

(1989) 03 MP CK 0045

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No"s. 133 and 138 of 1987 (G)

Betwa River Board and Others

APPELLANT

Vs

M/s. Nathmal Gopal Lal
 M/s. Nathmal Gopal Lal Vs
Betwa River Board and Others

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Arbitration Act, 1940 — Section 31(1), 31(2)
River Boards Act, 1956 — Section 4(1)

Citation : (1989) MPJR 517

Hon'ble Judges : T.N. Singh, J;K.K. Varma, J

Bench : Division Bench

Advocate : R.A. Roman with Mr. P.N. Varma, for Betwa River Board and Others, Mr. A.B. Rohatgi, with Mr. A.D. Chaudhary and Mr. N.M. Haswani, for M/s. Nathmal Gopal Lal, for the Appellant; A.B. Rohatgi with Mr. A.D. Chaudhary and Mr. N.M. Haswani, Advocates for M/s. Nathmal Gopal Lal, Mr. R.A. Roman with Mr. P.N. Varma, Advocates for Betwa River Board and Others, for the Respondent

Final Decision : Dismissed

Judgement

Dr. T.N. Singh, J.

Through the States of Madhya Pradesh and Uttar Pradesh flows the river Betwa. In order to control the regulation and development of the inter-State Betwa River and the River Valley, Parliament has enacted Betwa River Board Act, 1976, for short, "River Board Act". For the construction of a submersible bridge across Betwa on Lalitpur-Chanderi road, work was awarded to M/s. Nathumal Gopal Lal and some dispute having arisen in regard to the claim of the Contractor, that was decided by Arbitrators, appointed by parties. However, the Contractor and the Betwa River Board are both aggrieved by the judgment of learned District Judge, Guna, in whose Court the Arbitrators had filed their award. Both have appealed and the appeals are heard analogously, to be disposed of by this common judgment.

On behalf of the Betwa River Board, Shri Roman has appeared and he has made several contentions impugning the judgment as also the award passed by the Arbitrators. In their appeal, the Contractors have merely prayed for enhancement of the rate of pendente lite interest and their counsel Shri Avadh Behari Rohatgi has addressed us on the question of interest, but he has also made submissions urging strenuously that the contentions raised by Shri Roman merit no consideration at all.

We propose to deal first with the contentions raised on behalf of the Betwa River Board. Shri Roman's first contention is that the award could not have been filed in the Court of the District Judge, Guna and, therefore, the impugned judgment be set aside as the Guna Court had no jurisdiction to pronounce on the award filed in that Court. Our attention is drawn by Shri Roman to Sections 2(c), 14(2) and Sub-sections (1) and (2) of Section 31 of the Arbitration Act as also to Sub-sections (1) and (2) of Section 4 of River Board Act and Rule 3(1) of the Rules framed under that Act. He was also drawn our attention to an order passed by the Delhi High Court on 29-5-1984 and certain correspondence between the parties to which we shall advert in due course.

We propose to extract first the relevant statutory provisions and indeed first, of the Arbitration Act:

(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of the arbitration proceedings u/s 21, include a Small Cause Court."

14(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 and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or signed copy of it together with any depositions and documents which may have been taken and proved before them, to be filed in Court and the Court shall thereupon give notice to the parties of the filing of the award.

(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all question regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

We quote now Sub-sections (1) and (2) of Section 4 of the River Board Act:

Establishment and incorporation of the Betwa River Board.-(1) With effect from such date as the Central Government may, by notification in the Official Gazette,

appoint in this behalf, there shall be established for the purposes of this Act, a Board to be called the Betwa River Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.

As per Rule 3(1) above referred of the Rules, framed under the Act, Jhansi, in the State of Uttar Pradesh, is the place where the Office of the Betwa River Board is situated.

At this stage, it may be appropriate to refer also to the provisions relied on by Shri Rohatgi. Those are Sections 20 and 21 of the Code of Civil Procedure, but in that connection, it has to be noted also what Section 41(a) of the Arbitration Act provides. The marginal note of Section 41 very clearly limits the scope, ambit and purport of Section 41 and its language "subject to the provisions of the Act....." leaves no ambiguity about that. As per Clause (a), "the provisions of Code of Civil Procedure, 1908 shall apply to all proceedings before the Court and to appeals under this Act" by which the Legislature meant to keep out of its purview the provisions contained in Section 31 of the Act. Indeed, the latter provision being meant to deal exclusively with the question of "jurisdiction" that is required to be read in conjunction with Section 2(a) and 14(2) of the Act. According to us, therefore, Section 21, CPC, has little scope to operate in the teeth of the stringency accorded to the question of jurisdiction in Section 31 of which not only Sub-section (2) afore-quoted, but Sub-section (4) also begin with the non-obstante clause "notwithstanding anything contained in any law for the time being in force."

Reading conjointly the afore quoted provisions of the Arbitration Act, we entertain the view that the act of filing of the award is that of the Arbitrators or umpire and in that they are not to abide by any diktat from any of the parties. As per Section 14(2), parties may request the award to be filed so that, in terms of Section 17, the award can be made "decree" by the Court, but, in which Court the award has to be filed is the question which parties cannot answer or determine. This question has assumed importance in this case because Betwa River Board is insisting that the award could be filed only in a Court of competent jurisdiction at Jhansi in Uttar Pradesh because the Office of the Betwa River Board is at Jhansi and the contract was also executed at Jhansi. True, as pointed out by Shri Roman, the Arbitrators has filed the award earlier in the High Court of Delhi, but it was returned to them by order passed on 29-9-1984 in Suit No. 899 of 1983 by Delhi High Court, taking the view that no part of cause of action had arisen in Delhi as the Office of the Board was at Jhansi and the contract in question was neither entered into in Delhi nor any part of the contract was performed in Delhi. However, it is equally clear that the only order that was passed by the Delhi High Court was that "the award could not be filed in Delhi". It was also ordered that "Let the award be returned for presentation to the

proper Court". That decision cannot, in any view of the matter, operate res judicata between the parties on the question of filing of the award in a Court at Jhansi and the question of jurisdiction of Guna Court to entertain the award and render judgment thereon in accordance with Section 17 is, therefore, res integra.

Section 31 (1) of the Arbitration Act requires the award made by an arbitrator to be "filed in any Court having jurisdiction in the matter to which the reference relates." The word "Court" is defined in Section 2 (c) afore-quoted and therein, reference is made to a "Civil Court" of competent jurisdiction. The term "District Judge" is defined in Section 3 (17) of General Clauses Act, 1897, to mean "the Judge of the principal Civil Court of original jurisdiction" and excludes the High Court exercising its ordinary or extraordinary original civil jurisdiction. Although Section 4, Code of CPC excepts from the purview of the Code "any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force", reference in Section 2 (c) of the Arbitration Act being explicitly made to a "Civil Court", other requirements of Section 2(c) and 31(1) of the said Act being satisfied; the Court of District Judge at Guna, in our opinion, would have the jurisdiction to entertain the award filed by the Arbitrators in this case. For that, it is open to us to refer to the provisions of Section 20, Code of CPC because the provisions thereof would apply, a priori, to that Court. It is clear from Sections 3 and 141, Code of CPC that a "Civil Court", subject to the provisions of Section 4 thereof, is required to follow the provisions of the Code because the Code is meant ordinarily to apply to "all proceedings in any Court of Civil Jurisdiction". In so far as the pecuniary aspect of the jurisdiction of the Court of District Judge, Guna is concerned, the award having upheld the claim of the Contractors to be paid in the sum of Rs. 9,24,757/- by the Betwa River Board, no objection is either made or can prevail in relation thereto. However, the moot question required to be determined in this case evidently, is, whether the Guna Court can be said to have "jurisdiction in the matter to which reference relates" and whether it has "jurisdiction to decide the question forming the subject-matter of the reference if the same had been the subject matter of the suit". These requirements follow from the joint mandate of Sections 2(c) and 31(1) of the Arbitration.

We advert now to the relevant materials on record referred to by Shri Roman in support of his contention. The Tender Notice of the Contract in question, was obviously issued from the Office of the Superintending Engineer, Rajghat Dam Construction Circle III, Rajghat, Lalitpur, U. P. and the Tender was required to be submitted to him on or before 15-1-1979. On 30-1-1979, the Contractors submitted their sealed Tender with their letter of the even date, but they also indicated that the Lump Sum offer which was required to be submitted was conditional upon certain assumptions appertaining the technical aspects of the work as were indicated in the offer in the said letter. Their tender was accepted on 9-6-1979 by the Superintending Engineer, Rajghat, District Lalitpur (U. P.) on the terms and conditions contained in the letter and they were required to sign the agreement on 14-6-1979. In the said acceptance letter, it was mentioned

that the clause of arbitration shall be suitably modified so as to authorise the Chief Engineer, Rajghat Dam Project, Betwa River Board, Jhansi, to appoint Arbitrators. The Superintending Engineer, vide his letter dated 13-6-1979, intimated the Contractors that the agreement had been signed and, therefore, the work had to be started "under the execution of the Executive Engineer, Rajghat Dam Construction Division V, Rajghat, as per terms and conditions of the contract".

8-A. It appears that during the course of the construction of the bridge, some problem arose as to its "design" and in that connection, Shri Roman drew our attention to the letter dated 9-11-1979 of the said Executive Engineer to the Contractors in which it was mentioned that "design already submitted by you may be modified in the light of these observations". However, the letter dated 26-11-1979 which the Superintending Engineer wrote to the Contractors is of greater importance and on that we have to say something more while dealing with Shri Roman's second contention, questioning the Arbitrators' jurisdiction to pass award in favour of the Contractors allowing additional payment claimed by the Contractors in respect of additional work done in regard to the modified design. Of equal importance is the letter which the Contractors wrote on 3-12-1979 to the Chief Engineer, Rajghat Dam Project, Betwa River Board, Jhansi, in regard to the controversy raised in the letter dated 26-11-1979 by the Superintending Engineer. Relying on the said correspondence, Shri Roman submitted that even the Contract as to modification of design and work done in accordance therewith was executed at Rajghat/Jhansi and obviously the "reference" was made to the Arbitrators in respect thereto and indeed, the reference raised questions which formed the subject-matter of the dispute to be decided by the Arbitrators. Therefore, the Arbitrators could file the award only in the Court of District Judge at Jhansi.

In our opinion, there is an obvious fallacy underlying the argument pressed by Shri Roman and, according to us, neither in terms of Section 2(c) nor that of Section 31(1) of Arbitration Act and nor indeed, of Section 20, CPC, we would be justified in holding that the Court of District Judge, Guna lacked the requisite jurisdictional competence in dealing with the matter. Even if we confine our view to Sections 2 (c) and 31 (1) of the Arbitration Act, we have to consider the place of execution of the additional work for which additional payment the Arbitrators recommended because the reference raised not only the question of execution of the contract made by parties in that regard, but raised mainly the question of execution of additional work and of additional payment. We have no doubt about the crux of the controversy. It is not the contract, whether original contract or the subsequent contract, but the execution by the Contractors of the additional work as per modified design in relation to which claim for additional payment was recommended by the Arbitrators. Indeed, not only the reference related to that claim and that was the "matter" which was required to be decided by the Arbitrators in terms of Section 31 (1), in terms of Section 2(c), that only could have been "the subject-matter of a suit" if the parties had not agreed on an

arbitration. If we consider also Section 20, CPC, the same position obtains. Clause (c) thereof gives jurisdiction to a Court to entertain a suit if within the local limits of its jurisdiction, the cause of action, wholly or in part, arises. There can be no doubt that if execution of contract formed one part of the cause of action, whether for the original contract or the subsequent contract, the execution of either contract formed another part of the cause of action.

For the several reasons aforesaid, we must hold that the first contention of Shri Roman fails. Indeed, if we have to say anything further on that contention, suffice it to add that during the pendency of the instant appeal, this Court caused an enquiry to be made as to whether any part of the work of construction of the bridge in question was done within the local limits of the jurisdiction of the Guna Court. For that, necessary direction was made to the District Judge, Guna and a Commissioner was accordingly appointed to visit the site and after the enquiry, learned District Judge, Guna remitted to this Court its findings that construction of a part of the bridge did take place within the local limits of jurisdiction of that Court. That finding is not assailed and indeed, we do not think if there is any scope either for that finding to be assailed.

10-A. Shri Roman cited case-law to support his contention, but we do not think if reliance thereon avails him in any manner. In *Union of India (UOI) and Another Vs. Ladu Lal Jain*, their Lordships were required to construe merely the scope and ambit of Clauses (a) and (3) of Section 20, CPC. The decision in *Guru Nanak Foundation Vs. Rattan Singh and Sons*, case is also besides the point. In that case, their Lordships were required to consider scope mainly of Section 31 (4) of the Arbitration Act. It was held that the Arbitrator had to file his award in the Supreme Court and not in the Delhi High Court although an application was made in the first instance in the Delhi High Court u/s 20 for a direction to file the arbitration agreement in Court. The proceeding in Delhi High Court eventually took the form of a prayer for removal of the arbitrator and that prayer being rejected, the matter was brought to the Supreme Court in appeal and in that appeal, the Supreme Court appointed the arbitrator who had passed the award. To the decision in the case of *Gulati Constitution Co.* AIR 1984 Del 299, Betwa River Board was a party and if we have to say anything about that decision, it has to be said that similar view as we have taken in this case on the construction of Section 2 (c) and 31 (1) of the Arbitration Act was taken in that case. The arbitration had filed the award in Delhi High Court and the award was returned with the direction for the same to be filed in the Court of competent jurisdiction, taking the view that the arbitrator's holding proceedings at a particular place did not give jurisdiction to the Court of that place to adjudicate on the award filed by him in that Court. The only question which the Division Bench decided in the case of *Nedungadi Bank* AIR 1961 Kar 50 was of the construction of Explanation (ii) of Section 20, Code of CPC and nothing else. However, reliance by Shri Rohatgi on *Madhao Deshpande Vs. Madhav Dharmadhikaree*, case to rebut Shri Roman's contention, we find most appropriate. It was held therein, construing Section 2 (c) of the Arbitration Act that a part of the subject-matter of the

dispute falling within the jurisdiction of Nagpur Court, the award could be filed in that Court and it did not matter even if "only bit of the property" was situated at Nagpur and the major part of the property was at Chandrapur.

we turn now to Shri Roman's second contention, though much less has to be said with that because of the settled law. Let it be noted at the outset that the two Arbitrators Shri Jagdish Chandra, Retired Director, Railway Board (nominated by the Contractors)-and Shri G. Talwar, Superintending Engineer, Madhya Pradesh, Irrigation, Guna-had passed on 12-6-1983 an unanimous award accepting partially the claim of the Contractors in respect of five out of sixteen items of "disputes/claims"referred to them for arbitration, by parties. Those are listed below:

The Contractors claim Rs. 6,86,865/- payment due on account of change in design consequent to the changing of design velocity of river by Betwa River Board, which was claimed by them in the statement of facts as Rs. 6,74,616/-.

The contractors claim Rs. 92,424/- being increase in the cost of 20 metre extension portion on account of velocity change. The amount in the statement of facts was claimed as Rs. 86,120/-.

The Contractors claim Rs. 33,109/- as additional charges payable for variation in depth with reference to the design foundation level. Cost impact due to variation of quantities, which was claimed as Rs. 31,274/- in the statement of facts.

The Contractor claim Rs. 1,00,000/- escalation payable on items 2, 3, 4 and 5 of above. The amount was revised and increased to Rs. 1,59,347/- in the statement of facts.

The Contractors claim pendente lite interest.

In this connection, it is necessary to extract relevant portion of Clause 4.1, of the Tender, on which Shri Roman has placed implicit reliance:

1 Contractor design:

The contractor/firm will quote for his/its own design which shall be suitable and feasible to the site, stream and foundation strate conditions. In the event of his/its design being accepted, he/it shall satisfy the Chief Engineer, Rajghat Dam Project Betwa River Board, jhansi as to the correctness and soundness of the design specifications and calculations in respect of the design offered, by the time, if the Chief Engineer may agree or allow to the Contractor....

However, reference is to be also made to Clause 17 of the Contract as that contains the Arbitration Clause and we extract below relevant portion therefrom:

17. Provided always that in case any question, dispute or difference shall arise between the Executive Engineer and the contractor (s) as to what additions, if any, ought in fairness to be made to the amount of the contract by reason of the works being delayed through no fault of the contractor (s) or by reason or on

account of any directions or requisitions of the Executive Engineer involving increased cost to the contractor(s) (beyond the cost) of properly attending the carrying out to contract according to the true intent and meaning of the signed drawing and specifications, or as to....

There is no doubt about the gravamen of Shri Roman's contention that it concerns the construction of Clause 4.1 of the Tender. It is his contention that the "lump sum" Tender left no scope for the Contractor to claim any additional payment for any additional work. Indeed, he has contended that for the modification of design and the work carried out therewith, the Contractor has not to be paid anything because the contract would be deemed to include that work as, after the Chief Engineer had accepted the modified design, the work of construction of the bridge in accordance with the contract should be deemed to commence. In that connection, we have already referred to the correspondence passed between the parties, namely, letters aforesaid, dated 9-11-1979, 26-11-1979 and 3-12-1979. On the factual aspect of the contention, our attention is drawn by Shri Rohatgi to the letter addressed by the Executive Engineer Rajghat Dam Construction Division V, to the Superintending Engineer on 22-7-1980 to submit that as per terms of the contract, vide letter dated 13-6-1979, above-referred, of the Superintending Engineer, the said Engineer was authorised to see to the execution of the contract and in the said letter, he had admitted the claim of the Contractors and he had recommended in following terms, the payment claimed by the Contractor:

As already stated above, on account of changes made in the basic parameters of the design i. e. velocity, the stipulations contained in para 4.1 of the tender document under which contractor has to carry out any modification in the design of the bridge at his cost does not appear to hold good, in this case. It is, therefore, felt that the claims of contractor for additional cost appear to be correct.....

Column-9 of Annexure-2 shows the cost of bridge on the basis of revised drawing based on B.C.S.R increased by the percentage referred to above i. e. 121.58%. According to this cost of the new bridge, on account of increase in quantities of various items comes to Rs. 30,26,865/- as against the original offer of Rs. 24 lakhs given by the contractor. It is felt that the increase of Rs. 6,26,865/- due to the contractor on account of increase in the velocity is justified and accordingly recommended for payment to the contractor.

Reliance placed by Shri Roman on the decision cited may now be tested. Time and again, Courts in India have reiterated the view expressed in the leading case of *Champsey Bhara* AIR 1923 PC 66 and it is the view expressed therein which is also reiterated in *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, which Shri Roman has cited. It is settled law that in the case of an award by the Arbitrator in which he has given no reason; it is not open to the Courts to attempt to probe the mental process by which the Arbitrator has reached his conclusion and that only when reasons are given, those can be

questioned. However, it was also held that parties can set limits to actions of an Arbitrator and the Courts can test Arbitrator's exercise of jurisdiction with reference to those limits. In that case, reasons had been disclosed and the Court found that in arriving at his conclusion, the Arbitrator had travelled out of his jurisdiction, albeit, on the interpretation of the Partnership Deed. Reliance on Orissa Mining Corporation Ltd. Vs. Prannath Vishwanath Rawlley, case must also be regarded as misconceived in as much as that is not a case like the present one. Unlike that case, the arbitrators in the instant case have not entertained any "fresh" claim outside afore quoted Clause 4.1 or Clause 17. It cannot indeed be said either that they were unmindful of their jurisdictional limits contemplated thereunder.

We have carefully read the award of the Arbitrators passed in this case. They have not given reasons in the award for upholding Contractors' claim to the extent accepted but it is also equally clear from the recitals in the award that they considered the respective statement of facts and also the counter-claim of facts along with documents submitted by parties in support of their respective cases. Indeed, to some of those documents, Shri Roman has himself drawn our attention. One is a letter dated 6-5-1980 by the Contractors under which the disputed claim was made and the other is reply dated 25-7-1981 by the Superintending Engineer rejecting the claim. In his reply, the Superintending Engineer rested his decision on the afore-quoted Clause 4.1 and as such, it is difficult to accept Shri Roman's contention that the Arbitrators acted without jurisdiction by not applying their mind to said Clause 4.1. In terms of Clause 17, read with Clause 4.1 afore-quoted, as also the terms of reference, the arbitrator in this case, were competent to decide the "disputes"/"claims" afore-quoted. Clause 4.1 envisaged modification of design. Clause 17 of the Contract envisaged claim for "additions" and "increased costs" on account of changed "drawings and specifications" and it authorised any question, dispute and difference in relation thereto being arbitrated. Shri Rohatgi submitted that law on the point has been recently reviewed by their Lordships on 14-2-1989 in the case of M/s. Sudarshan Trading Co. v. Government of Kerala SLP (Civil) Nos. 9459-61 of 1988 and he filed a copy of relevant issue of "Judgments Today" wherein that decision is printed and cited as Sudarshan Trading Co. Vs. Government of Kerala and Another, . It has been held that when an award is challenged on the ground of the arbitrator exceeding his jurisdiction even on the interpretation of the contract as to what items of claim could form referable disputes, the arbitrator could competently pronounce and the High Court could not examine the claims to test the correctness of the view of the arbitrator and to substitute its own decision. However, in the instant case we are satisfied that the Arbitrators had the jurisdiction to construe the relevant clauses 4.1 and 17 and we are also satisfied that on proper interpretation thereof, the Arbitrators have passed the award, accepting partially the claim made by the Contractors.

Another subsidiary contention on arbitrators' jurisdiction, Shri Roman raised faintly, submitting that the award was filed out of time. He conceded that in the

Court below that point was not raised and as such, we have no doubt that the belated contention cannot be entertained and decided by us in these proceedings. See *Shivlal Prasad Vs. Union of India (UOI)*, ; *Bihar State Electricity Board Vs. Khalsa Brothers*, . However, factually also, according to us, the contention has no merit because on the face of the award, we read the recital that from time to time, extension was made for making and signing the award and with the consent of parties, 30-6-1987 was fixed as the last date for that purpose. However, much within time, on 12-6-1983, the award was admittedly made and signed by the Arbitrators.

In the course of proceedings in the Court below, learned District Judge found that against item No. 9, the Arbitrators had made an award of Rs. 1,19,227/- ignoring and overlooking that the Contractors had, vide their letter dated 10-7-1981 agreed to accept Rs. 1,00,000/- in respect of those items. Accordingly, against that item, a deduction of Rs. 19,227/- was made and award in that regard was modified. In this Court, Contractors have not challenged that, but Shri Roman submitted that the entire award be treated as bad, which contention, we have failed to appreciate and accept. We wonder how the entire award can be said to be vitiated when Arbitrators have pronounced separately on several items of claim and each item of the claim is apparently separate and severable.

Despite our holding against the Betwa River Board, on other points raised in their Appeal (M. A. No. 138 of 1987), we have to uphold Shri Roman's contention that interest pendente lite, allowed by the Court below @ 6% per annum and the Arbitrators at the rate of 12% per annum, must be struck off. The award having been passed on 12-6-1983, the decision of their Lordships in the case of *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others*, is fully applicable to the instant case. It has been held by their Lordships that in the cases to which 1978 Interest Act applies, award of interest prior to the proceedings is not open to question, but there can be no award made for pendente lite interest for the simple reason that Arbitrator is not a Court within the meaning of Section 34, Code of CPC when reference to arbitration is not made in the course of any pending suit. Although Shri Rohatgi has relied on a decision of a learned Single Judge of the Calcutta High Court in the case of *West Bengal State Electricity Board v. B. B. M. Enterprises* 1988 (2) CCJ 149, that decision has ceased to be good law in so far as the question of interest is concerned in view of the holding aforesaid of their Lordships of the Supreme Court.

In the result, Contractors' appeal, namely, M. A. No. 133/87 fails and it is dismissed. The appeal of Betwa River Board (M.P. No. 138/87) succeeds partially and is allowed accordingly by modifying the decree passed by the Court below. We hold that the Contractors are entitled to be paid a sum of Rs. 7,32,608/- only and the decree passed by the Court below stands modified accordingly. Parties are left to bear their own costs in the two appeals.