
(2002) 05 GAU CK 0038

In the Gauhati High Court

Case No : Civil Revision No's. 4 and 6 (SH) of 1998

Kuljit Singh and Co.

APPELLANT

Vs

North Eastern Electric Power Corporation and Another

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Arbitration Act, 1940 — Section 16, 16(1), 17, 20, 29

Citation : (2002) 2 GLT 476

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : S.R. Sen and P.D.B. Baruah, for the Appellant; M.Z. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—These two civil revisions arise out of the orders dated 4.3.97 passed by the Additional Deputy Commissioner, East Khasi Hills, Shillong, in Misc. Civil Appeal No. 19(T) 93 and Civil Appeal No. 18(T) 93, involving common question of facts and law and, therefore, these two civil revisions were taken up for hearing jointly. These two civil revisions are also finally disposed of with the following common judgment and order.

2. In Civil Revision No. 6(SH) 1998, the Petitioner and the Respondents entered into a contract agreement being contract agreement No. NEEPCO/CE/5 of 79-80 dated 10.12.79 for the work of outlet work for Khadong Power House - RCC Duet and Trail Race Channel Lining which formed part of Kopili in C.R. No. 4 (SH) Hydro Electric Project in North Cachar Hills District. Similarly the Petitioner and the Respondents entered into Anr. contract agreement being contract agreement No. NEEPCO/CE/5 of 79-80, dated 10.12.79 for the work of Khandong Power House-RCC Duet and Trail Race Channel Lining which formed part of Kopili Hydro Electric Project in North Cachar Hills District.

3. Certain disputes arose between the parties with respect to aforesaid contracts

and pursuant to the arbitration clause being contained in the contract agreements executed between the parties, the disputes referred to arbitrators appointed by both the parties for arbitration. The arbitrators passed an award on 29.4.90 and the same was made rule of the Court by order dated 18.5.93 passed in (Arb) Misc. Case No. 62(T)90 by the Court of the Assistant to the Deputy Commissioner, Shillong, and while making the award rule of the Court, the said Court also awarded interest at the rate of 18% per annum from the date of the decree till final realisation of the awarded/decreetal amount with certain conditions. This is in respect of Civil Revision No. 4(SH)98. So far as Civil Revision No. 6(SH)98 is concerned, the Petitioner submitted ten claims for adjudication. Out of the ten claims, claim Nos. 7 and 8 were for mesne profit/interest from due date of payment upto the date of reference and for interest pendente lite. After the arbitrators made and published the award on 29.4.90, on objection raised by the concerned party, the award was remitted back to the arbitrators by the Court for giving reasons and thereafter, the arbitrators gave their reasons on 12.8.91 and filed the same before the Court. But the arbitrators did not adjudicate claim Nos. 7 and 8. Therefore, the Petitioner filed an application under Sections 8 and 20 of the Arbitration Act, 1940, (hereinafter called "the Act of 1940") which was registered as (Arb) Misc. Case No. 111(T)1990, for referring the claim Nos. 7 and 8 to a new Board of Arbitrators for adjudication of the same. The Assistant to the Deputy Commissioner, Shillong, after hearing the parties by his order dated 18.5.93 allowed the petition and directed the Respondents to refer the claim Nos. 7 and 8 to a new Board of Arbitrators. Being aggrieved by the aforesaid order dated 18.5.93, the Respondents preferred Misc. Civil Appeal No. 19(T) 93 in the Court of the Additional Deputy Commissioner, Shillong. The learned appellate Court set aside the order dated 18.5.93 by a common judgment and order dated 4.8.97 in Misc. Civil Appeal No. 18(T) 93 and Misc. Civil Appeal No. 19(T) 93 filed by the Respondents. Aggrieved by the common judgment and order dated 4.8.97 passed by the Additional Deputy Commissioner, Shillong, the Petitioner has preferred these two civil revisions.

4. Mr. S.R. Sen, learned senior counsel for the Petitioner assisted by Ms P.D.B. Barua, contended that the learned lower appellate Court below has acted illegally in exercise of its jurisdiction in setting aside the interest of 11% per annum on the awarded amount of Rs. 13,15,605.00 from the date of notice of making and signing the award till the date of actual payment of decreetal money whichever is earlier as awarded by the arbitrators and that, in the absence of any challenge by the Appellants in its memo of appeal regarding the award of interest @11% per annum on the awarded amount, suo moto interference by the appellate Court below to set aside the same was wholly uncalled for and not permissible under the law. Referring to Civil Revision No. 6(SH) 98, Mr. Sen, learned senior counsel, argued that the learned appellate Court below acted illegally in exercise of its jurisdiction by holding that the Petitioner has no ground to file an application under Sections 8 and 20 of the Act of 1940 for adjudication of the

claim Nos. 7 & 8. He further argued that the learned appellate Court below has failed to apply its judicial mind to the fact and the settled position of law that the arbitrator has the power to award interest pendente lite even if the agreement is silent but the parties claim interest and the same is referred to the arbitrators along with other claims, the arbitrators shall have the power to award interest pendente lite. Supporting the case of the Petitioner, Mr. Sen, learned senior counsel, also relied upon the grounds taken in these two revision petitions.

5. Mr. M.Z. Ahmed, learned Counsel appearing for the Respondents, on the other hand, contended that the joint arbitrators made and published their award on 29.4.90 but no objection was raised against the said award. However, the learned Court below sent back the records to the arbitrators with a direction to give reasons and accordingly, the arbitrators gave their reasons on 12.8.91 and filed the same in the Court. Mr. Ahmed also relied on the related Clause-K. 1.42 of the contract agreement and submitted that the claims in question is not at all arbitrable.

6. Now this Court is to see and examine as to whether the present Petitioner could make out a prima facie case to justify interference with the impugned common judgment and order or not.

7. Upon hearing the learned Counsel for the parties and also on perusal of the available materials on record, I am of the view that the Petitioner failed to make out a case to justify interference with the impugned common judgment and order passed by the learned first appellate Court for the following reasons:

Though the Petitioner in Civil Revision No. 6(SH) 98 raised its claim being claim Nos. 7 and 8 relating to mesne profit/interest from the due date of payment upto the date of reference and for interest pendente lite, the joint arbitrators upon hearing the parties ultimately made and published their award on 29.4.90 but no objection has been raised by the parties concerned against the said award. However, the award along with the records were remitted back to the arbitrators by the learned Court below for giving reasons and accordingly, the arbitrators gave their reasons on 12.8.91 and the same was filed in the Court, in other words, the claim Nos. 7 and 8 were not adjudicated upon and that being the position, the Petitioner filed an application u/s 8 and 20 of the Act of 1940 which was registered as (Arb) Misc. Case No. 11(T) 90. Thereafter the Court of the Assistant to the Deputy Commissioner, Shillong, allowed the said application by his order dated 18.5.93. In my considered view, the learned appellate Court below rightly appreciated the provisions of Sections 8 and 20 of the Act of 1940 while passing the impugned common judgment and order dated 4.8.97 since there was no application u/s 16 of the Act of 1940 to direct the joint arbitrators to adjudicate claim Nos. 7 and 8 before filing the application u/s 17 of the Act of 1940 and as such it automatically presumed that the Petitioner was satisfied with the award of joint arbitrators. The Petitioner approached the Court below with an application u/s 8 and 20 of the Act of 1940 instead of filing an application u/s 16 of the Act of 1940 which was not tenable in the eye of law. For better

appreciation in the matter, the related portion of Section 16 of the Act of 1940 is quoted herein below:

Power to remit award?

(1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit?

(a) where the award has left undermined any of the matters referred to arbitration or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under Sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under Sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

8. Clause No. K.1.42 of the contract agreement is also important and relevant. Accordingly, it is quoted herein below:

No claims for interest or damages will be entertained by the Corporation with respect to any money or balances which may be lying with the Corporation owing to any dispute difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payments, or in any other respect whatsoever.

9. It is true that the Court has the power to award interest in so far on an award for payment of money from the date of the decree or award on such rate as the Court deems fit and reasonable and accordingly, the interest awarded by the Court of the Assistant to the Deputy Commissioner, Shillong, in its order dated 18.5.93 passed in (Aib) Misc. Case No. 62(T)90 at the rate of 18% per annum from the date of the decree till final realisation of the awarded/decreetal amount was upheld by the first appellate Court. However, the learned first appellate Court misappreciated the provisions of Section 29 of the Act of 1940 and wrongly relied upon the decision of the Apex Court reported in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, in holding that the joint arbitrators have the power to grant interest pendente lite when the agreement is silent about it however the appellate Court upheld the order of the

learned Assistant to the Deputy Commissioner, Shillong. There is no appeal from the end of the Respondents and in that view of the matter, the Court is not interfering with the order of the appellate Court. It may be mentioned that in the absence of specific clause or term in the agreement that if any dispute is raised by the parties beyond the terms of the contract agreement, the same is not arbitrable. In view of the clear term of contract agreement, namely Clause K.1.42 mentioned above no claim for interest or damages will be entertained by the corporation with respect to any matter mentioned in the said clause. In this connection, a reference can be made to a decision of the Apex Court in Gautam Construction and Fisheries Limited v. Nabard, reported as (2000) AIR SCW 3183, wherein the Apex Court held thus ? "So far as the interest is concerned no exception would be taken to the award at the rate of 12% per annum. The grant of interest at the rate of 18% per annum is directly oppose to the specific terms in the contract and it is not permissible for the arbitrator or the Court deal with the validity of the award a higher rate than the mutually agreed rate which is binding on the parties. The challenge to the judgment of the Division Bench in this connection fails and shall stand rejected." In my considered view, the joint arbitrators had rightly rejected the aforesaid claims of the Petitioner as the matter was not arbitrable. It may further be mentioned that the Court has power and jurisdiction to grant interest u/s 29 of the Act of 1940 even when there is no specific clause for interest. But in the instant case, there is a specific clause by which the parties cannot claim interest as discussed above.

10. In the result, these two civil revision petitions are devoid of merits and accordingly, these are dismissed. But there is no order as to costs.