

(2006) 09 PAT CK 0112
In the Patna High Court
Case No : CWJC No. 14053 of 2004

M/s M.B. Gharpuray Engineers and Contractors	APPELLANT
Vs	
The State of Bihar and Another	RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 31(7)(a), 31(7)(b)

Citation : (2007) 1 PLJR 271

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Jashawir Singh Arora, for the Appellant; Nadim Seraj and Manoj Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties. The writ application was filed by the petitioner for a direction to the respondent-Corporation (Bihar Bridge Construction Corporation) for payment of the entire amount as per the arbitral award alongwith statutory interest u/s 31(7)(b) of the Arbitration and Conciliation Act, 1996 and certain other payments.

2. Heard Sri J.S. Arora for the petitioner, Sri Nadim Seraj for the Corporation and Sri Manoj Kumar Jha, J.C. to G.A. for the State.

3. At the very outset Sri Seraj, learned counsel appearing for the Corporation fairly stated that the arbitral award could not be escaped from and had to be implemented but the Corporation being in a great financial crisis payment could not be made earlier. In course of the proceedings the entire payment of the principal as mentioned in the Award as also for the additional work done was tendered in the Court and accepted by Mr. Arora on behalf of the petitioner. Now the question remains with regard to claim of interest in terms of Section 31(7) (b). For considering the same it is relevant to quote Section 31(7)(a) and (b) of the Arbitration and Conciliation Act, 1996.

"(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

The reference to the said sub-section 7 of Section 31 would show sub-section (a) of sub-section 7 of Section 31 refers to the Award of interest between the date on which the cause of action arose and upto the date of Award. This sub-section clearly stipulates that where an Award is for the payment of money the arbitral tribunal may include in the same for which the Award is made and interest at such rate which it deems reasonable. It would thus be seen that subject to the contract the rate of interest or for that matter the awardability of interest is a matter of discretion of the arbitral tribunal and is limited to the period from which the cause of action arose and till the award was made. In other words, it is interest pendente lite.

4. So far as sub-section (b) is concerned, it is in mandatory indicative terms in the sense it says if the award is silent with regard to interest from the date of award to the date of payment then by default interest at the rate of 18% is payable. There is absolutely no discretion in the matter. The interest is fixed and automatic unless the award otherwise specified. This is as future interest as is commonly referred to. It would, thus, be seen that sub-section (a) gives a discretion whereas sub-section (b) provides for mandatory interest by default. Once the legislature have provided for the rate of interest it is not open to this Court to reduce in any manner. Such can only be done by the parties in whose favour the award is given.

5. In the present case the award is silent about the future interest. It does not say that no future interest is awardable. It does not say that future interest would be at any rate less than 18%. It therefore follows that by default an award being for payment of money it will carry interest till payment is made from the date of award and interest at the rate of 18%.

6. Sri Seraj, learned counsel appearing for the Corporation has brought the facts to the notice of this Court that because of various reasons primarily bad financial status the State Government took a decision in the year 2003 to wind up the Corporation and as such, a winding up application was filed before this Court. After the change of Government the Government took a decision to revive the Corporation in June, 2006. It is after such a decision was taken that a decision was taken to honour the arbitral award as well which has been pending unhonoured and, accordingly, the payments were made. Now the situation is that

if the Corporation is to pay interest at the statutorily provided rate it may become sick once again because interest liability for the long period itself would be substantially and far in excess of the principal amount almost equal to the principal amount. Sri Arora also appreciated the difficulty and at the request of the Court both the parties were required to come to a negotiated settlement because that was the only way now open. The petitioner repeatedly insisted for statutory rate as petitioner is a Commercial enterprise. The respondent-Corporation prayed for mercy.

7. In course of various discussions in this Court now it is agreed that the Corporation would pay interest at the rate of 10% for the period in question. Half of the said amount would be paid by Bank draft of a Nationalised Bank within a period of one week from today. The balance half would be paid within one month from today. This Court appreciates the fair stand taken by all counsel in this case.

8. In view of this agreement as between the parties it is held that the petitioner has accepted to waive his right and the Corporation has agreed to pay the said amount within the time stipulated therein punctually. This writ application is, thus, allowed in terms as indicated above.