

(2008) 07 GAU CK 0052
In the Gauhati High Court

North Eastern Electric Power Corporation Ltd.

APPELLANT

Vs

Gammon India Ltd. and Another

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Arbitration Act, 1940 — Section 17, 30, 33

Citation : (2009) 3 GLR 407 : (2008) 4 GLT 54

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Judgement

T. Vaiphei, J.—This revision under Rule 36-A of the Rules for the Administration of Justice and Police in Khasi and Jaintia Hills, 1937 is directed against the judgment and order dated 21.7.2003 passed by the Ld. Additional District Judge, East Khasi Hills, Shillong in F.A.O. No. 4 (T) of 1999 confirming the judgment and decree dated 18.11.1999 passed by the Ld. Assistant to Deputy Commissioner, Shillong in (Arb) Misc. Case No. 128 (T) of 1990 making the Award dated 8.9.1991 of the Sole Arbitrator a rule of the court and awarding interest @ 18% per annum from the date of the decree till realization of the entire decretal amount, if the petitioner failed to pay the awarded amount within 60 days from the date of decree. The history of this case reminds me of the oft-quoted observations of the Apex Court in *Guru Nanak Foundation Vs. Rattan Singh and Sons*, which reads thus:

Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative form, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940 ("Act" for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for

expeditious disposal of their disputes has by the decisions of the courts been clothed with legalese" of enforceable complexity. This case amply demonstrates the same.

2. The material facts of the case, as pleaded by the petitioner, are as follows:

The petitioner, namely, M/s North Eastern Electric Power Corporation Ltd. ("NEEPCO" for short) is a Government of India Enterprise of national importance established for the purpose of development and utilization of the power potential of the entire North Eastern Region while the respondent, M/s Gammon India Ltd., is a Company registered under the Companies Act, 1956, having its registered office at Bombay and its Branch Office at 8, Lachumiere Hills, Shillong, and is engaged in the construction of various projects. The respondent was allotted by the petitioner the work for construction of concrete dams at Kopili Hydro-Electric Project, for which the agreement No. NEEPCO/CE/ 2 of 1978-79 was executed by and between them on 1.7.1978. During the execution of the work, in order to utilize maximum water level in the construction of Khandong Dam, the Government of India/Central Water Commission (CWC) decided to raise the overflow section of the dam upto EL 719 metres whereupon the construction drawings were prepared by the CWC and the revised drawings showing the overflow and non-overflow sections issued to the respondent from time to time in terms of the contract agreement. The change in the levels were made as a result of further design studies and as a definite improvement over the original design incorporated at the tender stage. The above changes were made in the crest level of dams within the scope of the contract agreement. The respondent also undertook the work in respect of Umrong Dam up to the revised crest level at the same rate and conditions, and construction of this dam together with Khandong dam were covered by the same contract agreement dated 1.7.1978. However, the respondent refused to raise the crest level of the dam beyond EL 704.26 metres in the case of the other dam, namely, Khandong Dam, though the plant installations were capable of raising the overflow section up to EL 719 metres. The conclusion of the petitioner is that the refusal of the respondent to raise the dam level beyond EL 704.26 metres amounted to breach of the said contract agreement. According to the petitioner, as per Clause K 1.43 of the agreement dated 1.7.1978, concreting up to EL 712 metres in the overflow section and up to EL 725 metres in the non-overflow section was possible with their existing cable way system for this dam, and was well within the scope of the said agreement.

3. It is also the pleaded case of the petitioner that when it requested the respondent to continue concreting beyond EL 704.26 metres up to 712 metres, the latter refused to do so and, in turn, requested it to refer the matter to arbitrator and demanded new rates for concreting between EL 704.26 to EL 712 metres and refused to proceed with the work further. Though the petitioner considered the demand made by the respondent to be unreasonable and unjustified, it nevertheless, in the interest of speedy completion of the work, was

compelled to issue a separate work order dated 10.1.1985 for the work between EL 704.26 metres to EL 712 metres, pending finalization of the arbitration award being referred to and subject to such award. Ultimately, the parties referred their disputes to the Sole Arbitrator for award on the following points:

Whether under provisions of the contract agreement bearing NEEPCO/CE/2 of 1978-79 dated 1.7.1978, the work between EL 704.26 M to EL 712 M and the work of piers and the rates of payment, etc. in this portion of the work is within the scope of the said agreement dated 1.7.1978 or not; and whether the contractor is responsible to execute the aid work at rates and terms and conditions contained in the said agreement dated 1.7.1978, or whether the said work is outside the scope of the said agreement dated 1.7.78 and this is to be paid for as per terms and conditions contained in the work order issued by NEEPCO vide letter dated 10.1.85 as modified by letter dated 19.4.85. The Sole Arbitrator was also required to determine the amount payable by the parties for the said work.

4. At this stage, it may be noticed that though in terms of Clause K. 1.18 of the contract agreement dated 1.7.78, reference of disputes between the contracting parties was to be referred to two arbitrators to be appointed by each of the parties, the instant dispute came to be referred to the Sole Arbitrator in terms of the subsequent agreement dated 5.5.1987.

5. The Sole Arbitrator thereafter entered into the reference on 16.7.1988. The respondent submitted its statement of claims while the petitioner submitted its written statement of claims along with counter-claims. After hearing the parties, the Sole Arbitrator gave his non-speaking Award on 22.10.1990 by rejecting the counter-claim of the petitioner and by awarding a sum of Rs. 2,40,00,252/- (Rupees two crores forty lakhs two hundred and fifty two) only. As the petitioner had by then made interim payment of Rs. 2,35,78,196/- (rupees two crores thirty five lakhs seventy eight thousand one hundred and ninety-six) only to the respondent, the balance amount of Rs. 4,22,056/- after adjustment of the paid amount was directed to be paid by the petitioner to the respondent within 45 days of the date of the Award. The Sole Arbitrator also awarded interest @ 12% p.a. on Rs. 4,22,046/- forty-five days after the date of the award till the date of the decree. The respondent thereafter filed the application dated 10.4.1991 u/s 17 of the Arbitration Act, 1940 ("the Act" for short) for making the Award a rule of the Court and to pass a decree in terms thereof. The petitioner received the Notice dated 20.3.1991 from the Ld. Assistant to D. C, Shillong for riling of the Award. As the Award was a non-speaking Award, which was contrary to the provisions of the Meghalaya Arbitration (Extension and Amendment) Act, 1990, the same was remitted to the Sole Arbitrator for giving reasons, which was then duly done by him on 8.9.1991. The application u/s 17 of the Act was accordingly registered as Misc. Case No. 128 (T) 1990. The petitioner promptly filed objection petition under Sections 30 and 33 of the Act and challenged the Award. The learned Assistant to D. C, after hearing the parties, passed the judgment

and decree dated 18.11.1999 and made the Award a rule of the court in the manner indicated earlier. The matter was taken to appeal by the petitioner before the Ld. Additional Deputy Commissioner in FAO No. 4 (T) 99, but the appeal also met the same fate.

6. The Sole Arbitrator held that the execution by the respondent of the work of concretizing the dam between EL 704.26 M and EL 712 M in the overflow blocks and piers was outside the scope of the agreement dated 1.7.1978, and the work therefore was to be paid on the basis of the rates, terms and conditions contained in the subsequent agreement dated 10.1.1985 as modified by the letter dated 19.4.1985. The reasoning adopted by the Sole Arbitrator is that the respondent relied on their tender drawings, NTT causes and description of works for working out their tender rates; that the crest level was shown on those drawings attached to the tender documents as 704.20 M in thick line; that from the said drawings, notes on those drawings and Clause K. 1.23 of the conditions of the contract containing the Dam date, which also stated the crest level to be 704.23 M, the respondent had given clear indication that the crest level of the Dam included in the scope of the contract was restricted to 704.26 M and that both the parties were clear about the scope of the contract at the tender stage itself; that consideration of raising the crest level above 704.26 M came up only subsequent to the conclusion of the contract and identification of the scope of the work included in the original agreement dated 1.7.78 and that the scope of the agreement could not be modified under Clause K1.43 or K. 1.25 or the letter of the respondent dated 27.7.1977 forming part of the agreement so as to include the works between EL 704.26 and 712 M of overflow Blocks and Piers. As for the rates of payment, terms and other conditions for these additional works, he held, in terms of the aforesaid findings, that payments were to be made at the rates, terms and conditions of the subsequent agreement dated 10.1.1985 as modified by the letter dated 19.4.1985. In so far as the counter-claims of the petitioner are concerned, the Sole Arbitrator reasoned that as the concerned additional works were held to be outside the scope of the original agreement, the claims made by the petitioner were inadmissible. As for the reason for awarding Rs. 2,40,00,252/-, the Sole Arbitrator based his decision on the admission of the parties in their joint statement dated 5.7.1990, which, in turn, was based on his decision in favour of the respondent. 7. Since the bone of contention between the parties revolves round the construction of terms of the agreement dated 1.7.1978 incorporated in Clause K. 1.43 and Clause K. 1.25, under the headings "Right to change location and plans" and "Additional General, Revised and Detailed drawings", the same are reproduced as under:

K. 1.43. When additional information regarding foundation or other conditions become available as a result of the excavation work, further testing, design studies otherwise,- it may be found desirable to change the location, alignment, dimensions, or design of the dam, or appurtenant works to such conditions. It may also be possible to improve the design given herein. In such cases the Corporation reserves the right to make such reasonable changes in the dam and

appurtenant works, as, in the opinion of the Chief Engineer, may be considered necessary or desirable. The Contractor's plant shall be laid out; and his operations shall be conducted so as to accommodate any reasonable change in the location and design of the dam and appurtenant works, or any part thereof, without additional cost to the Corporation. The rates quoted by the Contractor in Section C shall hold good even then.

K. 1.25. (b) The drawings, which forms a part of these specifications, show the work to be done under these specifications as definitely and in as much detail as is possible at the present stage of the development of the design. These drawings will be supplemented or superseded as the work progresses by such additional, general, revised and detailed drawings as may be considered necessary or desirable by the Chief Engineer, such additional, general, revised and detailed drawings will show dimensions and details necessary for construction purposes more completely than are shown on the attached drawings, for all features of the work and for the installation of machinery or equipment not yet purchased. In case there is difference in details or in specifications in these drawings from those given in tender specification and drawings, the details given in these additional, general, revised and detailed drawings shall prevail. The Contractor shall check all drawings carefully and intimate the Chief Engineer, of any errors or omissions discovered. The Contractor shall not take advantage of errors or omissions, as full instructions will be furnished to the Contractor, should any errors or omissions be discovered. The Contractor shall on request be furnished with such additional copies of the specifications and drawings as may be required for carrying out the work.

8. It is a settled law without reference to cases that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the court and for that limited purpose the agreement is required to be considered. In the case of speaking award, the following principles are deducible from the decision of the Apex Court in Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, :

(a) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the court cannot interfere.

(b) If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.

(c) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing

the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.

(d) In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(e) The award made by the arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which ultimately requires to be decided by the court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of a specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of a wider arbitration clause such claim amount cannot be awarded as the agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement.

(f) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(g) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law.

9. It is, therefore, trite to say that the arbitrator being a creature of the agreement between the parties, he has to operate within the four corners of the agreement and if he ignores the specific terms of the contract, it would be a question of jurisdictional error on the face of the award, falling within the ambit of legal misconduct, which could be corrected by the court. However, if the arbitrator commits an error in the construction of contract, that is error within his jurisdiction. But if he wanders outside the contract and deals with the matter not allotted to him, he commits a jurisdictional error. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the respondent or there is a specific bar in the contract to the raising of this particular claim, then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction. After all, the arbitrator cannot award an amount which is ruled out or prohibited by the terms of the contract. Because of a specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of a wider arbitration clause such claim amount cannot be awarded as the agreement is binding upon the parties, and the arbitrator has to

adjudicate as per the agreement. However, the case where there is want of, or excess of, jurisdiction has to be distinguished from the case where there is error in the exercise of jurisdiction. The award is to be quashed if there is error of jurisdiction but not if the error is committed in the exercise of jurisdiction. When the arbitrator is required to construe a contract then merely because another view may be possible the court would not be justified in construing the contract in a different manner and then to set aside the award by observing that the arbitrator has exceeded the jurisdiction in making the award. In order to find whether the arbitrator has acted in excess of jurisdiction, the court may have to look into some documents including the contract as well as the reference of the dispute made to the arbitrator limited for the purpose of seeing whether the arbitrator has the jurisdiction to decide the claim made in the arbitration proceedings (see *Himachal Pradesh State Electricity Board Vs. R.J. Shah and Company*, .

10. The question which now falls for consideration is whether the arbitrator has acted within the four corners of Clause K. 1.43 read with Clause K. 1.25 (b) of the agreement in awarding the sum of Rs. 2,40,00,252/- for raising the crest of the dam from EL 704.26 metres to EL 712 metres. A close look at the two Clauses of the agreement extracted above will reveal that they are broadly worded. The dispute which was referred to the arbitrator undoubtedly pertains to construction of the contract agreement dated 1.7.78. The question is whether the agreement actually contemplated the respondent raising the claim for payment of remuneration for the work of raising the said crest level of the dam. If the answer is in the negative, then it is clear that the arbitrator will have no jurisdiction. If, however, the answer is in the affirmative, in the words of the Apex Court in *Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir*, "even if, in fact, the arbitrators had interpreted the relevant clauses of the contract in making their award on the impugned items and even if the interpretation is erroneous, the Court cannot touch the award as it is within the jurisdiction of the arbitrators to interpret the contract. Whether the interpretation is right or wrong, the parties will be bound; only if they set out their line of interpretation in the award and that is found erroneous can the Court interfere". The aforesaid principle, of course, is subject to the proposition that the arbitrator being the creature of the contract must operate within the four corners of the contract and cannot travel beyond it either by misinterpreting the terms of contract or otherwise. Clause K. 1.43 contemplates a situation after the signing of the agreement in which additional information would become available as a result of excavation work, further testing, design studies or otherwise and on that basis it might be found desirable to change, among others, the location, alignment, dimension or design of the dam or appurtenant works. The Corporation in such eventualities reserved its right to make reasonable changes in the dam and appurtenant works, which, in the opinion of the Chief Engineer, was considered necessary. If the Chief Engineer considered it necessary to make reasonable change in the location and design of the dam and the appurtenant works, or any part thereof, the respondent was to lay out his plan and would

conduct his operation so as to accommodate such change without additional cost to the Corporation, (*italic mine*). The clause then further provides that the rates quoted by the respondent in Section C should hold good even then.

11. Coming now to Clause K. 1.25 (b) of the agreement, which is to be read with the foregoing Clause K. 1.43, this clause, in simple terms, says that the drawings, which form apart of the specifications, show the work to be done under those specification, can be supplemented or superseded as the work progresses by such additional, general, revised and detailed drawings as maybe considered necessary by the Chief Engineer; such additional, general, revised and detailed drawings would show dimensions and details necessary for construction purposes more completely than are shown on the attached drawings, for all features of the work and for the installation of machinery or equipment not yet purchased. In the event that there is difference in details or specifications and drawings, the details given in those additional, general, revised and detailed drawings should prevail. The respondent was given the liberty to check all drawings carefully and intimate the Chief Engineer, of any errors or omissions so discovered by him and should not take advantage such errors or omissions in case of discovery thereof. As already noticed, the sole arbitrator took the view that the petitioner having given clear indication in the main drawings attached to the tender documents, notes on those drawings and Clause K. 1.23 of the agreement containing the Dam data that the crest level contemplated within the scope of the agreement was restricted to EL 704.26 M, both the parties were clear on the scope of the agreement at the tender stage and held that raising of the crest level beyond that level could not be allowed in terms of the agreement as that would amount to modification of the agreement, which is not permissible by virtue of Clause K. 1.43 or K. 1.25 or Gammon India's letter dated 27.7.1977. The sole arbitrator, therefore, upheld the contention of the respondent that the work between EL 704.26 and EL 712 M was outside the scope of the agreement.

12. Undoubtedly, the respondent was required to undertake the work of raising the crest level of the dam from EL 704.26 M to EL 712 at the cost of, on the own admission of the petitioner itself in the joint statement dated 5.7.1990, someRs. 2,40,00,252/- over and above the original work value. In my opinion, the quantity of the additional work involved in raising the level of the dam executed by the respondent appeared to be far more in excess of the anticipated quantity of work in the original agreement and such excess being occasioned by alteration of drawings and designs. In the course of execution of the contract, drawings and designs were changed which resulted in abnormal increase in the quantity of the work and for such an increase in the quantity of work costing some Rs. 2,40,00,252/-, if the respondent claimed payment therefor, and if the sole arbitrator accepted the claim, it(is not possible to say that the sole arbitrator committed legal misconduct. In my opinion, the changes in the drawings and designs or dimensions of the dam demanding additional works from the respondent cannot be said to be reasonable changes within the meaning of Clause K. 1.43 of the original agreement. A perusal of the letter dated 27.7.1977

of the respondent, which admittedly formed a part of the agreement read with Clause K. 1.43 and Clause K. 1.25 (b) totally rules out the possibility that the parties were at the time of entering into the original agreement in contemplation of changes in the drawings, designs and dimension of this magnitude. This reminds me of the observations of Asquith, L.J. in *Parkinson (Sir Lindsay) & Co. Ltd. v. Commissioners of Works and Public Buildings* (1949) 2 KB 632 [quoted with approval by the Apex Court in *Section S. Harcharan Singh Vs. Union of India*,], which are as under:

If the original contract plus the deed are read without any implied limitation on their literal meaning, the result, as indicated above, is that after 300,000 pound profit has been earned by the contractor, he can be compelled to labour like the Danaids without reward or limit, or any further "extras" which the Commissioners may elect to exact from him, "till the last syllable of recorded time"... Only the most compelling language would induce a court to construe the combined instruments as placing one party so completely at the mercy of the other. Where the language of the contract is capable of literal and a more restricted, meaning, all the relevant circumstances can be taken into account in deciding whether the literal or a more limited meaning should be ascribed to it.

At pages 673 of the same judgment, Singleton, L.J. made observations in the same vein:

I find myself unable to agree with the submission of Mr. Rewcastle that, under the contract as varied by the deed of variation, the contractor would have been bound to continue making alterations and additions, if ordered, for years and years, without any extra payment by way of profit. That would have led to manifest absurdity and injustice, as Mathew, J. said in *Bush v. Whitehaven Town & Harbour Trustees (I)*. There must a limit.

13. The respondent in agreeing to execute the work did not certainly agree to become the bonded labourer of the petitioner. Although Clause K. 1.43 read with Clause K. 1.25 seemingly conveyed the impression of unlimited extra works, work of a certain kind such as the one here, it may yet be quite outside the terms of the contract. In the letter dated 27.6.1977 (Ext.-N2), the respondent informed the petitioner in no uncertain term that "[O]ur tender is generally in accordance with the requirements given in your enclosed tender documents, duly completed and signed by us, except for the clarifications and elucidations in Appendices "A" and "B" which together with this letter and subsequent correspondence exchanged between the parties up to acceptance shall form part of the contract and shall supersede corresponding stipulations/conditions/specifications in your tender documents wherever they are at variance." It was, therefore, permissible for the sole arbitrator to consider whether Clause K. 1.43 read with Clause K. 1.25 of the original agreement enabled or not the Chief Engineer of the respondent-Corporation to require the respondent to execute the additional work of raising the crest level of the dam from El 704.26 M to EL 712 M without additional payment to it. The sole arbitrator having considered all the

relevant materials and there being no legal proposition which has formed the basis for accepting the claim of the respondent and on the other hand the same being arrived at on account of the abnormal increase in the quantity of work which, in turn, was on account of change in the drawings, designs and dimensions of the dam, there is no justification for the interference of this Court. Even if there is an erroneous interpretation of the two clauses in question, that will merely amount to an error within his jurisdiction. Moreover, there is also no irrationality or perversity in the findings of the sole arbitrator. On the contrary, the view taken by the sole arbitrator in the instant case is a possible view, and this Court cannot substitute its view for the view of the sole arbitrator on the ground that the other view is a better view. Under the circumstances, it is also difficult to accept the other contention of the learned senior counsel for the petitioner that the sole arbitrator failed to give reasons for making the impugned award, after all, the arbitrator, unlike a court of law, is not required by law to give elaborate and detailed reasons in making the award. 14. The last question which now falls for consideration is as to whether the interest of 18 per cent per annum awarded by the sole arbitrator can be sustained in law. It is contended by Mr. V.K. Jindal, the learned senior counsel for the petitioner, that the courts below and the sole arbitrator failed to take into consideration the changing economic scenario in the country and the constant downfall of the rate of interest in the banking institutions, which presently hovers around 5 per cent, and have, in the process, awarded excessive interest and that the interest is liable to be reduced substantially. The contention of the learned senior counsel is strongly refuted by Mr. S.R. Sen, the learned senior counsel for the respondent, by submitting that the award of interest at the rate of 18% by the Learned Assistant to D. C. upheld by the Ld. Addl. District Judge does not suffer from any infirmity. In the instant case, the sole arbitrator awarded interest only on Rs. 4,22,056/-, that too, at the rate of 12% per annum from the day, forty-five days after the date of the award till the decree or the date of payment, whichever was earlier. However, in my opinion, what is the rate of interest to be awarded by the Arbitrator will always depend on the fact and circumstances of each case. For example, in *Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.* (2005) 6 SCC 462 where it was urged on behalf of the appellant that the interest awarded at the rate of 18% was excessive, the Apex Court, keeping in mind the fact that that was the rate in which the respondent had given advance to the appellant, declined to interfere.

15. It may, however, in *Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others*, where the contract in question was entered into in 1987, the work completed in 1990 after extension granted by the respondent, and the arbitrator passed the awards in 1995, the Apex Court held that it would be proper, equitable and in the interest of justice if the interest at the rate of 18% awarded by the arbitrator was reduced to 10 per cent.

16. Again, in *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another*, the Apex Court took into account the economic reforms taking place in the country with consequential changes in the interest regime and, therefore,

reduced the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the pendente lite and future interest to 9%.

17. Aain, in J.C. Budhraj Vs. Chairman, Orissa Mining Corporation Ltd. and Another, , the top court awarded interest at the rate 12% from 1.8.1977 (when the cause of action arose) to the date of award (28.11.1986) and at the rate of 6% from 29.11.1986 till the date of payment. It is obvious that the common thread running through these decisions is that there is no rule of thumb for awarding a particular rate of interest, which must be determined on the facts obtaining in that particular case. Interest is paid to a person by way of compensation for depriving him of money to which he is legitimately entitled, hi the instant case, it is not understood on what principle the courts below awarded interest at the rate of 18% per annum when the sole arbitrator awarded only 12% per annum. Bearing in mind the fact that only Rs. 4,22,056/- was payable by the petitioner on the date the award was made by the sole arbitrator and also regard being had of the afore-cited decisions, I am of the opinion that the ends of justice will be met if the interest awarded by the courts below at the rate of 18% per annum is reduced to 12% per annum as originally awarded by the sole arbitrator.

18. The result of the foregoing discussion is that the impugned judgment of the learned Additional District Judge, Shillong, deserves to be interfered with by partly allowing the revision petition.

19. The revision petition is allowed in part by confirming the award made by the sole arbitrator. The revision-petitioner is, however, directed to pay interest at the rate of 12 per cent per annum on Rs. 4,22,056/- from the date of the award by the sole arbitrator, instead of 18% per annum as awarded by the courts below, till full and final payment.

20. The revision petition is allowed to the extent indicated above. On the peculiar facts of the case, I pass no order as to cost.