

## Inordinate Delay In Passing Arbitral Award Is A Valid Ground For Setting Aside, Rules Madras High Court

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### Introduction

In a recent decision in *Unique Builders v. Union of India*<sup>1</sup>, the High Court of Madras delivered an important judgment delving into the impact of inordinate delay in rendering an arbitral award. The moot question in the present case revolved around whether an arbitral award could be set aside solely on the ground of inordinate and inexplicable delay in its pronouncement.

The High Court ruled in favour of the petitioner, holding that the inordinate delay in issuing the award, coupled with the arbitral tribunal's failure to provide a valid explanation, vitiated the award under public policy considerations. In this article, we navigate through the facts of the case, and the findings of the High Court.

### Facts

The dispute arose from a contract between Unique Builders (*i.e.*, the petitioner) and the Southern Railway, represented by the Union of India and its engineering divisions. The petitioner, a construction firm, sought arbitration to resolve issues arising from a railway construction project.

The arbitration proceedings culminated with closing arguments being led on 03.01.2017, upon which the sole arbitrator reserved the matter for passing the award. Thereafter, despite the petitioner following up on the matter repeatedly, the sole arbitrator failed to issue any satisfactory response, and the award was not rendered. As the delay persisted, the petitioner filed an application (O.P. No. 759 of 2019) under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), seeking termination of the arbitrator's mandate due to non-issuance of the award.

In the interregnum, the sole arbitrator pronounced the award on 30.09.2019, nearly three years after reserving the judgment. On 09.10.2019, the petitioner collected the award and challenged the same under Section 34 of the Arbitration Act. The petitioner argued that the delay in issuing the award vitiated its validity.

### Arguments of the Petitioner

The petitioner challenged the award on two grounds: *firstly*, the inordinate delay in rendering the arbitral award; and *secondly*, the lack of any meaningful justification for the delay.

The petitioner argued that despite reserving the matter in January 2017, the award was issued only in September 2019, *i.e.*, after filing a petition to terminate the arbitrator's mandate. As per the petitioner, this delay compromised the arbitrator's ability to recall facts and issues accurately, thereby affecting the quality of adjudication. Furthermore, the

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<sup>1</sup> O.P. No.21 of 2020.

petitioner submitted that the arbitrator failed to provide any explanation for the delay, rendering the award contrary to public policy.

Apart from the delay in rendering the award, the petitioner contended that the award itself lacked specific findings on several claims. As per the petitioner, the sole arbitrator did not adjudicate upon or assign reasons for rejecting several claims.

## Arguments of the Respondent

The Southern Railway countered the petitioner's claims with the following arguments:

(i) Non-Applicability of Section 29A of the Arbitration Act

Southern Railway argued that, in the instant case, the arbitration proceedings had commenced in September 2014, before the implementation of the 2015 Amendment Act.

As per Southern Railway, it was only in the 2015 Amendment Act that time limits were introduced for arbitration under Section 29A of the Arbitration Act. Since the application of Section 29A is not retrospective, there was no statutory requirement for the arbitrator to issue the award within a fixed time frame.

In support of their case, the respondents relied on the Madras High Court decision in ***Eagle Earth Movers v. Southern Railway***<sup>2</sup>, wherein an eight-month delay in issuing an award was not considered fatal. The respondents argued that mere delay does not automatically vitiate an award unless prejudice is demonstrated.

(ii) Sufficiency of Consideration and Reasoning

On the consideration and reasoning aspect, the respondents argued that the arbitrator had examined all relevant claims, and the petitioner's assertion that several claims were ignored was incorrect. The respondents argued that the arbitrator's conclusions were based on the available evidence, and setting aside an award required a higher threshold than merely disagreeing with the findings.

## High Court's Analysis and Decision

The High Court set aside the award on the sole ground that the delay in passing the award was inordinate, unexplained, and prejudicial to the petitioner's interests.

The High Court acknowledged that prior to the 2015 Amendment, there was no statutory time frame for issuing awards. However, judicial precedents, including ***Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd.***<sup>3</sup>, and ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.***<sup>4</sup>, established that arbitrators must pronounce awards within a reasonable period.

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<sup>2</sup> O.P.No.422 of 2018.

<sup>3</sup> ILR (2009) II Delhi 286.

<sup>4</sup> CDJ 2019 SC 1455.

The High Court then referred to Delhi High Court's ruling in **Department of Transport, GNCTD v. Star Bus Services Pvt. Ltd.**<sup>5</sup>, where a delay of 1.5 years in issuing an award was held to be against public policy. Similarly, in **Gian Gupta v. MMTC Ltd.**<sup>6</sup>, an award passed six years after closing arguments was set aside due to excessive delay.

In view of the above, the High Court held that the arbitrator's failure to explain the nearly three-year delay rendered the award contrary to public policy and the objectives of arbitration.

Furthermore, the High Court observed that the arbitrator did not comply with Section 31(5) of the Act, which mandates that a signed copy of the award must be delivered to all parties without delay. In this case, the arbitrator merely sent an email notification on 01.10.2019, and the petitioner collected the award days later, indicating procedural lapses.

Accordingly, the Madras High Court allowed the petition under Section 34, setting aside the arbitral award entirely on the ground of unexplained delay. The High Court held that such a delay defeats the purpose of arbitration, which aims for speedy resolution.

## Comment

The judgment sends a strong message that delay in arbitration is unacceptable, regardless of whether statutory timelines apply. Courts expect arbitrators to adhere to principles of efficiency, ensuring that awards are delivered within a reasonable timeframe. Furthermore, arbitrators must provide reasons for any significant delay, failing which Courts may deem the award unenforceable.

## Contact

For any query, help or assistance, please reach out at [info@trinitychambers.in](mailto:info@trinitychambers.in) or visit us at [www.trinitychambers.in](http://www.trinitychambers.in).

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<sup>5</sup> 2023:DHC:3410.

<sup>6</sup> 2020 SCC Online Del 107.