim award, awarding an amount of Rs. 65,52,878/- together with interest at the rate of 18% per annum to be calculated if the amount awarded was not paid within 60 days from the date of the award. 23. 10. 2003-A copy of the interim order dated 12. 10. 2003 received by the respondents. 22. 1. 2004-According to the petitioner, the period of limitation prescribed under Section 34 (3) of the Arbitration and Conciliation Act, 1996 for filing an application for setting aside the arbitral award got expired. 22. 2. 2004-According to the petitioner, even as per the proviso to Section 34 (3) the extended period of one month expired and the interim award became final as per provision of Section 35 of the Act and became executable as per Section 36 of the Act. 2. 4. 2004-The respondent Nos. 1 and 2 wrote a letter to the Arbitrator for review of the award and also sought for a clarification in respect of the award. 10. 4. 2004-The Arbitrator by his letter clarified the matter and stated that he had no jurisdiction to entertain the request made in the application for review or reconsideration of the arbitral award. 21. 6. 2004-The petitioner filed execution case bearing No. Misc. (J)08/04 before the Court of Deputy Commissioner, Papum Pare, Itanagar for execution of the interim award dated 12. 10. 2003. 6. 8. 2004-The respondent filed an application under Section 34 of the Act for setting aside the interim award dated 12. 10. 2003 together with application under Section 5 of the Limitation Act read with Section 34 (3) of the Act for condonation of delay in filing the application for setting aside the award. 6. 8. 2004-The application was entertained and fixed for hearing on condonation of delay after 15 days. The petitioner being aggrieved by such entertainment of the application preferred a writ petition being W. P. (C) No. 633 2/2004. 1. 9. 2004-The writ application disposed of referring to entertain the w

rit petition at that stage observing that matter being pending before the Court below, it would be highly inappropriate to pass any order which might have the effect of pre-empting the Court below from deciding the question pending before it. The matter left to be decided by the Deputy Commissioner. 15. 9. 2004-The Deputy Commissioner, Papumpare, Itanagar by the impugned order passed in Misc. Application No. 10/2004 in the proceeding before it under Section 34 of the aforesaid Act condoned the delay in preferring the application under Section 34 of the Act.

( 3 ) It is the legality and validity of the aforesaid order dated 15. 9. 2004 which is under challenge in this proceeding. According to the petitioner, the Deputy Commissioner could not have condoned the delay in view of the specific provision of Section 34 of the Act as per which under no circumstances the period of limitation prescribed which is three months plus 30 days (altogether four months or 120 days ).

( 4 ) The respondent Nos. 1 and 2 have filed their affidavit-in-opposition controverting the stand of the petitioner that the impugned order dated 15. 9. 2004 is beyond the purview and scope of the provision of Section 34 (3) of the Act. The basic stand in the affidavit is that after the interim award passed by the Arbitrator on 12. 10. 2003, the respondents by their letter dated 2. 4. 2004 sought for review of the award. By the said letter, the respondents also prayed for making provision for payment of the amount against the interim award on furnishing bank guarantee since it would be an interim payment pending final award to be passed by the Arbitrator. According to the respondents, such a prayer made to the Arbitrator was as per provision of Section 17 of the Act with a view to secure the amount against the interim award by way of bank guarantee facilitating realization of the amount in the event of passing the final award in favour of the respondents by the Arbitrator. It is the case of the respondents that since the Arbitrator by his letter dated 2. 4. 2004 clarified the matter and indicated that the award dated 12. 10. 2003 was in fact the final award, the cause of action for the respondents to prefer an application under Section 34 of the Act had arisen only on 10. 4. 2004 when the Arbitrator made it known that in fact the interim award dated 12. 10. 2003 was the final award. According to the respondents, from the said date i. e. , 10. 4. 2004, when the matter was clarified by the Arbitrator, the limitation began to run and the application having been filed on 6. 8. 2004 with the application for condonation of delay, same was within the period of limitation prescribed under Section 34 (3) of the Act.

( 5 ) From the above narration of facts the position which has emerged is that it is the case of the petitioner that the interim award dated 12. 10. 2003 being the final award in respect of the items for which the interim award was passed, having been passed on 12. 10. 2003 and a copy of the same having been received by the respondents on 23. 10. 2003, the period of limitation of three months prescribed under Section 34 (3) of the Act expired on 22. 1. 2004 and even if the further prescription of one month beyond the period of three months as provided for under the proviso to Section 34 (3) of the Act is taken into account, the period of limitation finally expired on 22. 2. 2004 and the application for setting aside the arbitral award under Section 34 of the Act having been filed on 6. 8. 2004, same was well beyond the period of limitation by almost six months and thus was not maintainable and the Deputy Commissioner could not have condoned the delay by the impugned order dated 15. 9. 2004 same being beyond the scope, ambit and jurisdiction of the Deputy Commissioner as per the in-built provision of Section 34 of the Act.

( 6 ) As against the aforesaid claim of the petitioner, it is the stand of the respondents that they having filed an application under Section 33 of the Act for correction and interpretation of the award dated 12. 10. 2003 and the final order thereon having been passed on 10. 4. 2004 and the application under Section 34 of the Act for setting aside the award having been filed on 6. 8. 2004, same w

as well within the period of limitation prescribed under Section 34 (3) of the Act. According to the respondents, with the passing of the order dated 10. 4. 2004 by the Arbitrator, the interim award dated 12. 10. 2003 got merged with the same and the period of limitation will have to be counted from 10. 4. 2004.

( 7 ) The respondents in their affidavit have also taken various other grounds touching the merit of the interim award with which the present proceeding is not concerned. The sole question involved in this proceeding is as to whether the delay in filing the application under Section 34 of the Act could have been condoned as has been done by the Deputy Commissioner before whom the said application has been filed, by the impugned order dated 15. 9. 2004. The respondents have also taken the plea of limited scope, jurisdiction and ambit of Article 227 of the Constitution of India towards setting aside the impugned order dated 15. 9. 2004.

( 8 ) I have heard Mr. S. Shyam, learned counsel for the petitioner and Mr. D. Chowdhury, learned counsel for the respondents. Both the counsel appearing for the respective parties made their elaborate arguments and pressed into service various decisions.

( 9 ) Mr. Shyam, learned counsel for the petitioner apart from oral submissions made during the course of the hearing also submitted a written argument. The basic tenets argument of Mr. Shyam was that the period of limitation prescribed under Section 34 (3) of the Act could not have been enlarged by the Deputy Commissioner and such enlargement of limitation was beyond his scope, ambit and jurisdiction. As regards the application submitted by the respondent seeking clarification of the interim award, Mr. Shyam, referring to the provision of Section 33 of the Act submitted that the said application being not within the parameters laid down, in Section 33 of the Act under which alone an application for correction and interpretation of an award can be made, the said application and the communication made thereon cannot enlarge the prescribed period of limitation. According to him, the learned Deputy Commissioner passed the impugned order on a complete misreading of the scheme of the Act and condoned the delay.

( 10 ) Mr. Shyam submitted that, as regards the period of limitation in-built provision having been made under Section 34 (3) of the Act, the Deputy Commissioner could not have extended the period of limitation beyond the scope and ambit of Section 34 (3) of the Act, not even under the provisions of the Limitation Act which stood excluded from the purview of the Section 34 of the Act. He also submitted that even the application seeking clarification of the award having not been filed within the prescribed period of limitation of one month as provided for under Section 33 (3) of the Act, the said application itself was not maintainable and the disposal of the said application by the arbitrator by his letter dated 10. 4. 2004 was inconsequential. According to Mr. Shyam the application filed by the respondents seeking certain clarification of the award was not an application under Section 33 of the Act. He finally submitted that there is no distinction between an interim award and final award as per provision of Section 2 (c) of the Act. He placed reliance on the decision of the Apex Court as reported in Union of India Vs. Popular Construction Company, (2001) 8 SCC 470.

( 11 ) As against the aforesaid arguments of Mr. Shyam, learned counsel for the petitioner, Mr. D. Chowdhury, learned counsel for the respondents placing reliance on the provisions of Section 17 and 31 (6) of the Act posed the question, whether the award dated 12. 10. 2003 could be said to be a final award as it stood on the date of passing of the same. According to him, although the award was an interim one, but the Arbitrator by his communication dated 10. 4. 2004, clarified the same to be the final award giving rise to cause of action for the respondents from that date only. Placing reliance on the provision of Section 30 of the Act, he submitted that no settlement was arrived at by and between the parties for an interim award and thus the Arbitrator wrongly passed the interim award on

12. 10. 2003 and made the same final by his communication dated 10. 4. 2004. Thus according to him the cause of action for the respondents arose only on 10. 4. 2004. He also the observations of the Arbitrator in the interim award by which the Arbitrator recording the submissions and request made by the claimant/petitioner considered it prudent to examine the claims and counter statements of defence as to whether an interim award was at all possible and judicious pending the final disposal of the matter with a final award.

( 12 ) Mr. Chowdhury finally submitted that the respondents would have no objection towards releasing the amount awarded by the arbitrator subject to the final award to be passed by the arbitrator and furnishing of bank guarantee by the respondents against the said award. He submitted that under no circumstances, the interim award passed by the Arbitrator can be said to be the final award when the observations made by the Arbitrator in the award itself suggest that such an award was subject to the final award to be passed. According to him, the whole controversy arose with the communication made by the Arbitrator i. e. , letter dated 10. 4. 2004 by which the Arbitrator made the interim award dated 12. 10. 2003 to be the final award giving rise to cause of action for the respondents.

( 13 ) Referring to Section 24 and 25 of the Act Mr. Chowdhury stressed on the procedural aspect of the matter required to be followed by the Arbitrator. He also to Section 37 (b) of the Act and submitted that the petitioner will have adequate remedy by way of preferring appeal in the event of setting aside of the arbitral award under Section 34 of the Act and thus there is no question of entertaining the application under Article 227 of the Constitution of India at the stage of passing an interlocutory order by way of condoning the delay in making the application under Section 34 of the Act. He finally submitted that the Court exercising its power and jurisdiction under Article 227 of the Constitution of India will be reluctant to interfere with the order passed by the Deputy Commissioner, even if another view is possible in the matter. He placed reliance on the following decisions of the Apex Court :-

(i)Satwant Singh Sodhi Vs. State of Punjab and Ors. , (1999) 3 SCC 487. (ii)Ouseph Mathai and Ors. Vs. M. Abdul Khadir, (2002) 1 SCC 319. (iii)Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, (1986) 4 SCC 447. (iv)Waryan Singh and Anr. Vs . Amarnath and Anr. , AIR 1954 SC 215. (v)Nagendra Nath Bora Vs. Commissioner of Hills Division, AIR 1958 SC 398 (vi)Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675.

( 14 ) In reply to the above arguments made by the learned counsel for the respondents, Mr. Shyam, learned counsel for the petitioner reiterating his above arguments also the stand in the affidavit-in-reply filed by the petitioner. He submitted in reference to Section 2 (c) of the Act that there is no difference between the interim and final award. He submitted that the Arbitrator, by the interim award has decided only certain issues involved in the dispute and so far as those issues are concerned, the matter attained finality with the passing of the impugned award dated 12. 10. 2003. He submitted that the entire arbitration proceeding will be complete and final with the passing of the final award deciding the remaining issues. Referring to the provision of Section 32 of the Act, Mr. Shyam , learned counsel for the petitioner submitted that the arbitral proceeding in question shall come to an end with the passing of the final arbitral award.

( 15 ) I have considered the submissions made by the learned counsel for the parties and the materials available on records. Before considering the same, I feel it appropriate to refer to the decisions cited by the learned counsel for the parties so as to find out their applicability or otherwise to the facts situation involved in the instant case.

( 16 ) In the case of Popular Construction Company (supra) on which the learned counsel for the petitioner placed reliance, the Apex Court had the occasion to d

deal with the question of limitation in preferring an application under Section 34 (3) of the Act and the applicability of Section 5 of the Limitation Act, 1963.

The Apex Court held that the Act of 1996 is 'special law' and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. Interpreting the words 'but not thereafter' which find place in the proviso to Section 34 (3) of the Act, the Apex Court held that the phrase would amount to an express exclusion within the meaning of Section 29 (2) of the Limitation Act and would therefore bar the application of Section 5 of that Act. It observed that to hold that the Court could entertain an application to set aside the award beyond the extended period under the proviso to Section 34 (3), would render the phrase 'but not thereafter' wholly otiose and that no principle of interpretation would justify such a result. Referring to the provision of Section 36 of the Act providing for enforcement of an award where the time for making an application to set aside the arbitral award under Section 34 has expired the Apex Court observed that the importance of the period fixed under Section 34 is emphasized by the provision of Section 36. Thus, this decision is primarily to bring home the point of argument that the arbitral award passed by the arbitrator on 12.10.2003 attained its finality on 22.2.2004 on expiry of the statutory period of limitation prescribed under Section 34 (3) of the Act and the award becoming enforceable under Section 36 of the Act, such period of limitation could not have been extended by the Deputy Commissioner by the impugned order dated 15.9.2004.

( 17 ) The first case on which Mr. Chowdhury, learned counsel for the respondent placed reliance is *Satwant Singh Sodhi* (supra). In this case, the Apex Court was concerned with the question whether interim award is final to the extent it goes or only till the final award is delivered. Answering the question, the Apex Court held that the same would depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered, it will have the force of the interim award and it will cease to have effect after the final award is made. If on the other hand, the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have the effect even after the final award is delivered. In that case, referring to the award in question, the Apex Court held that the terms of the award did not indicate that the same was of interim nature.

( 18 ) The other decisions on which Mr. Chowdhury placed reliance are primarily to remind the scope and jurisdiction under Article 227 of the Constitution of India and that an application under Article 227 cannot be treated like an extension of a statutory appeal or revision. Mere errors of fact and law cannot be a ground to exercise jurisdiction under Article 227 of the Constitution of India and that it can only be exercised when it is established that the lower Court or the Tribunal has been guilty of grave dereliction of duty and flagrant abuse of power resulting in any grave injustice to any party. Even if two views are possible, the Court exercising power under Article 227 of the Constitution of India will not substitute the decision in question adopting one of the two possible views. All these decisions have been pressed into service to reiterate on the limits of High Court's jurisdiction under Article 227 of the Constitution to interfere with the findings of fact; unless such findings can be said to be perverse and have resulted in injustice, it would not be open to interfere under Article 227 of the Constitution.

( 19 ) From the arguments advanced by the learned counsel for the parties and the materials available on records, the question for determination is, whether the award in question can be said to be an interim award intended to have effect only so long as the final award is not delivered or the same is intended to finally determine the rights of the parties. In the case of *Satwant Singh Sodhi* (supra) a similar question came up for consideration before the Apex Court. In that case the Apex Court observed that the question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend up

on the form of the award.

( 20 ) In the instant case, the interim award was passed by the sole arbitrator in respect of certain items forming subject-matter of the reference. The arbitrator has indicated the claims raised by the claimant-writ petitioner for adjudication and determination through arbitration. Those items have been indicated under seven (7) different heads. By the impugned award the sole Arbitrator has answered the claim No. 1 under 14 sub-heads and the claim No. 3, leaving aside claim Nos. 2, 4, 5, 6 and 7 to be decided in the final award after further scrutiny. Thus on the face of it the claim Nos. 1 and 3 have attained its finality through the interim award. It is true that the Arbitrator made an observation in the award regarding passing of an interim award pending final award but the same will have to be understood in the totality of the award and other observations. Even while making the observations relating to an interim award pending final award the Arbitrator further opined that he felt it prudent to examine the claim and counter-statement of defence as to whether an interim award was at all possible and judicious pending the final disposal of the matter with final award. On that basis and as indicated in the award itself he considered the whole matter and recorded the conclusion arrived at by him and passed the interim award as per Section 31 (6) of the Act of 1996.

( 21 ) The respondents also understood the interim award to be the final award in respect of the aforesaid claims which will be evident from their letter dated 2. 4. 2004 (Annexure-2) to the writ petition. The said letter is now sought to be projected by way of invoking the provision of Section 33 of the Act. As per the said provision, a party to the arbitration proceeding may within 30 days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties, with notice to the other party, request the arbitral tribunal to correct any computation errors, in clerical or typographical errors or any other errors of a similar nature occurring in the award. Such a party may also request the arbitral tribunal with notice to the other party to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request so made by the party, it shall make the correction or give the interpretation within 30 days from the receipt of the request and the interpretation shall form part of the arbitral award.

( 22 ) In Annexure-2 letter dated 2. 4. 2004, the respondents never made any claim for any correction of clerical or typographical errors or any other errors of similar nature occurring in the award in question. They also did not seek any interpretation of a specific point or part of the award. They only objected to the award so passed and prayed for review of the award which was beyond the scope of Section 33 of the Act. Dealing with the claims settled by the Arbitrator, the respondents projected their point of view in the matter and finally asked the Arbitrator for a review of the case. They also requested to clarify whether the payment in terms of the award is to be made directly to the party i. e. , the petitioner and in case of making such payment directly to the petitioner to furnish equivalent bank guarantee bond from any nationalized bank pending final award. Thus, from this letter, what could be gathered is that the respondents never prayed for any interpretation of a specific point or part of the award. They also did not pray for correction of any clerical or typographical errors. What they prayed for was for a review of the award which is beyond the scope and ambit of Section 33 of the Act.

( 23 ) It is true that the respondents understood the award in its literal meaning of being an interim award pending final adjudication of the same very items decided by the interim award. It is in that context they requested for furnishing of equivalent bank guarantee bond from any nationalized bank. However, the question for determination will be as to whether such an interpretation and understanding of the award in question can be said to be within the parameters in consideration of which alone a request to the Arbitrator can be made under Section 33

of the Act.

( 24 ) At the first instance the application dated 2. 4. 2004 having been submitted to the Arbitrator beyond the period of limitation prescribed under Section 33 of the Act, the said application was not maintainable. Secondly, even if it is held to be within the period of limitation, the said application being not on the ground specified in Section 33 (a) (b), same was not maintainable. There was no scope for the respondents to pray for review of the award. In their said letter they agreed for making the payment subject, however, to furnishing of bank guarantee by the petitioner. Once it is held that the said letter of the respondents addressed to the sole Arbitrator was not within the purview of Section 33 of the Act, the clarification issued by the sole Arbitrator by his communication dated 10. 4. 2004 must be held to be inconsequential. The said letter dated 10. 4. 2004 cannot be said to have created a situation for the respondents to make an application under Section 34 of the Act praying for setting aside the arbitral award.

( 25 ) On a total reading of the provision of the Act and in view of the aforesaid decision of the Apex Court in the case of Satwant Singh Sodhi (supra) there is no gain saying that an interim award can be in the form of a final award in respect of the items which are dealt with in the interim award. A bare perusal of the impugned interim award and the letter dated 2. 4. 2004 of the respondents leave no manner of doubt that the said interim award is the final award in respect of the claims decided by the sole Arbitrator. Once it is held that the interim award was the final award in respect of the items decided by the Arbitrator, there is no escape from the position of law in respect of the limitation prescribed under Section 34 of the Act for preferring an application towards setting aside the arbitral award.

( 26 ) The interim award was passed on 12. 10. 2003 copy of which was received by the respondent on 23. 10. 2003. So the limitation began to run from 23. 10. 2003 and the first period of 90 days expired on 22. 1. 2004. Even if further period of one month as provided for under the proviso to Section 34 (3) is taken into account, then also the period of limitation expired on 22. 2. 2004. Admittedly, the respondents filed the application under Section 34 of the Act on 6. 8. 2004 which is about seven (7) months from the first period of limitation and about six (6) months from the second period of limitation. An in-built provision having been made in Section 34 of the Act in respect of limitation, there is no scope for condonation of delay beyond the period prescribed under Section 34 of the Act.

( 27 ) It is in the above context, the learned counsel for the petitioner placed reliance on the aforesaid decision of the Apex Court in Popular Construction Company (supra) in which the Apex Court specifically held that the inclusion of the words \but not thereafter\ in the proviso to Section 34 (3) of the Act would amount to an express exclusion within the meaning of Section 29 (2) of the Limitation Act and would therefore bar the application of Section 5 of that Act. The Apex Court in that case further observed that to hold that the Court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase \but not thereafter\ wholly otiose and that no principle of interpretation will justify such a result. In that case, the Apex Court held in categorical terms that the provision of Sections 4 to 24 of the Limitation Act stood excluded from the purview of Section 34 of the Act and as such the consequences of the time expiring under Section 34 of the Act is that the award becomes immediately enforceable without any further act of the Court. As per Section 35 of the Act an arbitral award shall be final and binding on the parties and as per Section 36 of the Act, where the time for making an application to set aside the arbitral award under Section 34 has expired, the award shall be enforced in the same manner as if it were a decree of the Court.

( 28 ) In the instant case there is no manner of doubt that the limitation prescribed for making an application under Section 34 of the Act stood long expired for the respondents before they had approached the Court by their application submitted on 6. 8. 2004. Their interpretation of the award becoming final with the clarification issued by the Arbitrator on 10. 4. 2004 is simply not maintainable. As noticed above, even their application dated 2. 4. 2004 was beyond the purview and scope of the provision of Section 33 of the Act and the letter issued by the sole arbitrator on that basis was inconsequential. The respondents were not entitled to count limitation from the date of issuance of the letter dated 10. 4. 2004 by the sole Arbitrator in such a situation. On the face of it, the interim award being the final award in respect of the items, and the respondents also having understood the same to be the final award in respect of those items, there was no occasion for them to treat the letter of the Arbitrator issued on 10. 4. 2004 to be the foundation to invoke the provision of Section 34 of the Act for setting aside the arbitral award and in the process to pray for condonation of delay which was again barred under the provisions of Section 34 of the Act.

( 29 ) In view of the above, the Deputy Commissioner, Papum Pare, Itanagar could not have entertained the application preferred by the respondents under Section 34 of the Act and for that matter the Misc. Case No. 10/2004. Consequently, he could not have passed the impugned order dated 15. 9. 2004 condoning the delay in preferring the application under Section 34 taking the communication dated 10. 4. 2004 made by the sole Arbitrator to the respondents to be the date of final adjudication of the matter. When the matter is so starting on the face of it, the arguments advanced by Mr. Chowdhury that this Court exercising its power under Article 227 of the Constitution of India will not interfere with the possible view taken by the Deputy Commissioner is not at all tenable. The materials available on record stare on the face of it that the application filed by the respondents under Section 34 of the Act was clearly barred by limitation which could not have been saved by the Deputy Commissioner on the basis of the letter dated 10. 4. 2004 issued by the sole Arbitrator.

( 30 ) In view of the above, I have no hesitation to hold that the impugned order dated 15. 9. 2004 passed by the Deputy Commissioner, Papumpare, Itanagar in Misc. Case No. 10/2004 condoning the delay in making the application under Section 34 of the Act is not sustainable. Consequently the said order dated 15. 9. 2004 assailed in this writ application stands set aside and quashed.

( 31 ) The writ petition stands allowed. There shall be no order as to costs.