

(2007) 11 MP CK 0043
In the Madhya Pradesh High Court
Case No : W.A. No. 719 of 2007

M.P. State Electricity Board and Another	APPELLANT
Vs	
Anand transformers Pvt. Ltd. and Others	RESPONDENT

Date of Decision : 20-11-2007

Acts Referred:

Madhya Pradesh Re-organisation Act, 2000 — Section 58

Citation : (2008) 1 MPLJ 193

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Mukesh Agarwal, for the Appellant; J.P. Sanghi, for the Respondent

Judgement

A. K. Patnaik, C.J.

This is an appeal against the order dated 1-3-2007 passed by the learned Single Judge in Writ Petition No. 8449/2005, M/s Anand Transformers Pvt. Ltd. v. State of M. P. and others.

The relevant facts briefly are that orders for supply of transformers were placed on Respondent No. 1 by the Madhya Pradesh Electricity Board and the Respondent No. 1 supplied the transformers at Jabalpur in the State of Madhya Pradesh. The Madhya Pradesh Electricity Board could not pay the price of the transformers to the Respondent No. 1 due to financial difficulties. Thereafter sixteen promissory notes were executed by the Madhya Pradesh Electricity Board for various amounts towards the dues inclusive of interest at the rates specified in the promissory notes payable by the Madhya Pradesh Electricity Board to the Respondent No. 1 and the payments under the promissory notes were guaranteed by the State Government.

Thereafter the erstwhile State of Madhya Pradesh was bifurcated into Madhya Pradesh and Chhattisgarh by the Madhya Pradesh Reorganisation Act, 2000. After such bifurcation, the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board were constituted u/s 58 of the Madhya

Pradesh Reorganisation Act, 2000. When the amounts of promissory notes were not paid, Respondent No. 1 filed Writ Petition No. 8449/2005 before this Court under Article 226 of the Constitution of India contending inter alia that the Madhya Pradesh State Electricity Board and the State Government were liable to pay the amounts mentioned in the promissory notes and interest on the outstanding amounts at the rate of 18% per annum from the dates when the amounts were to be paid. The Madhya Pradesh State Electricity Board filed a return and contended inter alia that the writ petition was for recovery of dues arising out of commercial transactions and was not maintainable under Article 226 of the Constitution and the remedy of the Respondent No. 1 was to file a civil suit. The Madhya Pradesh State Electricity Board also contended in the return that the Madhya Pradesh Electricity Board, which executed the promissory notes was no longer in existence because after the Madhya Pradesh Reorganisation Act, 2000 two new Boards viz. Madhya Pradesh State Electricity Board and Chattisgarh State Electricity Board have come into existence and the Respondent No. 1 is trying to enforce the liability of Madhya Pradesh Electricity Board against the Madhya Pradesh State Electricity Board. The Madhya Pradesh State Electricity Board also contended in the return that the guarantee for the payment of the amounts mentioned in each of the promissory notes was given by the erstwhile State of Madhya Pradesh before its bifurcation and the new States of Madhya Pradesh and Chattisgarh after Madhya Pradesh Reorganisation Act, 2000 had not been impleaded as parties and, therefore, the writ petition was liable to be dismissed.

In the impugned order dated 1-3-2007 the learned Single Judge held that it was not in dispute that the amounts under the promissory notes, inclusive of interest at the rate of 15.97% per annum, were agreed to be paid to the Respondent No. 1 and that the promissory notes were guaranteed by the State of Madhya Pradesh and, therefore, both the Madhya Pradesh State Electricity Board and the State of Madhya Pradesh were jointly and severally liable to make the requisite payment to the Respondent No. 1. By the impugned order, the learned Single Judge directed that the balance amount of promissory notes be paid to the Respondent No. 1 along with interest at the rate of 15.97% per annum on or before 30th of June, 2007 and if the balance amount is not paid to the Respondent No. 1 before 30th of June, 2007 the rate of interest shall be enhanced to 18% per annum. By the impugned order the learned Single Judge further directed that the security amount of Rs. 5,00,000/- (Rs. Five lacs) which is with the Madhya Pradesh State Electricity Board shall be refunded to the Respondent No. 1 on or before 31st March, 2007 failing which it shall carry interest at the rate of 6% per annum with effect from 1st April, 2007. Aggrieved, the Madhya Pradesh State Electricity Board and its Chief Engineer (Appellant Nos. 1 and 2) have filed this appeal.

Mr. Mukesh Agarwal, learned Counsel for the Appellants, submitted that the liabilities of the erstwhile Madhya Pradesh Electricity Board are yet to be apportioned between the Madhya Pradesh State Electricity Board and

Chhattisgarh State Electricity Board and that a civil suit between the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board is pending and an order of status quo has been passed by the Supreme Court. He submitted that until the liabilities of erstwhile Madhya Pradesh Electricity Board are apportioned between the Madhya Pradesh State Electricity Board and the Chhattisgarh State Electricity Board, no directions can be issued to the Madhya Pradesh State Electricity Board to make any payment to the Respondent No. 1.

Mr. J. P. Sanghi, learned Senior Counsel for the Respondent No. 1, on the other hand, submitted that the Respondent No. 1 is in no way concerned with the apportionment of liabilities of the erstwhile Madhya Pradesh Electricity Board between the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board. He submitted that Respondent No. 1 has supplied the transformers at Jabalpur to the erstwhile Madhya Pradesh Electricity Board within the State of Madhya Pradesh and the Respondent No. 1 is not a party to any agreement or arrangement with regard to apportionment of liabilities between the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board and the Madhya Pradesh State Electricity Board and the State Government of Madhya Pradesh are jointly and severally liable to the Respondent No. 1 under the promissory notes and the Negotiable Instruments Act, 1881 to pay the amounts under the promissory notes and interest to the Respondent No. 1.

We agree with Mr. Sanghi that apportionment of liabilities is a matter between the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board and the dispute between the two electricity boards with regard to any liability cannot have any effect on the liabilities under the promissory notes executed by the erstwhile Madhya Pradesh Electricity Board and under the Negotiable Instruments Act, 1881. Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Illustration (c) u/s 62 of the Indian Contract Act, 1872 states that if A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement, B still owes C 1,000 rupees, and no new contract has been entered into. Hence, unless the Respondent No. 1 gives its assent to any new contract or arrangement between the Madhya Pradesh State Electricity Board and Chhattisgarh State Electricity Board for apportionment of liabilities of the Madhya Pradesh Electricity Board, the Madhya Pradesh Electricity Board is liable to pay to the Respondent No. 1 all dues under the promissory notes and Negotiable Instruments Act, 1881. No case has been made out before us that this particular liability under the promissory notes executed by the erstwhile Madhya Pradesh Electricity Board and the guarantee documents issued by the State Government has not been taken over by the Madhya Pradesh State Electricity Board and the Madhya Pradesh Government after the Madhya Pradesh Reorganisation Act, 2000, or that the liability under the promissory notes and the guarantee documents stands partly transferred to the Chhattisgarh State Electricity Board and the Chhattisgarh

Government. On the other hand, there are clear provisions in Sub-section (4) of Section 58 to show that upon dissolution of the existing Board meaning thereby the erstwhile Madhya Pradesh Electricity Board the assets, rights and liabilities which shall pass to the new Board and the Madhya Pradesh State Electricity Board has, in fact, already paid a total amount of Rs. 1,04,43,764/- to the respondent No. 1 towards the liabilities of the Madhya Pradesh Electricity Board under the 16 promissory notes.

Mr. Agarwal next submitted that the amounts inclusive of interest under the promissory notes totalling to Rs. 1,04,43,764/- have been paid to Respondent No. 1 through the Central Bank by 30-6-2007 during the pendency of the writ appeal. He further submitted that this amount of Rs. 1,04,43,764/- included the principal amount of Rs. 82,57,960/- and interest of Rs. 21,85,804/-. Mr. Sanghi, on the other hand, submitted that the sum of Rs. 1,04,43,764/- is the total amount of the promissory notes inclusive of interest up to the date of maturity of the promissory notes.

The 16 promissory notes, which were executed by the Madhya Pradesh Electricity Board in favour of Respondent No. 1, are all identically worded and the first promissory note No. 665 dated 5-11-1997 is extracted here in below:

Madhya Pradesh Electricity Board No. MPEB/SIDBI/97-98/665, Jabalpur, dated 5 NOV. 1997 Rs. 2,57,221/- 57 months after date (inclusive of days of grace), we, the Madhya Pradesh Electricity Board, Jabalpur, promise to pay at Central Bank of India, Faizabad, or at the Small Industries Development Bank of India, Bhopal, to M/s Anand Transformers Pvt. Ltd., Faizabad, or order the sum of Rupees Two lacs fifty seven thousand two hundred twenty one only inclusive of interest at 15.97% per annum for value received.

for and on behalf of madhya pradesh electricity board

It will be clear from the language of the promissory note dated 5-11-1997 extracted above that the total amount for which the promissory note has been executed is Rs. 2,57,221/- inclusive of interest at the rate of 15.97% per annum and the interest was added to the original amount because the promissory note was due and payable after 57 months.

All other promissory notes are identically worded except that the rate of interest in some promissory notes was different. The details of the sixteen promissory notes are given in the chart below:

Sr. No.	Annexure in W.A.	No.	Amount of pronote	Rate of interest	Year
Pronote No.	No.	Date			

1	2	3	4	5	6
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1	P-7	257221	15.97	97-98	665/5-11-1997
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2	P-9	534390	15.97	97-98	695/18-11-1997
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3 P-11 279256 15.97 97-98 755/25-11-1997
4 P-13 1070171 15.97 97-98 1205/21-2-1998
5 P-15 788596 15.97 97-98 1550/28-3-1998
6 P-16 1684346 15.97 98-99 1434/28-11-1998
7 P-17 826472 15.97 98-99 1819/1-1-1999
8 P-18 809584 15.97 98-99 2144/16-2-1999
9 P-20 660225 15.12 99-2000 1723/23-2-2000
10 P-21 522875 15.12 99-2000 1725/23-2-2000
11 P-23 708194 15.12 99-2000 1728/24-2-2000
12 P-24 560865 15.12 99-2000 1730/24-2-2000
13 P-26 350318 15.12 99-2000 1803/8-3-2000
14 P-27 277439 15.12 99-2000 1805/8-3-2000
15 P-29 621559 15.12 99-2000 1798/9-3-2000
16 P-30 492253 15.12 99-2000 1800/9-3-2000
TOTAL 10443764

The total amount of Rs. 1,0443,764/- includes the interest on the amount originally due towards supply of transformers, but since the total amount due towards the supply of transformers were to be paid after the period mentioned in the promissory notes, interest at the rate mentioned therein was added on to the amount originally payable towards the supply of transformers and this original amount together with interest constitutes the amount of promissory notes.

Mr. Agarwal next submitted that the learned Single Judge ought not to have directed in the impugned order for payment of interest at the rate of 15.97% per annum when interest payable on some of the promissory notes was 15.12% per annum instead of 15.97% per annum. We find a lot of force in the submission of Mr. Agarwal. It will be clear from the aforesaid chart that in the first eight promissory notes the rate of interest was mentioned as 15.97% per annum but in the second eight promissory notes the rate of interest was mentioned as 15.12% per annum. Hence, the impugned order passed by the learned Single Judge directing the payment of interest at the rate of 15.97% per annum in the case of all promissory notes was not correct. Mr. Sanghi, however, submitted that this mistake in the impugned order of the learned Single Judge is of no consequence because the amounts of pronotes of all the 16 promissory notes have been mentioned in the pronotes and the amounts include the interest calculated upto the dates on which the amounts were to be paid.

Mr. Agarwal next submitted that since the entire amount of the promissory note

was paid by 30-6-2007 no amount was further payable towards interest to Respondent No. 1. Mr. Sanghi, on the other hand, submitted that the learned Single Judge has directed that the balance amount of promissory notes be paid to the Respondent No. 1 along with the interest at the rate of 15.97% per annum on or before 30-6-2007 and this would mean not only the amount of promissory note but also interest at the rate of 15.97% per annum from the calculation of the date of maturity of promissory notes has to be paid to the Respondent No. 1 on or before 30-6-2007.

The exact language used by the learned Single Judge in the impugned order is as follows:

Accordingly, it is hereby directed that the balance amount of promissory notes be paid to the Petitioner along with interest at the rate of 15.97% per annum on or before 30th June, 2007. If the said amount is not paid to the Petitioner within that period, the rate of interest shall be enhanced to 18% per annum. The security amount of Rs. 5,00,000/- (Rs. Five lacs) of the Petitioner which is with Respondent No. 2 - M. P. State Electricity Board shall be refunded to the Petitioner on or before 31st March, 2007, failing which it shall carry interest at the rate of 6% per annum w.e.f. 1st April, 2007." It is clear that by the impugned order the learned Single Judge has directed that the balance amount of promissory notes has to be paid along with interest at the rate of 15.97% per annum on or before 30-6-2007 and if the amount is not paid to the Respondent No. 1, the rate of interest has to be enhanced to 18% per annum. As we have seen, the total amount covered under the 16 promissory notes was Rs. 1,04,43,764/- and admittedly, no amount in addition to Rs. 1,04,43,764/- has been paid by the Appellants to the Respondent No. 1. Thus, only the amount of the promissory notes has been paid and no interest in addition to the amount of promissory notes has to be paid to the Respondent No. 1 as per the directions of the learned Single Judge in the impugned order. Therefore, the Appellants are liable to pay interest over and above the amount of Rs. 1,04,43,764/- to the Respondent No. 1.

Mr. Agarwal next submitted that the claim of Respondent No. 1 to interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 and such claim cannot be allowed by the High Court in exercise of the powers under Article 226 of the Constitution of India. He cited the decision of the Supreme Court in AIR 2002 SC 2421 in support of his submission that the claim of interest under the Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 can only be made in a suit or other proceeding but not in a writ petition.

Mr. Sanghi, on the other hand, submitted that in the writ petition interest at the rate of 18% per annum was claimed u/s 80 of the Negotiable Instruments Act, 1881 and the language of Section 80 is clear that when no rate of interest is specified in the instrument, interest on the amount due thereon shall, be calculated at the rate of 18% per annum from the date at which the same ought

to have been paid by the party charged, until tender or realization of the amount due thereon.

We find on a reading of the writ petition, particularly paras 3 and 6.5 thereof, that the claim of Respondent No. 1 to the interest on the outstanding amount at the rate of 18% per annum is based on Section 80 of the Negotiable Instruments Act, 1881 which is quoted here in below:

80. Interest when no rate specified. - When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

The language of Section 80 is clear that when no rate of interest is specified in the instrument, the interest on the amount due thereon shall, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged. The promissory notes in the present case mentioned the rate of interest on the original amount due up to the date of payment of the promissory notes and such interest has been included in the amounts of the promissory notes. The 16 promissory notes do not specify any rate of interest on the amounts due under the promissory notes. Hence, Section 80 of the Negotiable Instruments Act, 1881 is applicable and the learned Single Judge was right in directing the Appellant to pay interest at the rate of 18% per annum on the amounts of promissory notes if the same were not paid by 30-6-2007.

In the decision of the Supreme Court in the case of Equipment Conductors and Cables Ltd. v. Haryana State Electricity Board and Another (supra) cited by Mr. Agarwal, the Haryana State Electricity Board contended that Equipment Conductors and Cables Ltd. did not supply the goods within time and, therefore, is not entitled to the interest. The disputes whether the supply of goods had been made in time or not and whether Equipment Conductors and Cables Ltd. were defaulters and were entitled to interest were matters which could not be decided under Article 226 of the Constitution of India as has been held by the Supreme Court. In the present case, on the other hand, it is not in dispute that the transformers have been supplied by Respondent No. 1 and that the Madhya Pradesh Electricity Board had executed 16 promissory notes for a total amount of Rs. 1,04,43,764/- inclusive of interest mentioned therein payable to Respondent No. 1 on the dates mentioned in the promissory notes. It is also not in dispute that the promissory notes did not specify the rate of interest on the amounts due under the promissory notes. We find that the amounts were not paid on the due dates as per the promissory notes. The result is that the Appellants were liable to pay interest at the rate of 18% per annum calculated from the dates on which the amounts were to be paid as per the promissory notes. We cannot, therefore,

interfere with the directions of the learned Single Judge in the impugned order that in case the amounts of the promissory notes are not paid to Respondent No. 1 before 30-6-2007, the rate of interest shall be enhanced to 18% per annum and we direct that the balance of the amount due as per the impugned order of the learned Single Judge be paid by the Madhya Pradesh State Electricity Board as well as the State Government by the 28th of February, 2008. The appeal stands disposed of.

Order accordingly.