
(2002) 07 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1613 of 2001

Haryana State Agricultural Marketig Board	APPELLANT
Vs	
Jagdish Chand Contractor and Another	RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7)
Interest Act, 1978 — Section 3

Citation : (2003) 1 ARBLR 476 : (2003) 2 CivCC 23 : (2003) 1 RCR(Civil) 780

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Rajesh Bindal, for the Appellant; P.S. Rana, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The short question raised in the present petition filed u/s 115 of the Code of Civil Procedure, 1908, (for brevity, "the Code") is whether an Arbitrator is empowered to award interest with regard to pre-reference period.

The facts which are necessary to decide the aforementioned legal question may first be noticed. A dispute had arisen between the contractor-respondent No. 1 (for brevity, "the contractor") and the petitioner which was referred to the Arbitrator--a Superintending Engineer appointed by the Chief Engineer in accordance with the provisions of Clause 25-A of the contract agreement dated 25.6.1993. The Arbitrator announced the award on 25.5.1995, awarding a sum of Rs. 1,47,080 to the contractor. On the amount of Rs. 1,32,080 interest @ 12% per annum w.e.f. 1.1.1995 till the date of payment was awarded. The petitioner filed the objections u/s 34 of the Arbitration and Conciliation Act, 1996 (for brevity, "the Act") before the District Judge, Karnal contending that the award given by the Arbitrator was not speaking one and the interest awarded by him was against the provisions of the Act. It was further pointed out before the District Judge that the Arbitrator adopted the procedure which is not warranted by law and violated the mandatory provisions of the Act. The objections were

resisted by the contractor and a detailed reply was filed. After framing the issues, the District Judge reached the conclusion that the objections raised by the petitioner were not sustainable in law. The order recorded by the District Judge reads as under :

have considered the submissions of the learned counsel for the parties. In my opinion there is no merit in the arguments advanced by the learned counsel for the petitioner-objector. The main file of the Arbitrator has also been received in this Court and from the perusal of the award dated 25.5.1999 it is revealed that the award is running into 10 pages. The Arbitrator has discussed each and every claim of respondent No. 1 contractor in his award in details. Thus, I fail to understand as to how it can be said that the award is a non-speaking award. The learned counsel for the petitioner-objector could not point out anything as to how it can be said that this award is a non-speaking award. Rather the perusal of the award makes it crystal dear that it is a detailed and well reasoned award.

Regarding the granting of interest by the Arbitrator I would like to say that in view of the provisions contained in Section 31(7)(a) of the Act 1996 the Arbitrator is very much competent to allow interest to the contractor. The Hon"ble Apex Court also in a case State of U.P. Vs. Harish Chandra and Others, . observed that an Arbitrator has power to award interest. Learned counsel for the petitioner-objector could not produce any contrary authority or provision of law in support of his argument and, therefore, this argument of the learned counsel for the petitioner-objector also has no legs to stand upon."

3. Mr. Rajesh Bindal, learned counsel for the petitioner has argued that the Arbitrator was not competent to award interest in respect of pre-reference period. According to the learned counsel, the Arbitrator was appointed on 3.11.1997 and, therefore, the awarding of interest w.e.f. 1.1.1995 to 3.11.1997 is unwarranted by virtue of the provisions of Section 31(7)(b) of the Act. Another submission made by the learned counsel is that Clause 25-A of the contract agreement does not permit awarding of any interest to the contractor and in such a situation, no reliance could have been placed on Section 31(7)(b) of the Act because it was clearly stipulated between the parties that only the amount awarded in connection with the dispute was recoverable. He has further pointed out that the terms of the contract agreement clearly stipulate that no interest could be awarded.

4. Mr. PS. Rana, learned counsel for the contractor has argued that there is no prohibition either in Clause 25-A of the contract agreement or in Section 31(7)(a) (b) of the Act for the Arbitrator to award interest in the manner, the interest has been awarded in the present case. He has placed reliance on a judgment of the Supreme Court in Harish Chandra & Co."s case (supra).

5. After hearing learned counsel for the parties, I am of the considered view that this petition is devoid of merit and is thus liable to be dismissed because the provisions of Interest Act, 1978 (for brevity, "1978 Act") confer express power

on the Arbitrator to allow interest in respect of the period when the amount was payable from the date of institution of the proceedings. The relevant part of Section 3 of 1978 Act reads as under :

"(3) Power of Court to allow interest-

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,--

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in subsection (1),--

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the Court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages."

6. The aforementioned provisions fell for consideration of a Constitution Bench of the Supreme Court in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (Deceased) by LRs. and Ors. (2001) 2 SCC 721 : 2001(1) Arb. LR 346 (SC). After detailed discussion of various judgments, their Lordships of the Supreme Court reached the conclusion that the Arbitrator has the jurisdiction to award interest for the pre-reference period even in cases which arose prior to the commencement of 1978 Act which came into force w.e.f. 19.8.1981. The observations of their Lordships in this regard read as under:

"Both logic and reason should counsel Courts to lean more in favour of the Arbitrator holding to possess all the powers as are necessary to do complete and full justice between the parties in the same manner in which the Civil Court seized of the same dispute could have done. By agreeing to settle all the disputes and claims arising out of or relating to the contract between the parties through arbitration instead of having recourse to Civil Court to vindicate their rights the party concerned cannot be considered to have frittered away and given up any claim which otherwise it could have successfully asserted before Courts and obtained relief. By agreeing to have settlement of disputes through arbitration, the party concerned must be understood to have only opted for a different forum of adjudication with less cumbersome procedure, delay and expenses and not to abandon all or any of its substantive rights under the various laws in force, according to which only even the Arbitrator is obliged to adjudicate the claims referred to him. As long as there is nothing in the arbitration agreement to exclude the jurisdiction of the Arbitrator to entertain a claim for interest on the amounts due under the contract, or any prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of the Arbitrator to consider and award interest in respect of all periods subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the Court thereunder, has to be upheld. The submission that the Arbitrator cannot have jurisdiction to award interest for the period prior to the date of his appointment or entering into reference which alone confers upon him power, is too stale and technical to be countenanced in our hands, for the simple reason that in every case the appointment of an Arbitrator or even resort to Court to vindicate rights could be only after disputes have cropped up between the parties and continue to subsist unresolved, and that if the Arbitrator has the power to deal with and decide disputes which cropped up at a point of time and for the period prior to the appointment of an Arbitrator, it is beyond comprehension as to why and for what reason and with what justification the Arbitrator should be denied only the power to award interest for the pre-reference period when such interest becomes payable and has to be awarded as an accessory or incidental to the sum awarded as due and payable, taking into account the deprivation of the use of such sum to the person lawfully entitled to the same."

7. However, in the present case I do not even need to go that far because the question with regard to awarding of interest has arisen after the date of commencement of 1978 Act which was enforced w.e.f. 19.8.1981. That question was considered in the case of Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, . The judgment in Abhaduta Jena's case (supra), was considered in detail on other questions by a Constitution Bench in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, . and also in the case of Harish Chandra & Co. (supra). The Supreme Court in Harish Chandra & Co.'s case (supra), has laid down that interest in respect of pre-reference period can be awarded by the Arbitrator if

there is no prohibition in the contract agreement. Answering the aforementioned question in Harish Chandra & Co.'s case (supra), their Lordships observed as under :

"So far as this point is concerned, we may note a decision of a three Judge Bench of this Court in State of Orissa Vs. B.N. Agarwalla, etc., , which has clearly ruled in the light of the earlier Constitution Bench judgment of this Court in Secretary, Irrigation Department Govt. of Orissa v. G.C. Roy, that the claim for interest even for the pre-reference period was also within the power and authority of the Arbitrator after the Interest Act, 1978. It is also not in dispute between the parties that in the present cases, the cause of action for reference arose after the coming into force of the Interest Act, 1978. Consequently, it cannot be effectively urged by the learned senior counsel for the appellant-State that the Arbitrator had no power to grant such pre-reference period interest. The first point is, therefore, answered in the affirmative.

8. When the principles laid down by the Supreme Court are applied to the facts of the present case, it becomes evident that reference to the Arbitrator in this case was made on 3.11.1997 in pursuance of Clause 25-A of the contract agreement. The award was announced on 26.5.1999. Therefore, by virtue of the provisions of 1978 Act, the Arbitrator which is Court within the meaning of 1978 Act would enjoy jurisdiction to award interest. There is no provision in Clause 25-A of the contract agreement which may prohibit the Arbitrator from awarding interest for pre-reference period. Clause 25-A of the contract agreement reads as under :

"Clause 25A. If any question, difference or object (sic ?] whatsoever shall arise in any way connected with or arising out of this instrument or the meaning or operation on any part thereof or the right duties or liabilities of either party then save insofar as the decision of any such matter herein before provided for and has been so decided every such matter including whether its decision has been otherwise provided for any/or whether it has finally decided accordingly or whether the contract should have been terminated or has been rightly terminated and as regards the rights and obligations, of the parties as the result of such termination shall be referred for arbitration or Arbitrator not below the rank of Superintending Engineer to be appointed by the Chief Engineer or the Board within 180 days viz. six months from the date of making final payment to the contract or when the contractor is willing to receive the payment from the date registered notice is sent to him that final bill is ready for payment and his decision shall be final and binding and when the matter in values (sic.....?) the Arbitrators shall pass a speaking order announcing the Award. Nothing shall be paid to escalation in cost. A claim for the payment or recovery or deduction of money, only the amount if any awarded in such Arbitrator shall be recoverable in respect of the matter so referred."

A perusal of the above clause shows that there is no bar on the Arbitrator to award interest for pre-reference period. Therefore, the 1978 Act would become

applicable and the Arbitrator would acquire jurisdiction to award interest.

9. The argument of Mr. Bindal that Section 25A of the Act should be construed to mean that only the amount awarded in connection with dispute was recoverable but no interest could be awarded or recovered, does not deserve to be accepted. The plain language of Clause 25-A of the contract agreement clearly shows that the Arbitrator has the jurisdiction to award interest in respect of the pre-reference period. Therefore, Section 31(7)(a) of the Act has been rightly invoked by the Arbitrator. Even otherwise, Section 3 of 1978 Act would intervene and empower the Arbitrator to award interest which has been interpreted by the Supreme Court in *Abhaduta Jena*, *G.C. Roy* and *Harish Chandra & Co.*'s cases (*supra*).

10. For the reasons recorded above, this revision petition fails and the same is dismissed.