
(2008) 03 UK CK 0015
In the Uttarakhand High Court
Case No : A.O. No. 392 of 2007

Punjab Chemi Plants Ltd.

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Arbitration Act, 1940 — Section 29, 37(3), 39, 7A

Citation : (2008) 3 UC 1423

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, T.C. Pandey, for the Appellant; M.C. Tiwari for State, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal u/s 39 of the Arbitration Act has been filed by Appellant against the judgment and decree dated 06-05-1994 passed by Civil Judge, Haridwar in Misc. Case No. 116 of 1993, Punjab Chemi Plant Ltd. v. State of U.P. whereby the learned Civil Judge, Haridwar made the award dated 05-08-1993 rule of the court passed by Sri G.S. Pandey, Arbitrator in respect of agreement No. 6/S.E./76-77.

2. Brief facts giving rise to this appeal are that the State of U.P. and Janta Nirman Civil Engineer Contractor entered into an agreement to construct Power House M/s Punjab Chemi Plants Ltd. is the consignee of Janta Nirman Civil Engineer Contractor. In the agreement deed there was provision that as and when there arise any dispute between the parties, the same shall be adjudicated by the Arbitrator, which shall be binding upon them. The court below on 11-09-1986 appointed Sri G.S. Pandey as sole Arbitrator who gave his award dated 05-08-1993. The Arbitrator allowed the arbitration petition partly awarding total sum of Rs. 7,24,171.00 along with pendentilite and future interest @ 3% per annum from the date of commencement of the arbitration till the date of payment or the date of decree which may be passed on the award, whichever is

earlier. The Arbitrator filed the award before the Civil Judge, Roorkee for making the same as rule of the court.

3. The learned Civil Judge registered the case as O.S. No. 116 of 1993 in which objections were filed from both the sides. The objection of the State was registered as Misc. Case No. 114 of 1993 whereas the objection filed on behalf of the Company was registered as Misc. Case No. 114A/1993.

4. The Appellant/company filed the objection on the sole ground that the rate of interest awarded by the Arbitrator should be increased.

5. The State of U.P. has filed objection against the award on the ground that the Arbitrator has no right to give the award and he has mis-conducted his jurisdiction. It was also alleged that the claimant had no right to move the court for sending the matter for arbitration. The State also alleged that the Arbitrator did not afford sufficient opportunity to adduce its evidence. The State also alleged that the Company did not complete the work within the stipulated time due to his own fault. It was also pleaded that the claim of the claimant was barred by limitation. It was also pleaded that the claimant, at his own accord, had given no claim certificate in respect of the work and therefore he could not have claimed for arbitration of the dispute in accordance with the principle of estoppel. The State pleaded that the Arbitrator has ignored these facts that the impugned award is not binding upon the parties. The trial court on the objections filed by the State in Misc. Case No. 114 of 1993, framed the following points:

1) Whether the award is liable to be rejected on the basis of the objections of the objector?

2) Whether the Arbitrator has misconducted himself while giving the award?

3) Whether the case is time barred?

4) Whether the Arbitrator has given the award out of his jurisdiction? If so, its effect?

5) Relief?

6. Likewise the Civil Judge on the objection of the Company/Appellant framed following points in Misc. Case No. 114A of 1993:

1) Whether the claimant/objector M/s Punjab Chemi Plants Ltd. is entitled to get interest @ 14% per annum upto the date of award and thereafter @ 17% per annum on the award money?

2) Whether there is need to amend the award?

3) Whether the award is against the law and is liable to be rejected in to-to?

4) Relief?

7. The Trial Judge, after hearing learned Counsel for the parties and going

through the objections filed by the parties rejected the plea of the State that the application was time barred. It also rejected the plea of the State that the Arbitrator has misconducted himself in giving the award. The court has recorded finding that the time for giving award was extended by the Arbitrator on the consent of both the parties. The court below has also recorded the finding that the State could not show any instance of misconduct committed by the Arbitrator while giving the award. It has also recorded the findings that the Arbitrator conducted the arbitration proceedings under the terms and conditions enumerated in the contract agreement. The court below after considering the relevant provision of the Act also rejected the objection of the Company/Appellant and forbade to interfere in the rate of pendentialite and future interest awarded by the Arbitrator.

8. Feeling aggrieved by the judgment and order passed by the court below, the Appellant/Company has come up in appeal before this Court.

9. Heard Sri V.K. Kohli, learned Senior Advocate assisted by Sri T. Pandey, learned Counsel for the Appellant, Sri M.C. Tiwari, learned Standing Counsel for the State and perused the record.

10. Learned Counsel for the Appellant has invited my attention towards Section 29 of the Arbitration Act and on the basis of the aforesaid provision has submitted that the court should have awarded interest @ 6% per annum from the date of decree till the date of actual payment, while in the instant case, the court has confirmed the award and made it rule of the court and has awarded interest only @ 3% from the date of commencement of the arbitration till the date of payment or the date of decree which may be passed on the award, whichever is earlier without assigning any reason, therefore, the order passed by the court below is against the provision of law.

11. Having considered the arguments advanced by learned Counsel for the Appellant, I am of the view that the argument is devoid of any force. The provision of Section 29 of the Arbitration Act reads as follows:

29. Interest on awards-Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

12. From bare perusal of the provision of Section 29 of the Arbitration Act, it is quite clear that to grant the interest on award is a discretion to be exercised by the court below while making the award as rule of court and in the instant case, the court below has exercised its jurisdiction by confirming the award and making the same as rule of the court. Therefore, the interest to be paid to the Appellant @ 3% per annum as is indicated in the award and by the court below itself does not render the impugned judgment illegal. The language envisaged in Section 29 of the Act nowhere indicates that in case, if the court while confirming the award and making the same as rule of the court grants in interest less than

6%, then the reasons would have to be assigned. Therefore, from the readings of the Section itself, it is not mandatory for the court to grant the interest @ 6% and in case, if the interest @ 6% is not granted, then the special reasons to be recorded thereof.

13. Further in order to reach to a just conclusion it would again be pertinent to read the provision of Section 7A of the 1st Schedule of Arbitration Act, 1940 which reads as follows:

7A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as defined in Sub-section (3) of Section 37, to the date of award, in addition to any interest award on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six percent per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, but in no case beyond the date of the decree to be passed on the award.

14. The aforesaid provision also makes the picture clear that the Arbitrator may award interest at such rate as he may deem reasonable, to be paid on the principal sum awarded and this interest shall not exceed to 6% per annum. Therefore, in view of the aforesaid provision, the Arbitrator exercising his discretionary jurisdiction, has awarded interest @ 3% per annum to be paid on the principal sum from the date of commencement of the arbitration till the date of payment or the date of decree which may be passed on the award, whichever is earlier. The Court below has accepted the conclusion of the Arbitrator on the point of interest also while making the same rule of the court.

15. I do not find any infirmity in the impugned award as well as in the impugned judgment and order passed by the court below granting the interest @ 3% per annum from the date of commencement of the arbitration till the date of payment or the date of decree which may be passed on the award, whichever is earlier and thereby making the award as rule of court.

16. Accordingly, the appeal is dismissed. The impugned judgment and order is hereby affirmed. No order as to costs.