IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.3 of 2020.
Reserved on: March 31, 2021.
Date of Decision: April 30, 2021.

Tilak Raj **…. Appellant.**

Versus

State of Himachal Pradesh & Another **…. Respondents.**

Coram:
The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice
The Hon'ble Mr. Justice Anoop Chitkara, Judge.
Whether approved for reporting?[1]

For the Appellant: **Mr. B.C. Negi, Senior Advocate with Mr. Parvesh Negi, Advocate.**

For the respondents: **Mr. Ashok Sharma, A.G. with Mr. Adarsh Sharma, Addl. A.G.**

Anoop Chitkara, Judge.

Challenging the acceptance of the applications by Ld. Single Bench of this Court condoning the delay by extending the time in filing Objections under Section 34 of the Arbitration and Conciliation Act, 1996, and also the delay in refiling the same after removal of the objections, the claimant came up before this Court.

2. On 29th March 2019, the State of HP filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (after now called 'the Arbitration Act') against the award of Ld. Arbitrator announced on 8th December 2018. Since the period of three months expired on 9th March, hence the objections accompanied an application under section 34 of the Arbitration Act to condone the delay on the grounds that the objections were filed within permissible 30 days after the expiry of the statutory period of three months.

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[1]**Whether reporters of Local Papers may be allowed to see the judgment?**

3. During the scrutiny of the objection petition, the registry of this Court raised specific objections. One of the objections was not filing the original copy of the award. On 10th June 2019, the Objectors removed the objections and filed the award's signed copy. However, since the objectors did not remove the objections within the prescribed 20 days, the objectors filed another application seeking condonation of the delay of 71 days in late refiling the objection petition after removal of the objections.

4. While filing the objections on 29th March 2019, the objectors did not annex the award's certified copy. A perusal of the record and the stamp of the Registry reveals that the certified copy of the award was filed on 10th June 2019. The record also reveals that on 29th March 2019, the objectors-applicants had filed a photocopy of the award, which was attested by the Assistant Engineer. A perusal of the award's photocopy, which bears the filing date stamp of 29th March 2019, also discloses the signature of the learned Arbitrator and is practically a photocopy of the certified copy, which was later on filed on10th June 2019.

5. The application filed under section 34 of the Arbitration Act for condoning the delay beyond three months, was numbered OMP(M) 34 of 2019, and the application for refiling was numbered OMP 457 of 2019. The explanation offered for the delay in refiling was that the PWD officials were engaged in the General Lok Sabha elections of 2019. Given their engagement in the election, the file remained unattended. After the election process was over, objections were again removed and refiled on 10th June 2019, placing the certified copy of the award on record. As such, a delay of 71 days occurred in refiling the objection petition after removing objections. The claimant filed its response to the OMP(M) 34 of 2019 but did not file any reply to OMP 457 of 2019. In the absence of the response, such pleadings remained unrebutted.

6. After hearing the parties, vide an order dated 3rd December 2019, learned Single Bench of this Court allowed both the applications, i.e., the OMP No.457 of 2019 filed for refiling the objection petition, after removal of the objection, as well as the OMP(M) No.34 of 2019, seeking extension of time in filing the objection petition.

7. Challenging the order mentioned above, the respondent-claimant came up before this Court by filing an Intra Court Appeal under Clause 10 of the Letters Patent

constituting the High Court of Judicature at Lahore, the 21st March 1919, as extended to the High Court of Himachal Pradesh.

8. We have heard learned counsel for the parties and gone through the records.

9. The appellant is aggrieved only qua the order passed in OMP(M) No.34 of 2019, seeking extension of time under section 34 of the Arbitration Act, in filing the objection petition. The appellant's first contention is that the perusal of the award dated 8th December 2018 reveals that learned Arbitrator had supplied the certified copy on the same day. Thus, it was incorrect on the part of the applicants to have pleaded that they have received it on 22nd December 2018 instead of 8th December 2018. The second contention is that in the award dated 8th December 2018, the learned Arbitrator had explicitly mentioned the supply of the copies to the parties on the same date. Despite that, the objection petition did not contain a signed copy, which was annexed on 10th June 2019. Thus, in the filing of the petition on 29th March 2019, without annexing the signed copy of the award, the petition is deemed to have been filed on 10th June 2019 because the filing of the petition without the signed copy was no filing.

ANALYSIS AND REASONING:

10. S. 34 of the Arbitration Act reads as follows:

> "34. Application for setting aside arbitral award. _ (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3). (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."

11. In **Union of India v. Popular Construction Co.**, (2001) 8 SCC 470, Hon'ble Supreme Court, while considering the application of Section 5 of the Limitation Act, 1963 in the proceedings under Section 34 of the Arbitration Act, holds,

> [11]. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5

> and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.
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> [12]. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this 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. Parliament did not need to go further. 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. No principle of interpretation would justify such a result.

12. In **State of Himachal Pradesh v. Himachal Techno Engineers**, (2010) 12 SCC 210, Hon'ble Supreme Court holds,

> [4]. Having regard to the proviso to section 34(3) of the Act, the provisions of section 5 of the Limitation Act, 1963 will not apply in regard to petitions under section 34 of the Act. While section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days but not thereafter." Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.

13. In **Chintels India Ltd v. Bhayana Builders Pvt. Ltd.**, Civil Appeal No. 4028 of 2020, a three Judge bench of Hon'ble Supreme Court holds,

> "[ ]. A reading of section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot

> be condoned — see State of Himachal Pradesh v. Himachal Techno Engineers and Anr. (2010) 12 SCC 210 at paragraph 5."

14. Since the objections were filed on the seventh day after the expiry of the stipulated three months, as such, there was a necessity of filing an application under section 34 of the Arbitration Act, explaining the delay beyond three months. The objection petition as well as the application were filed jointly by the concerned Superintending and Executive Engineers, supported by an affidavit of the Superintending Engineer. The first question that ponders is that whether the Executive Engineer had to decide about the filing of the objections or the Superintending Engineer?

15. The Superintending Engineer states on affidavit that the Executive Engineer, HPPWD Division Banjar, District Kullu, the petitioner/applicant no. 2, had received the copy of the award on 22.12.2018. After consideration, he forwarded it to the petitioner/applicant no. 1, who received it on 03.01.2019. Subsequently, after obtaining the necessary approvals from the higher authorities, the objection petition was filed, which was beyond ninety days of the date of the award. The explanation for the delay tendered was due to procedures in seeking permission and vetting from the concerned officials. A perusal of the first page of the copy of the award filed on 29 March 2019 reveals the diary number 5061 dated 22-12-2018 entered in the Executive Engineer's office. It corroborates the stand of the applicant that the second respondent had received it on 22-12-2018. After that, as per the affidavit, the first respondent had received the file on 3-1-2019. The petition has been jointly filed by the concerned Superintending Engineer and the Executive Engineers, claiming to be the right authorities to file the objections.

16. Ld. Single Judge relied upon the contents of the application filed under section 34 of Arbitration Act and considered the delay to be of seven days. It implies that Ld. Single Judge considered the date of handing over the copy, not to the official to whom Ld. Arbitrator had delivered on the date of award, i.e., 8th Dec 2018, but 22nd Dec 2018, when the office had forwarded and handed over it to the concerned Executive Engineer. The objections were filed on 9th Mar 2019, and per application, the seven days delay was sought to be condoned. The period of seven days would come only if the three months were counted from 22nd Dec 2018 till 22nd Mar 2019, and since the

objections were filed on 29th Mar 2019, which was the 7th day after the expiry of three months. A perusal of Para 2(iii) of the order passed by Ld. Single Judge condoning the delay reveals that filing was seven days beyond the stipulated period, and the application also sought condonation of delay of seven days. Thus, the date of receipt of the signed copy was taken as 22-12-2018, the date when the signed copy of the award was handed over to the concerned Executive Engineer, the 2nd petitioner, and not as 8-12-2018, the actual date on which Ld. Arbitrator had handed it over to the parties through their representatives.

17. Since the delay was condoned based on the contents of the application taking the date of receipt as the date on which the concerned Executive Engineer, the 2nd petitioner/applicant had received it from its officials, thus seeking condonation of delay of 7 days, beyond three months. However, the petition was filed by Superintending Engineer, the first petitioner/applicant, and is also supported by his affidavit, which points out that the Superintending Engineer was the decision-maker for filing the objections. Thus, it was the concerned Superintending Engineer, who after receipt of the award, had the knowledge of the proceedings and would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-Section (1) of Section 34 of the Arbitration Act. However, this would always be subject to the reasonableness of time in bringing the issue to for his consideration, without unnecessary or unusual delay

18. In **Union of India v. Tecco Trichy Engineers and Contractors**, (2005) 4 SCC 239, a three Judge Bench of Hon'ble Supreme Court held,

> [6]. Form and contents of arbitral award are provided by Section 31 of the Act. The arbitral award drawn up in the manner prescribed by Section 31 of the Act has to be signed and dated. According to sub-Section (5) , "after the arbitral award is made, a signed copy shall be delivered to each party". The term "party" is defined by clause (h) of Section 2 of the Act as meaning 'a party to an arbitration agreement'. The definition is to be read as given unless the context otherwise requires. Under sub-section (3) of Section 34 the limitation of 3 months commences from the date on which "the party making that application" had received the arbitral award. We have to see what is the meaning to be assigned to the term "party" and "party making the application" for setting aside the award in the context of the

State or a department of the government, more so a large organization like the Railways.

[7]. It is well-known that the Ministry of railways has very large area of operation covering several Divisions, having different divisional Heads and various departments within the Division, having their own departmental Heads. The General Manager of Railways is at the very apex of the division with a responsibility of taking strategic decisions, laying down policies of the organisation, giving administrative instructions and issuing guidelines in the organisation. He is from elite managerial cadre which runs entire Organisation of his division with different Departments, having different Departmental Heads. The day to day management and operations of different departments rests with different departmental Heads. Departmental Head is directly connected and concerned with the departmental functioning and is alone expected to know the progress of the matter pending before the arbitral Tribunal concerning his Department. He is the person who knows exactly where the shoe pinches, whether the arbitral award is adverse to department's interest. Departmental Head would naturally be in a position to know whether the Arbitrator has committed a mistake in understanding Departmental's line of submissions and the grounds available to challenge the award. He is aware of the factual aspect of the case and also the factual and legal aspects of the questions involved in the arbitration proceedings. It is also a known fact and Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the railways before arbitration. The General Manager, with executive work load of entire division cannot be expected to know all the niceties of the case pending before -the arbitral tribunal or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of the departmental Head. General Manager, being the head of the Division, at best is only expected to take final decision whether the arbitral award is to be challenged or not on the basis of the advise and the material placed before him by the person concerned with arbitration proceedings. Taking a final decision would be possible only if the subject matter of challenge namely, the arbitral award is known to the departmental Head, who is directly concerned with the subject matter as well as arbitral proceedings. In the large organizations like railways, "party" as referred to in Section 2 (h) read with Section 34 (3) of the Act has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the Arbitrator.

[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.

[9]. In the context of a huge organization like railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-Section (1) or (5) of Section 33 or under sub-Section (1) of Section 34.

[10]. In the present case, the Chief Engineer had signed the agreement on behalf of union of India entered into with the respondent. In the arbitral proceedings the chief Engineer represented the Union of India and the notices, during the proceedings of the arbitration, were served on the chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer/ gauge Conversion, Chennai. The Chief engineer is directly concerned with the arbitration, as the subject matter of arbitration relates to the department of the Chief engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The general Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is incharge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the department to take

> appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34 (3) of the Act. The service of notice on the Chief Engineer on 19.3.2001 would be the starting point of limitation to challenge
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> [11]. We cannot be oblivious of the fact of impersonal approach in the Government departments and organizations like railways. In the very nature of the working of government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have taken place unless the Chief engineer had received the copy of the award when only the delivery of the award within the meaning of sub-Section (5) of section 31 shall be deemed to have taken place.

19. The explanation offered for the delay is that the signed copy was handed over to the concerned Executive Engineer on 8th December 2018. However, from 8th December 2018 to 22nd December 2018, the said Executive Engineer was preoccupied and could not forward the same, and that is why the date was mentioned as 22nd December 2018. Subsequently, the file was handed over to the concerned Superintending Engineer on 3rd January 2019, and he, subject to the approval of higher authorities, decided to challenge the arbitral award. Thus, the limitation would have started from 3rd January 2019. Be that as it may, in the present case, the application's contents do not say so. Even otherwise, the main controversy is the non-filing of the signed copy of the award at the time of the objection's filing petition; as such, we proceed further.

20. While filing the objection petition, the petitioners, instead of filing the actual copy of the award handed over by the Arbitrator, filed its copy, attested by an Assistant Engineer, HPPWD, Sub Division, Banjar, under its stamp. The registry of this Court raised certain objections, including non-filing of the signed copy. After removing the objections, the objectors refiled the petition on 10th June, annexing therewith the signed copy of the award supplied by the Arbitrator.

21. Ld. Counsel for the claimant submits that this objection petition is deemed to have been filed on 10th June 2019 and not on 29th March 2019 because, at that time, it did not accompany the signed copy of the impugned award. Thus, the objection petition

was filed beyond three months plus 30 days, and no provision of law would empower the Court to condone the delay beyond such 30 days. Therefore, the appellant contends that the learned Single Judge could not have condoned the delay. On the contrary, the contention on behalf of the respondent-State is that the delay was due to the movement of file from one office to another, and the learned Single Judge has rightly condoned the delay.

22. Rule 7 of the Chapter 6-C of The High Court of Himachal Pradesh (Appellate Side) Rules, 1997, reads as follows:

> "7. Whenever any objection is taken by the office to the papers presented that they are not in accordance with the relevant Rules, the maximum period for removal of such objections shall be seven days at a time and 20 days in the aggregate. If the period taken by the concerned party for removal of the objections exceeds the time limits specified above, the Registry shall not accept the papers unless the delay in removal of such objections is condoned on an application by the party."

23. A perusal of the orders dated 3.12.2017, passed by learned Single Judge, reveals that the objections against the arbitral awards were filed seven days beyond the stipulated period of 90 days. Since the objections were filed within 120 days, the objector had filed OMP(M) 34 of 2019, explaining the reasons for extension of time, and such reasons were the movement of the file. According to learned Single Judge, the delay was of 7 days. Regarding the delay of 71 days in re-filing, Ld. Judge referred to the deployment of staff in the election duty roster. The Court was also of the view that since the award is in respect of payment of Rs. 96,70,739/- along with interest @ 18% per annum and on all such reasons, learned Single Judge condoned the delay. The Bench also relied upon the judgment of Hon'ble Supreme Court in **Northern Railway v. Pioneer Publicity Corporation Private Limited**, (2017) 11, SCC 234, wherein it was held as follows: -

> "[4]. We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act..."

24. Learned Single Judge, while referring to Rule 8 of Chapter 2 of H.P. High Court (Scrutiny, Maintenance of Judicial Records, Administrative and Executive Business) Rule 1997, allowed the application by holding that delay in maintaining both the

applications has been cogently explained. Thus, the well-reasoned order of learned Single Judge is neither erroneous nor calls for any interference.

25. Learned Single Judge had trodden the globe starting from the East to West. However, we start our voyage from West to East to find an answer to the proposition of law that whether the High Court of Himachal Pradesh (Appellate Side) Rules, 1997 coupled with Rules framed under the Arbitration Act mandate that at the time of filing of the petition under section 34 of the Arbitration Act, it must accompany the signed copy of the award handed over by the Arbitrator to the parties.

26. The relevant provision of section 31of the Arbitration Act is extracted as follows:

> 31. Form and contents of arbitral award. —
> (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
> (5) After the arbitral award is made, a signed copy shall be delivered to each party.

27. In **Hindustan Construction Co Ltd v. Union of India**, AIR 1967 SC 526, Hon'ble Supreme Court holds,

> [ ]. It appears that the award was made in duplicate and one copy was sent to each party. On August 4, 1961, the appellant made a petition before the Subordinate Judge, First Class, Delhi, under Ss. 14 and 17 of the Arbitration Act, No. 10 of 1940, (hereinafter referred to as the Act). It was prayed that the umpire be directed by the Court to cause the award or a signed copy thereof together with any depositions and documents which might have been taken and proved before him to be filed in Court (S. 14). It was further prayed that a judgment be passed in terms of the award (S. 17).
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> [4]. The main question that has been argued on behalf of the appellant is that the document in question is a signed copy of the award within the meaning of those words in S. 14 (2) and, therefore, further proceeding should have been taken under S. 17 of the Act. Now the relevant part of S. 14 (2) reads thus
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> > "(2) The arbitrators 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-cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court."
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> Therefore, when a notice is issued by a Court to the arbitrators or umpire it is their duty to file in Court either the award in original or a signed copy thereof as directed by the Court. It is

not in dispute that in the present case the original award has not been filed. The dispute is whether the document filed is a signed copy of the award. The main contention on behalf of the appellant is that the document is a signed copy of the award within the meaning of those words in S. 14 (2), and thus should have been acted upon by the Court. On the other hand, it is contended on behalf of the respondent that what has been filed is a certified copy of the award and not a signed copy thereof, and, therefore, it cannot be acted upon. The High Court has accepted the contention of the respondent and all that it has said in that behalf is that it is clear from a perusal of the award that it is not a signed copy of the award but it is certified as correct copy of the award, dated the 27th May 1961. Unfortunately, the High Court has not considered what exactly the words "signed copy of the award" mean, and it is to this problem that we must now turn.

[5]. Now the word "copy" as such is not defined in the Indian [Evidence Act, 1 of 1872. But we get an idea of what a copy is from the provisions of S. 63 of the Evidence Act. That Section inter alia defines what secondary evidence means and includes, namely-(i) certified copies as provided in S. 76 of Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word "copy" means "'a thing made just like another, full reproduction or transcription". What the word "copy" in S. 14 (2), therefore, requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was, therefore, a copy of the original, and the only question that remains is whether it was signed. for if it was signed, it would be a signed copy.

[6]. This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action, etc." To write one's name is signature. Section 3 (56) of the General Clauses Act No. 10 of 1897, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing

> means writing one's name on some document or paper. In Mohesh Lal v. Busunt Kumaree, (1881) ILR 6 Cal 340, a question arose as to what "signatures" meant in connection with S. 20 of the Limitation Act, No. IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs.
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> [7]. We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in Court and it shows that the person signing authenticated the accuracy or correctness of the copy the document would be a signed copy of the award. It would in such circumstances be immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before signing the copy of the award. If anything, the addition of these words (namely, certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what S. 14 (2) requires, so long as the authentication is under the signature of the arbitrator or the umpire himself…"

28. The requirement of certified copy in filing any appeal/revision etc., on the appellate side of this Court is specified in The High Court of Himachal Pradesh (Appellate Side) Rules, 1997, after now called "the Appellate Side Rules."

29. Chapter 1, Part-1, Rule 4(e) of the Appellate Side Rules, defines copy as under:

> "Copy" means copy of original document prepared by the process of typing cyclostyling, *xeroxing(ommitted)*, Photostating or by computer prints.

30. Chapter 5 of the Appellate Side Rules, prescribes the institution of proceedings, and relevant provisions are extracted as follows:

> A. PRESENTATION OF APPEALS, PETITIONS, CIVIL WRIT PETITIONS ETC.
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> B. APPEALS
> "(ii) If an appeal is against an interlocutory order it shall be accompanied by a certified copy of the order against which the appeal is filed."

> E. CIVIL REVISIONS:
> "2. Civil revision petitions under Section 115 of the Code or any other enactment shall be accompanied by:
> 1) a certified copy of the decree or order, which is to be revised;
> 2) a certified copy of the judgment, if any, on which decree is based;
> 3) a true copy of the judgment or order, if any, of the Court or Tribunal of the first instance; …"
>
> F. CRIMINAL REVISIONS:
> "(3) Every petition for revision of an order shall be accompanied by a copy of the order in respect of which such application is made.
> (4) In the case of petition for revision of the order of an appellate Court, a copy of the order of the Court of the first instance shall also be filed."
>
> G. APPLICATION FOR REVIEW:
> "(2) It shall be accompanied by a certified copy of the judgment sought to be reviewed."
>
> H. MISCELLANEOUS:
> "1. The memorandum of Appeals/Revision/Review must contain the number of the case and date of decision against which such appeal or revision is being preferred. In case of Second Appeal, the number(s) of the Case and date(s) of decisions of both the lower courts shall be mentioned. In case the appellant-petitioner fails to give these particulars, the appeal/revision shall be held 'under objection'."

31. Wherever the rules insist upon the requirement of filing certified copy, it mentions explicitly. There are no specific provisions in the Appellate Side Rules relating to the petitions under the Arbitration Act. To cover some of the grey areas, the High Court of Himachal Pradesh, on its administrative side, issued a note/ Executive Instruction, dated 11th Dec 2006, through its Registrar (Vigilance) marked to Additional Registrar (Judicial), which reads as follows:

> "In Civil Revision No.178/2006, titled as Khima & Another versus Dinesh Kumar & Others, filed before the Hon'ble Full Court it was noticed that this revision petition which is against the order of Shri T.S. Kaisth, Civil Judge (Sr. Division), Mandi dated 29.8.2006 is not accompanied by a certified copy of the order dated 29.8.2006. The civil revision had been filed by attaching an uncertified copy of the said order, which is not in accordance with the rules/instructions. Therefore, I have been directed to convey that instructions may be issued to the concerned branch/officials that in future no appeal or revision

should be accepted when it is not accompanied by a certified copy of the order of the lower Court.

(V.K. Gupta)
Registrar (Vigilance)
December 11, 2006."

32. Even this instruction is restricted to the lower Courts' orders, whereas an Arbitrator is not a lower Court. Section 82 of the Arbitration Act empowers High Courts to make Rules consistent with the Act to all proceedings before the Court under this Act. In pursuance of the same, 'the High Court of Himachal Pradesh (Arbitration and Conciliation), Rules 2002', has been framed. However, the said Rules do not provide for filing the signed copy while filing objection petitions under section 34 of the Arbitration Act, challenging the arbitral award.

33. Whenever the Statute or its Rules insist upon filing the certified copy or the original/signed copy, it specifically mentions it. Out of a large number of statutes and rules, just for comparative analysis, the following statutes/rules/regulations provide for filing of copy/certified copy of the impugned judgment /order: -

a). CIVIL PROCEDURE CODE, 1908:

Order XLI (Appeals from Original Decrees).—
1. Form of appeal. What to accompany memorandum.— (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the [Judgment].
[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court dispense with the filing of more than one copy of the judgment.]

Order XLII (Appeals from Appellate Decrees).—
1. Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees

b). ARBITRATION AND CONCILIATION ACT, 1996:

19. Determination of Rules of procedure.—
(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

c). INCOME TAX (APPELLATE TRIBUNAL) RULES, 1963:

9. What to accompany memorandum of appeal.—
[(1) Every memorandum of appeal shall be in triplicate and shall be accompanied by two copies (at least one of which shall be a certified copy) of the order appealed against, two copies of the order of the [*Assessing Officer*], two copies of the grounds of appeal before the first appellate authority and two copies of the statement of facts, if any, filed before the said appellate authority.]
[(2) (*i*) In the case of appeal against the order of penalty, the memorandum of appeal shall also be accompanied by two copies of the assessment order ;
(*ii*) In the case of appeal against the assessment under section 143(3) read with section 144B, the memorandum of appeal shall also be accompanied by two copies of the draft assessment order and two copies of the Inspecting Assistant Commissioner's directions under section 144B ;
(*iii*) In the case of assessment under section 143(3) read with section 144A, the memorandum of appeal shall also be accompanied by two copies of the Inspecting Assistant Commissioner's directions under section 144A ; and
(*iv*) In the case of assessment under section 143 read with section 147, the memorandum of appeal shall also be accompanied by two copies of the original assessment order, if any.]
[(3)] The Tribunal may in its discretion accept a memorandum of appeal which is not accompanied by all or any of the documents referred to in sub-rule (1).
[*Explanation :* For the purpose of this rule, "certified copy" will include the copy which was originally supplied to the appellant as well as a photostat copy thereof duly authenticated by the appellant or his authorised representative as a true copy.]

*It has been clarified by the President, Income-tax Appellate Tribunal, in his letter No. F. 38-JS (AT)/71, dated 9-8-1971, that a copy of the order appealed against bearing the signature of the issuing or authorised officer and seal of the office which issued the copies, will be treated as equivalent to a certified copy of the order appealed against.

d). CODE OF CRIMINAL PROCEDURE, 1973:

382. Petition of Appeal.— Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by an copy of the judgment or order appealed against.

e). THE CONSUMER PROTECTION RULES, 1987:

15. Procedure for hearing the appeal.— *(Before National Commission)*:

(3) Each memorandum shall be accompanied by a certified copy of the order of the State Commission appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum.

f). THE HIMACHAL PRADESH CONSUMER PROTECTION RULES, 1988:

22. Procedure of hearing the appeal.—
(iii). Each memorandum shall be accompanied by a certified copy of the order of the District Forum appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum.

g). THE CENTRAL MOTOR VEHICLES RULES, 1989:

30. Procedure for appeal.—(1) An appeal under rule 29 shall be preferred in duplicate in the form of a memorandum, setting forth the grounds of objections to the order of the licensing authority and shall be accompanied by a certified copy of the order appealed against and appropriate fee as specified in rule 32.
71. Procedure for appeal.—(1) An appeal under rule 70 shall be preferred in duplicate in the form of a memorandum, setting forth the grounds of objections to the order of the registering authority and shall be accompanied by the appropriate fee as specified in rule 81 and a certified copy of such order.

h). NATIONAL COMPANY LAW APPELLATE TRIBUNAL RULES, 2016:

22. Presentation of appeal.—
(2) Every appeal shall be accompanied by a certified copy of the impugned order.

34. Wherever the legislation felt the necessity of filing a certified copy, such need was explicitly mentioned. However, in Section 34 of the Arbitration Act, there is silence to this aspect. Even otherwise, Ld. Arbitrator cannot certify the copy given Section 76 of the Evidence Act, which reads as follows: -

S. 76. Certified copies of public documents.— Every [public officer] having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

> *Explanation.* - Any officer who, by the ordinary course of official duty is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.
>
> S. 77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

35. Whenever there is a requirement to file certified copies, it is mentioned explicitly in statutes/Rules/instructions. Because an Arbitrator is legally not competent to hand over a certified copy, thus, per section 34 of the Arbitration Act, Ld. Arbitrator hands over one signed copy each to all the parties.

36. In the High Court of Himachal Pradesh (Appellate Side) Rules, 1997, the words 'copy' has been defined as a photocopy/cyclostyle/computer print, but not a certified copy. Thus, in the absence of rules or executive instructions, which prescribed the requirement of filing the signed copy handed over by the Arbitrator to the party, there can be no assumption that in the objection petition, the sole true copy handed over by the Arbitrator to the parties should be annexed. Such an interpretation would be beyond the statute, rules, or any Executive Instructions.

37. In **Shipra v. Shanti Lal Khoiwal**, (1996) 5 SCC 181, a three Judge bench of Hon'ble Supreme Court holds,

> "[7] The question, arises as to the meaning of the expression "true copy". In "Sarkar on Evidence" (14th Edition - 1993) it is stated at page 2183 under "Appendix A" that "(A)n affidavit is a statement in writing on oath or affirmation before a person having authority to administer an oath or affirmation. The affidavit should be in statutory Form 25 prescribed under Rule 94-A. It should be supplied along with the election petition which contains allegations of corrupt practices as grounds for assailing the validity of the election of a returned candidate. In Black's Law Dictionary (6th Edition) "copy" is defined at page 336 to mean "(A) transcript, double initiation, or reproduction or an original writing, painting, instrument, or the like. Under best evidence rule, a copy may not be introduced until original is accounted for". At page 1508, the word "true" has been defined as "(C)conformable to fact; correct; exact; actual; genuine; honest. In one sense, that only is "true" copy which is conformable to the actual state of things. The expression "true copy" is defined to mean : (A) true copy does not mean an absolutely exact copy but means that the copy shall be so true that anybody can understand it". In Webster's Comprehensive

Dictionary (International Edition) "true copy" is defined as "(A)n exact, verbatim transcript of any document, report, etc.,; especially, one certified as correct by a qualified authority". In Stroud's Judicial Dictionary (5th Edition) (Vol. 5) "true copy" is defined at page 2694 thus "A 'true copy' does not mean and absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it.....The test whether the copy is a "true" one is whether any variation from the original is calculated to mislead an ordinary person".

[8] It would thus be clear that a true copy is a transcript identical to or substitute to the original but not absolutely exact copy. But nobody can by any possibility, misunderstand it to be not a true copy. It is seen that the test, as stated earlier, is whether by any variation from the original is calculated to mislead an ordinary person. When a petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statute intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition. The question, therefore, is : Whether copy of the affidavit supplied to the respondent without the attestation portion contained in it (though contained in the original affidavit) can be considered to be a "true copy" ?

[9] In Mithilesh Kumar Pandey v. Baidyanath Yadav, (1984) 2 SCR 278 : (AIR 1984 SC 305), in a situation analogous to the present one, a question had arisen : Whether the copy of an election petition, though attested by the election petitioner under his own signature, when it contained mistakes of vital character, could be considered to be a true copy and whether the mandatory requirement of Section 83 (3) of the Act had been complied with ? This Court, after considering the entire case law including those cited across the bar by the counsel for the appellant had held thus :

> "On a careful consideration and scrutiny of the law on the subject, the following principles are well established :
> (1) that where the copy of the election petitioner served on the returned candidate contained only clerical or typographical mistake which are of no consequence, the petition cannot be dismissed straight way under S. 86 of the Act,
> (2) a true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the Court may not take notice thereof.

> (3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of S. 81 (3) of the Act,
> (4) prima facie, the statute uses the word "true copy" and the concept of substantial compliance cannot be extended too far to include serious of vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of S. 81 (3) of the Act, and
> (5) S. 81 (3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section."
>
> [10] Since the corrupt practices are required to be proved to the hilt, the element of vagueness would immediately vitiate the election petition. A true copy supplied with mistakes of vital and serious nature would, therefore, entail dismissal of the election petition. Each case has to be considered on its own facts and circumstances. No general principle of universal application could possibly be laid…"

37. Since S. 34 of the Arbitration Act is silent about the requirement of a signed copy at the time of the award's challenge, the filing would be governed under the procedures mentioned in the Rules of the concerned Court. The words used in S. 34 are 'a signed copy' to parties. It talks about just a single set of the document. It appears to be for the record and to prepare subsequent copies. In the absence of specific rules that ask for the filing of the signed copy received by the party, it cannot be assumed that the signed copy is required to be filed.

38. The above survey establishes that while filing an objection petition under section 34 of the Arbitration and Conciliation Act, 1996, neither the Arbitration Act nor the High Court of Himachal Pradesh (Arbitration and Conciliation), Rules 2002, or the High Court of Himachal Pradesh (Appellate Side) Rules, 1997, provide for filing of the signed copy or the certified copy of the award under challenge.

39. An Arbitrator cannot give the copy of the award under the caption certified copy. He has no authorization to do so under the Indian Evidence Act or any other law or Rules. Furthermore, the arbitrators do not have the paraphernalia of the copying agencies to keep on supplying the copies to the parties as per their demands. To reduce

the Arbitrator to the extent of copying agency would be letting them down and amount to undermine the majesty of such arbitral assignment. Thus, the legislator being aware of such constraints with the Arbitrator, only asked the Arbitrator to supply the signed copy to the parties. The words used are not any number of signed copies, it is in the singular. It implies that Arbitrator would supply just one copy. In rare cases when such copy is lost or destroyed, it is undoubtedly within the Arbitrator's discretion to hand over another signed copy. It is comparable to a Matriculation certificate or an Educational degree. When a person is supposed to hand over a copy of a matriculation certificate or a degree, then a person is not supposed to annex the original document, but its photocopy or printout of the scanned copy. The rationale is that the original copy is given for the record of the parties. In the changing world, subject to the confidentiality clauses, the certificates are being digitalized.

40. Given above, despite taking a converse path, our conclusion is similar to that of the Ld. Single judge. Thus, there is no merit in the appeal, and it is accordingly dismissed.

(L. Narayana Swamy)
Chief Justice.

(Anoop Chitkara),
Judge

April 30, 2021 (mamta/ps)