
(2011) 09 DEL CK 0308
In the Delhi High Court
Case No : O.M.P. No. 201 of 2001

ITI Ltd.

APPELLANT

Vs

Par Pressings

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19(4), 34, 81
Civil Procedure Code, 1908 (CPC) — Section 34
Evidence Act, 1872 — Section 23

Citation : (2011) 09 DEL CK 0308

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Dayan Krishnan, Gautam Narayan and Nikhil A. Menon, for the Appellant; C. Mukund and Pankaj Jain, for the Respondent

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J.—These objections have been preferred by the Petitioner ITI Limited u/s 34 of Arbitration and Conciliation act, 1996 (for short "the Act") to assail the award dated 16/06/2001 passed by the sole arbitrator, Sh. Devender Kumar Sangal, former Secretary and Director General, Department of Telecommunications, whereby the claims of the Respondent, who was claimant before the arbitral proceedings, were awarded.

2. At the relevant time, the Petitioner ITI Limited used to undertake the manufacture and assembly of various mechanical products. The Respondent, Par Pressings - a small scale industry, was selected as an Ancillary Unit for the supply of Unit Assemblies (UTAs). These UTAs were the sub-assemblies of the Cross Bar Telephone Exchanges manufactured by the Petitioner Company which they supplied to Department of Telecommunications (DOT). Sometime in January, 1992, the Cross Bar Exchanges were phased out by the DOT. Consequent to the phasing out of the Cross Bar Exchanges, the DOT cancelled the orders placed by it on the Petitioner. The Petitioner company vide its communications dated

05.02.1992, 07.03.1992 and 30.04.1992 required the Respondent to stop the supply of UTAs. This gave rise to claims by the Respondent against the Petitioner.

3. Due to this pre- closure of supply of orders by the Petitioner, the Respondent vide its letters dated 16/03/1992, 11/5/1992 requested the Petitioner to reconsider its decision and pay for the UTAs already delivered and which were ready for the delivery and were lying with the Respondent. The Respondent pleaded that they had already manufactured or were in the process of manufacturing the UTAs under the orders, which were sought to be foreclosed.

4. Due to continuous persuasion of the Respondent, the Petitioner formed a high level committee to look into the claims of the Respondent and resolve the matter satisfactory. The committee met on 23/09/1992 and on 01/10/1992 in which the Respondent also participated and briefed the committee about its claims. In the meeting held on 01/10/1992 various decisions were taken in which the UTAs worth Rs. 3,61,703/- were accepted by the Petitioner. The Petitioner also agreed that the other claims of the Respondent be forwarded to DOT for compensation.

5. The Petitioner forwarded the claims of the Respondent amounting to Rs. 17.40 lakhs to DOT for payment along with its various other claims. On 14/01/1997 DOT agreed to compensate the Petitioner to a tune of Rs. 9.82 crores against the total claim of Rs. 27.45 crores. DOT did not specify the amount claim wise, under each head, and awarded the compensation as a lump sum.

6. The Chairman of the Petitioner considered the claims of Respondent and laid down certain guidelines for the payment to the Respondent. However, the General Manager of the Petitioner unit took the stand that as the DOT has not accorded any compensation specifically in relation to the Respondent's claims, so no payments could be made to them.

7. The Respondent kept on pursuing its claim and the Board of Directors of the Petitioner, in its meeting held on 30.04.1999, decided to appoint an independent eminent personality to decide the disputes between the parties and give his considered opinion.

8. Before the arbitrator, the Petitioner raised a preliminary objection about the claim of the Respondent being barred by the law of limitation. The arbitrator, after considering the submissions of both the parties gave a reasoned preliminary award to the effect that the claimant's claim was not barred by limitation under the Act read with the Limitation Act, 1963.

9. The Petitioner challenged the interim award of the arbitrator u/s 34 of The Act by filing OMP No. 214/2000 which was decided on 04/12/2009. The objections of the Petitioner were dismissed and the interim award was upheld. The Petitioner also objected to the nature of proceedings by contending that they were not arbitration proceeding. The Court rejected this contention of the Petitioner as well and held the proceedings to be arbitration proceeding.

10. The learned senior counsel for the Petitioner urges that the findings returned

are perverse and contrary to law and public policy and the award is, therefore, liable to be set aside.

11. Learned senior counsel for the Petitioner contends that the award has been passed on the basis that there was deemed acceptance of the Respondent's claims by the Petitioner, merely because the Petitioner agreed to forward the claims of the Respondent to the DOT and they were included in the compensation claimed by the Petitioner from DOT.

12. Learned senior counsel for the Petitioner submits that the Petitioner has never accepted the liability towards the Respondent, and these claims were intimidated to the DOT only for settling the matter as a way of possible settlement. Never, in any correspondences or meetings, the Petitioner accepted the said liability. The learned senior counsel further contends that the said communication was only sent as a means of settlement, and they are specifically barred by Section 81 of the Act, and Section 23 of Evidence Act. He submits that there is a specific bar in Section 81 of the Act which states that any admission made during conciliation proceedings as a means of settlement will not be put up in any judicial or arbitral proceedings as an admission. Learned Counsel submits that the arbitrator has committed a patent illegality in coming to his conclusion, which is wholly erroneous and contrary to the facts. Learned Counsel for the Petitioner has placed reliance on *Sukhdev Gambhir v. A P S Gambhir*, 2009 (1) AD (Del) 821, in support of his aforesaid submission.

13. Learned senior counsel for the Petitioner further submits that the Ld. Arbitrator has conducted legal misconduct by ignoring the letter dated 07/03/1992 marked "X" in the impugned award, written by the Petitioner to the Respondent for stoppage of supply of 40 codes of UTAs. He submits that the Respondent had acknowledged the receipt of this letter and had sent a reply dated 16.03.1992 to this communication. Due to non consideration of the said letter and its reply, the cut-off date (when the orders were foreclosed) has been taken by the learned Arbitrator as 05.05.1992, whereas the same should have been taken as 10.03.1992, when the said letter marked "X" was received by the Respondent. The Petitioner submits that the arbitrator has accepted the plea of the Respondent that the said letter was antedated and was written after the letter of 30.04.1992, and that the same was obtained by duress and coercion. He submits that the arbitrator has come to a conclusion of duress without any evidence. In respect of the reply dated 16.03.1992, the Petitioner's counsel submits that no pleading of duress or coercion in relation to issuance of the said communication was made. The counsel submits that the arbitrator has recorded that there was no evidence led by the Respondent in this regard to show that Respondent was under duress to give the reply dated 16.03.1992.

14. The next submission of learned senior counsel of the Petitioner is that the Respondent, with the collusion with some officials of the Petitioner company, had been dumping the UTAs in the Petitioner's compound without any formal receipt and without following due procedure. Under the contractual terms, the

Respondent was required to supply the third copy of the Challan to the ancillary department of the Petitioner company, which was never done. The counsel further submits that the goods were never accepted by the Petitioner and they were delivered without acceptance. It is submitted that the Petitioner has taken disciplinary action against the officials who were in connivance with the Respondent and this fact was placed before the Ld. Arbitrator.

15. The next submission of Id counsel for the Petitioner is regarding the levying of interest as per "Interest on Delayed payments to Small Scale & Ancillary Industrial Undertakings Act, 1993"(Interest Act). He contends that the said act came into force on 23/09/1992 and the entire cause of action arose before that date. He submits that there is patent illegality in the award, in awarding the interest under the Interest Act.

16. The Ld. counsel of the Petitioner relies upon Shakti Tubes Ltd. Vs. State of Bihar and Others, , wherein the Supreme Court held that the said Interest Act cannot be given retrospective effect. The following extract is relied upon by the Petitioner:

We have considered the aforesaid rival submissions. This Court in Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another, has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the Respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in paragraph 37 of the judgment which we had already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in paragraph 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made. Therefore, the submission made by the learned senior counsel appearing for the Appellant-plaintiff fails.

Consequently, we hold that the supply order having been placed herein prior to the coming into force of the Act, any supply made pursuant to the said supply orders would be governed not by the provisions of the Act but by the provisions of Section 34 of the Code of Civil Procedure.

(Emphasis supplied)

17. Learned senior counsel for the Petitioner submits that to determine whether the Interest Act is applicable or not, the date on which order was placed has relevance. He submits that all the purchase orders, undeniably, were placed by the Petitioner before 23.09.1992, i.e. the date on which the Interest Act became applicable. He submits that there is patent illegality in the impugned award in this regard.

18. On the other hand, learned Counsel of the Respondent urges that the

arbitrator has passed a reasoned and detailed award taking into consideration the factual matrix and the evidence led before him, and there is no infirmity or illegality in the award.

19. The learned Counsel of the Respondent submits that the Respondent is a small scale industry and was only working for Petitioner since long, and executing the orders of the Petitioner exclusively.

20. It is submitted that the plea of the Petitioner that the Respondent continued to supply the material even after closure of the various orders in collusion with the officials of the Petitioner is not correct. Not a single piece of evidence was produced before the learned Arbitrator to support the allegation of collusion between the officials of the Petitioner with the Respondent. He submits that whatever action is alleged to have been taken by the Petitioner against its officials, is their internal matter. The contention regarding non deposit of third copy of challan is not supported by evidence, as the Petitioner has accorded payments in the past even when third copy of challan was not submitted.

21. Ld. counsel of the Respondent further submits that the findings related to letter dated 07.03.1992 marked "X" are factual, based on the evidence and circumstances placed before the learned Arbitrator and the said findings have been arrived at after analysis of the other contemporaneous correspondence exchanged between the parties. He submits that the Respondent had specifically pleaded exercise of duress and coercion by the Petitioner in introducing a back dated communication by the Petitioner, and in extracting a back date reply thereto. He submits that the said factual finding cannot be said to be completely unsupported by evidence, and there is nothing illegal about the said finding.

22. Learned Counsel referred to the specific plea regarding the said letter being antedated in the statement of claim at para 15, which is reproduced:

The Claimant in 3rd week of June, 1992 received backdated letter dated March 7, 1992 from the Respondent stating therein that "As the per the decision of the originator, supplies of following codes of unit Assemblers may please be stopped from immediate effect(sic).The letter further directed the claimant to make arrangements to return the material issued against the codes mentioned in the said letter. The Claimant submits that the said letter was deliberately backdated by the Respondent to protect certain officials and smacks of arbitrariness and impropriety. The claimant submits that this act of the Respondent is fraudulent with all its ramifications.

23. Regarding the reply to the said letter dated 16.03.1992, the specific pleading in "Reply of the Claimant to the Statement of Objections of the Respondent", particularly in para 14 reads as follows:

. ...This letter dated February 16, 1992 was backdated under duress as it was actually issued sometime in the 3rd week of June 1992. A threat was held against the Claimant by the Respondent that in case we do not give such a letter,

there would be great financial disaster. It is worthwhile to note that the Respondent themselves have initiated disciplinary action against the officers for their misconduct in relation to the Claimant. ...

(Date wrongly mentioned as 16/02/1992 instead of 16/03/1992). 24. Learned Counsel of the Respondent submits that while looking into the matters, high power committee of the Petitioner (which was formed to look into the disputes of the parties) in its meeting held on 01.10.1992 accepted the date of the short closure as 05.05.1992. The relevant from the said minutes reads as follows

The party has supplied UTAs in between 1.4.92 to 5.5.92 i.e. the day from short closure orders were given to the party worth Rs. 6,40,501.99.....

25. Learned Counsel for the Respondent submits that the Petitioner's submission that their admission cannot be read before arbitral tribunal in view of Section 81 of The Act and Section 23 of evidence act is untenable, as both these provisions are not attracted in this case. The Respondent submits that the Petitioner included the Respondents claimed amount of Rs. 17.40 lakh in their own claim, to demand compensation from DOT vide letter dated 28.01.1995, after being satisfied with, and after verifying the genuineness of the Respondents claim.

26. The Respondent submits that there were no conciliation proceedings undertaken by the parties, and the Petitioner never took the stand before the arbitrator.

27. Respondent further submits that the interest awarded by the Ld. Arbitrator is justified, as the Respondent is a small scale ancillary unit and this fact has already been accepted by the Petitioner even before the arbitrator. The Interest Act provides the special rate of interest for the payment of dues of ancillary and small scale units, and the Respondent comes under it.

28. The jurisdiction of this Court to interfere with an award is limited. The findings of fact arrived by an arbitrator cannot be interfered with if there is some evidence before him to support the same. Unless the Court concludes that the findings are such that no person can reasonably arrive at in the given set of facts and circumstances, the Court would not interfere merely because the Court may have arrived at another conclusion. Therefore, if the arbitrator has adopted one of the possible views, the Court would not interfere with it.

29. A perusal of the impugned award shows that the same is very detailed. It, inter alia, consists of the summary of the award, the final award with reasons, and Annexure-4, i.e. the examination of the main points on which the Respondent/claimant and the Petitioner/non-claimant were on disagreement. In Annexure-4 to the award, the learned arbitrator has formulated various issues arising for consideration, which have then been discussed. He notes the submissions of the parties, his own observations, followed by his conclusion. The award made by the learned arbitrator appears to be extremely well reasoned and analytical in its content.

30. The first issue framed by him was whether the firm and valid purchase orders could be cancelled unilaterally by the Petitioner herein, or not, and if so, what are the consequences of the same. He holds that the purchase orders placed by the Petitioner and accepted by the Respondent form a valid contract between them in terms of the Indian Contract Act. The purchase orders were subject to terms and conditions stated overleaf. The purchase orders could be cancelled for delay in delivery of the finished products by the Respondent under Clause 2 of the terms and conditions. However, the learned arbitrator takes note of the fact that while cancelling the purchase orders, the Petitioner did not resort to Clause 2. He also takes note of the fact that the delivery schedule laid down in the various purchase orders was never adhered to. In fact, the performance of the contract by the Respondent was dependent upon the Petitioner's own compliance, inasmuch as, for the manufacture of the finished product by the Respondent, the Petitioner was obliged to supply components by the Petitioner.

31. The learned arbitrator holds that, considering the fact that the DOT had stopped induction of cross bar exchanges in its network, and cancelled the orders placed upon the Petitioner for such exchanges, the cancellation of the orders placed by the Petitioner on the Respondent for the UTAs was justified. However, for such cancellation, the Petitioner was bound to compensate the Respondent for any losses incurred by it due to such cancellation. This finding of the learned arbitrator is unexceptionable.

32. The learned Arbitrator then considers the issue whether the Petitioner's second letter dated 07.03.1992 marked "X", which instructed the Respondent to stop supplies of UTAs to 40 codes covered by 14 purchase orders, and asking for return of piece parts supplied by the Petitioner for the production, was in fact issued before the issue of the Petitioner's letter dated 30.04.1992 short closing the 14 purchase orders. He also considers the issue as to when the 14 purchase orders were effectively short closed.

33. A perusal of the award shows that the learned arbitrator takes note of the Respondent's submission that they are not in a position to produce any direct evidence to prove that the letter marked "X" dated 07.03.1992 and the reply thereto dated 16.03.1992 were both back dated. He then proceeds to examine the circumstantial pointers for his conclusion that the said letters were indeed back dated.

34. The learned arbitrator observes that another letter of the same date was also issued by the Petitioner to the Respondent in relation to UTAs of 11 codes. He wonders why two separate letters were issued on the same date. In the other letter dated 07.03.1992 in relation to UTAs stood two codes, it was stated that confirmation about them would be given later on. However, both these codes were mentioned in the letter marked "X" for stopping supplies. In the first letter dated 07.03.1992 (in relation to which there is no dispute), the Petitioner had asked for supplies on urgent basis.

35. The learned arbitrator also takes note of the Petitioner's letter dated 30.04.1992 short closing, i.e. cancelling the 14 purchase orders and asking for details of supplies already made and the balance quantities available. 13 of these 14 purchase orders are common to the letter marked "X" of 07.03.1992. The same person had signed the letter dated 30.04.1992 and the letter marked "X" of 07.03.1992. The learned arbitrator wonders that if the letter marked "X" of 07.03.1992 had already been issued, delivered and replied to, the person issuing the letter dated 30.04.1992 should have known that supplies on 13 of the 14 purchase orders have already been stopped and return of material requested. In this eventuality, there was no occasion to mention the same purchase orders again in that letter dated 30.04.1992. He also observes that if the letter marked "X" dated 07.03.1992 and the letter dated 16.03.1992 had already been exchanged, there would have been a reference to them in the subsequent communication dated 30.04.1992.

36. Last but not the least, the learned arbitrator also takes note of the fact that the committee appointed by the Petitioner to discuss the Respondents claims acknowledged in para 4 of their note that the foreclosure of the purchase orders took place on 05.05.1992. On this basis, he has concluded that the letter marked ""'s dated 07.03.1992 calling upon the Respondent to stop supplies of 14 codes of UTAs against 14 purchase orders listed therein, and the Respondents letter dated 16.03.1992 did not pre-date the Petitioners letter dated 30.04.1992 delivered to the Respondent/claimant on 05.05.1992. Consequently, he holds that formal short closing of 14 purchase orders took effect only on 05.05.1992 and not on 07.03.1992, as contended by the Petitioner.

37. From the aforesaid, it would be seen that the learned arbitrator has analysed and appreciated the factual situation presented before him. The power of the learned arbitrator includes the power to determine the admissibility, relevance, materiality and weight of any evidence (see Section 19(4) of the Act). It cannot be said that the finding returned by the learned arbitrator in relation to the letter marked "X" dated 07.03.1992 and the Respondents letter dated 16.03.1992 to the effect that they were back dated, is wholly implausible or perverse. The same appears to be a plausible view in the facts and circumstances, and for the reasons disclosed in the award. Challenge to this finding is meritless.

38. The learned arbitrator has then gone on to examine the issue whether various purchase orders against which the Respondent/claimant produced and supplied UTAs forming subject matter of claim "A" were valid at the relevant time. Once again, I find that his reasoning for concluding that all the 25 purchase orders against which the Respondent/claimant produced and supplied UTAs were valid upto 05.05.1992 (when 14 of these were short closed), and 11 purchase orders were never cancelled or short closed even after 05.05.1992, is well reasoned and unexceptionable. Learned senior counsel for the Petitioner has not been able to assail the said finding, which is a sequiter to the finding that the Petitioner's letter marked "X" dated 07.03.1992 and the Respondents letter

dated 16.03.1992 were both ante dated.

39. The learned arbitrator has also considered the aspect whether the Respondent/claimant was justified in producing the UTAs to the other codes even after receipt of the Petitioners letters dated 05.02.1992 and 07.03.1992, whereby the Petitioners required the Respondent to stop supplies of UTAs to certain codes. The learned arbitrator has observed that instruction to merely stop the supply till further information, does not tantamount to cancellation of the purchase orders and did not oblige the Respondent/claimant to stop production of the UTAs. While returning this finding, he also takes note of the Petitioner's conduct that the Petitioner continued to supply proprietary piece parts to the Respondent even in respect of those codes of UTAs in respect of which the Petitioner asked the Respondent to stop supplies till further instructions. The view taken by the learned arbitrator that the Respondent was, therefore, entitled to continue production of UTAs, in respect of which the Petitioner had asked the Respondent to stop the supplies, is perfectly legal and justified.

40. The learned arbitrator has also considered the issue whether the note recorded by the committee appointed by the Director, Raiberali Unit after discussion with the Respondent on 01.10.1992, followed by inclusion of a sum of Rs. 17.40 lacs as the amount claimable by the Respondent, in the Petitioners own claim for compensation from DOT under the Petitioners letter dated 16.11.1993 amounts to an admission of liability by the Petitioner.

41. From the award it is seen that a high level committee of the Petitioner met on 01.10.1992 with the Respondents representative and computed the value of the supplies of UTAs made before 05.05.1992, i.e. the date of short close of orders as Rs. 7,29,255.99; the value of UTAs lying ready with the Respondent as Rs. 7,35,409.33, and; the value of the raw material procured by the Respondent at Rs. 2 lacs approximately. The working out of the figures to the last paisa, as aforesaid, shows due application of mind to the factual position. The arbitrator observes that the decision taken on 01.10.1992 was taken after considering the correspondence of the parties prior to 01.10.1992. At the relevant time, the parties were aware of the contemporary procedure. Not only that, the Petitioner took up follow action by including the Respondents claim in their claims raised to the DOT for cancellation of the Petitioner's orders by DOT.

42. The learned arbitrator after summoning the records of the Petitioner and perusing the same, concluded that the Respondents claim to the extent of Rs. 17.4 lacs had been included by the Petitioner in its claim raised before the DOT. In fact, the Petitioner had initially made a provisional claim of Rs. 16.5 crores on the DOT on 26.03.1993, which was revised vide letter dated 16.11.1993 to Rs. 27.45 crores. The revised amount included a provisional figure of Rs. 20 lacs towards payment demanded by the ancillary units including the Respondent. The arbitrator also takes note of the follow up letter dated 28.01.1995 issued by the Petitioner to the DOT claiming an amount of Rs. 22.09 lacs for cancellation of orders of the ancillary units. He observes that the claim made by the Petitioner

on the DOT was "almost a carbon copy of the statement in respect of claim "A" submitted by the claimant with its submission dated 27.07.1999".

43. I may note that in his reasoning the learned arbitrator takes note of other communications of the Petitioner, and only thereafter concludes that the inclusion of the Respondents claim amounting to Rs. 17.40 lacs in its claim on DOT tantamounts to an implicit admission by the Petitioner about the genuineness of the Respondents claim, and the Petitioners liability to pay the same.

44. Reliance placed by learned senior counsel for the Petitioner on Section 23 of the Evidence Act is wholly misplaced. Admittedly, when the Petitioner lodged its claim with the DOT, which included the Respondents claim on the Petitioner, there was no express agreement that the Respondent would be precluded from relying upon the factum of inclusion of its claim in the Petitioners claim on DOT. There is no circumstance brought forth by the Petitioner either before the arbitral tribunal, or even before me to lead to an interference that the parties agreed together that the Respondent would be precluded from relying upon the factum of the Petitioners including the Respondents claim to the extent of Rs. 17.40 lacs in its claim on DOT. In fact, a perusal of the award shows that before including the said claim of Rs. 17.40 lacs as a part of its claim on DOT, the Petitioner undertook an exercise of verification of the said claim through its high level committee.

45. Similarly, reliance placed on Section 81 of the Act by the learned senior counsel for the Petitioner appears to be completely misplaced. It cannot be said that the admission of liability by the Petitioner to the extent of Rs. 17.40 lacs claimed under claim "A" was an admission made by the Petitioner in the course of conciliation proceedings. The manner in which the conciliation proceedings under the Act can be initiated is set out in a 62. It is not the Petitioner's case that conciliation proceedings u/s 62 were undertaken by the parties. For holding conciliation proceedings, there has to be an independent conciliator. In this case, it was the two parties who met and reconciled the facts and figures as recorded in the note dated 01.10.1992. There was no independent conciliator involved.

46. The view taken by the learned arbitrator appears to be perfectly plausible and does not call for interference by this Court, as it is based on credible evidence considered by him. The reasoning adopted by the learned arbitrator cannot certainly be termed as perverse or such that no reasonable person could have adopted.

47. Reliance placed on Sukhdev Singh (*supra*) is misplaced, as I have concluded that in the present case, no conciliation proceedings ever took place between the parties in terms of Section 81 of the Act.

48. The objection of the Petitioner that the learned arbitrator has committed a patent illegality in directing payment of interest under the Interest Act appears to be justified and to that extent, it appears, that the award suffers from a patent illegality. The learned arbitrator applied the provisions of the Interest Act without

noticing the fundamental position that the said Act came into force on 23.09.1992, whereas, admittedly, all the purchase orders were placed on the Respondent prior to that date. In the light of the decision of the Supreme Court in Shakti Tubes Ltd. (supra), it is clear that the "transaction" in question took place prior to the coming into force of the Interest Act. I may also note that on this aspect, learned Counsel for the Respondent has fairly stated that the interest could not be awarded by resort to the Interest Act. Merely because the Respondent is a small scale and an ancillary industrial undertaking, the award of interest, as made by the learned arbitrator, by resort to the Interest Act cannot be upheld. That is a special Act, and its provisions cannot be given retrospective effect, as that is clearly not the intendment of the Interest Act. The award of interest, therefore, appears to be highly excessive and deserves to be set aside and be substituted by this Court.

49. The submission of the Petitioner that there was collusion between the officers of the Petitioner and the Respondent and, therefore, action was initiated against the officers of the Petitioner was not proved by the Petitioner before the learned arbitrator. A perusal of para 12.2 of Annexure-4 of the award shows that the Petitioners failed to produce any material before the arbitrator in this regard. The finding of the learned arbitrator that the said plea was unsubstantiated, therefore, appears to be completely justified.

50. In this case, even though the transaction took place in early 1992, the Respondent slept over the matter and, it appears, no steps were taken for over two years. On 03.10.1994, the Respondent called upon the CMD of the Petitioner to examine the Respondent's claims. The Respondent did not initiate any legal action and only in the year 1999, the Petitioner decided to appoint an arbitrator following the decision of the high level committee taken on 30.04.1999. It would therefore be seen that between the year 1992 and 1999, the Respondent, apart from making representations to the Petitioner, did not take any legal steps in the matter. A party who is not vigilant about its claims cannot seek to gain advantage by claiming interest for the period for which it has remained dormant and legally inactive. I am, therefore of the view that the award of interest for the period 1992 to 22.07.1999 (when the Respondent submitted its claim before the learned Arbitrator), the Respondent would not be entitled to claim any interest.

51. Considering the nature of the claim, the period to which it relates, and the overall circumstance, I modify the award made on claim "F", by directing that the Respondent shall be entitled to interest @ 9% p.a. on the awarded claims from 22.07.1999 onwards till the making of the award, and at the same rate from the date of the award till payment.

52. With the aforesaid modification, the petition stands disposed of.