(2010) 09 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No''s. 6126 of 1999 (O and M) and 4480 of 2002 (O and M)

Punjab State Cooperative Supply and Marketing Federation Ltd. APPELLANT

Vs

Walaiti Ram Parshotam Lal Rice Mills RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 29
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2011) 161 PLR 542

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—This order will dispose of CR No. 6126 of 1999 filed by Punjab State Cooperative Supply & Marketing Federation Ltd. (for short ''the Markfed'') and CR No. 4480 of 2002 filed by M/s Walaiti Ram Parshotam Lal Rice Mills (for short the ''Miller'') against the order dated 22.04.1999 passed by the First Appellate Court.

2. The parties entered into an agreement on 12.11.1980 for conversion of paddy into rice by the miller. The disputes between the parties were referred to an Arbitrator. The Arbitrator gave his Award on 21.12.1988 directing the Miller to pay a sum of Rs. 95,154/- within a period of four weeks from the date of Award in full and final settlement of the claims and if payment was not made within the stipulated period, the miller was liable to pay interest. The operative part of the Award read as under:

The Respondent should pay to the claimant a sum of Rs. 95,154/- within a period of four weeks from today in full and final settlement if the claim counter claims of the parties. If the payment is not made within the stipulated period, the Respondent shall be liable to pay interest on the above amount @ 15% per annum from the date of the award to the date of the decree by the Court.

3. On an application filed by Markfed under Sections 14 and 17 of the Arbitration Act, 1940, the said Award was made as Rule of the Court. However, in the appeal at the instance of the Miller, the order regarding future interest from the date of Award till the date of decree was set aside.

4. Aggrieved against the said order, both the parties are in revision. Firstly, coming to the revision filed by the Miller, it was argued that the agreement is that of conversion of paddy into rice, therefore, the actual weighment of the paddy delivered is relevant and not the book weight. I do not find any merit in such an argument. The determination of such dispute falls within the jurisdiction of the Arbitrator, who is the master of facts. The said aspect has been considered by the Arbitrator. In a recent judgment reported as Madnani Construction Corporation (P) Ltd. Vs. Union of India (UOI) and Others, , it has been again held that the findings of an Arbitrator on question of fact are not open to challenge, it is so held:

20. It is well settled that the arbitrator is the master of facts. When the arbitrator on the basis of record and materials which are placed before him by the Railways came to such specific findings and which have not been stigmatised as perverse by the High Court, the High Court in reaching its conclusions cannot ignore those findings.

5. In view thereof, I do not find any illegality or irregularity in such finding recorded by the Arbitrator, which has been affirmed by the learned trial Court and in the appeal by the First Appellate Court, thus the revision filed by the miller is dismissed.

6. In respect of revision filed by Markfed, the learned Counsel has argued that by agreeing to have settlement of disputes through arbitration, the party concerned must be understood to have only opted for a different forum of adjudication with less cumbersome procedure, delay and expense and not to abandon all or any of its substantive rights under the various laws in force, according to which the arbitrator is obliged to adjudicate the claims referred to him. As long as there is nothing in the arbitration agreement to exclude the jurisdiction of an arbitrator to entertain a claim for interest on the amounts due under the contract, or any prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of an arbitrator to consider and award interest in respect of all periods, subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the Court hereunder, has to be upheld. Reliance was placed upon constitutional bench Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj (2001) 2 SCC 721 wherein it was held to the following:

25. If that be the position, courts which of late encourage litigants to opt for and avail of the alternative method of resolution of disputes, would be penalising or placing those who avail of the same in a serious disadvantage. Both logic and reason should counsel courts to lean more in favour of the arbitrator holding to possess all the powers as are necessary to do complete and full justice between

the parties in the same manner in which the civil court seized of the same dispute could have done. By agreeing to settle all the disputes and claims arising out of or relating to the contract between the parties through arbitration instead of having recourse to civil court to vindicate their rights the party concerned cannot be considered to have frittered away and given up any claim which otherwise it could have successfully asserted before courts and obtained relief.

By agreeing to have settlement of disputes through arbitration, the party concerned must be understood to have only opted for a different forum of adjudication with less cumbersome procedure, delay and expense and not to abandon all or any of its substantive rights under the various laws in force, according to which only even the arbitrator is obliged to adjudicate the claims referred to him. As long as there is nothing in the arbitration agreement to exclude the jurisdiction of the arbitrator to entertain a claim for interest on the amounts due under the contract, or any prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of the arbitrator to consider and award interest in respect of all periods subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the court thereunder, has to be upheld.

7. Thus the process of resolving dispute arbitration is only change of forum and does not affect any of the vested rights of the parties before an arbitrator. It is argued that interest could be awarded by an Arbitrator for the period prior to entering upon reference, pendente-lite interest and after announcing the Award. The interest after the date of decree alone falls within the jurisdiction of Court in terms of Section 29 of the Act. It is argued that interest becomes payable in the following situations:

1. Interest from the date the sum becomes payable till the date of initiation of judicial proceedings called pre-reference period interest;

2. Interest for the period when the subject matter of claim is pending before judicial authority including an arbitrator called pendent-lite interest;

3. Interest from the date of Award of an arbitrator till the date of decree in cases of proceedings before an arbitrator;

4. And Interest from the date of decree till realization in cases before the civil court and from the date of order of the Award being made Rule of Court till the realization of the amount payable.

8. In terms of the Larger Bench decision in N.C. Budharaj''s case (supra), an Arbitrator has power to grant interest in respect of the pre reference period. In respect of the interest pendent-lite, the Larger Bench decision in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , empowers the Arbitrator to award interest pendente lite. There is no dispute in respect of the power to grant interest in respect of such periods. In Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, in respect of post award

period, the Hon''ble the Supreme Court held that the Arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. While award of interest for the period prior to an Arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure.

9. Section 34 of the CPC provides both for awarding of interest pendente-lite as well as for post-decree period and the principles of Section 34 are applicable to the proceedings before the Arbitrator, even if this Section, as such, may not be applicable. The Apex Court held to the following effect:

The question of interest can be easily disposed of as it is covered by recent decisions of this Court. It is sufficient to refer to the latest decision of a five-Judge Bench of this Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, Though the said decision deals with the power of the Arbitrator to award interest pendente-lite, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realization, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of CPC provides both for awarding of interest pendente-lite as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply.

10. In State of Orissa Vs. B.N. Agarwalla, etc., , at page 483, the court considered earlier judgments and said as under:

34. Mr Sanyal, the learned Counsel for the Appellant, contended that pre-reference interest could not be granted. He further submitted that the arbitrator had awarded future interest also from the date of award till the date of payment. It was submitted mat this had the effect of awarding interest even for the period after the court passes a decree, making the award the rule of the court. Referring to Section 29 of the Arbitration Act the learned Counsel submitted that the arbitrator had no jurisdiction to award interest for the period after the passing of the decree till the date of payment and, therefore, the award to that extent, at least, was liable to be set aside.

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36. According to Section 29 of the Arbitration Act, where the award is for payment of money the court may in the decree order interest from the date of the decree to the date of payment. This section by its plain language expressly gives the court the power to award interest from the date of the decree till the date of payment but would this imply that the arbitrator when making the award, has no jurisdiction to award interest from the date of the award till the date of

payment.

37. When the arbitrator makes an award, it is not necessary that in every case the award has to be filed in a court and a decree, in terms thereof, is passed. It does happen that when an award is made, the party against whom it is made, may accept the award and comply with the same. It is rightly not disputed that from the date of passing of the award, future interest can be awarded by the arbitrator as held by this Court in the cases of Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, and Hindustan Construction Co. Ltd. The correct procedure which should be adopted by the arbitrator is to award future interest till the date of the decree or the date of payment, whichever is earlier. The effect of this would be that if the award is voluntarily accepted, which may not result in a decree being passed, then payment of interest would be made from the date of award till the date of payment. Where, however, as in the present case, the award is filed in the court and a decree is passed in terms thereof, then Mr Sanyal has rightly contended that it is for the court to determine u/s 29 of the Arbitration Act as to whether interest should be ordered to be paid and if so at what rate.

38. u/s 29 of the Arbitration Act, the court can, even where the arbitrator has awarded interest from the date of the award till the date of payment, disallow interest from the date of the decree or determine a different rate at which the interest is to be paid or confirm the grant of interest as awarded in the award. When the court does not modify the award with regard to grant of interest from the date of the award up to the date of payment, the effect would be as if the court itself has granted interest from the date of the decree till the date of payment at the rate which was determined by the arbitrator. The future interest would be regarded as having been ordered to be paid u/s 29 of the Arbitration Act when the court does not modify the award in this respect.

11. In respect of payment of interest for the post award period, the Hon''ble Supreme Court in T.G. George v. State of Kerala (2001) 2 SCC 758, held that an Arbitrator can award interest for the post award period as well, wherein, it was held to the following:

10. The next question is whether the High Court was right in setting aside the award of the interest from the date of the award. This Court has held in the case of M/s. Jagdish Rai and Brothers Vs. Union of India, that the award of interest ought to be granted in all cases when there is a decree of money unless there are strong reasons to decline the same. In the case of Jagdish Rai and Bros. v. Union of India this Court has held that there are four stages of grant of interest, viz., (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before the arbitrator, (3) future interest arising between date of award and date of the decree, and (4) interest arising from date of decree till realization of the award. The power of court to grant interest from date of decree is not in doubt. In the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, this Court has

held that the arbitrator is competent to award interest from the date of the award. This Court has held in the case of Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy that the arbitrator has power to grant interest pendente lite. Recently in the case of Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj this Court has held that an arbitrator can award interest for the pre-reference period. Thus as per law laid down by this Court interest can be awarded at all four stages. The reasoning given by the High Court that interest cannot be awarded by the arbitrator is thus fallacious and cannot be sustained. In our view the direction to pay interest from the date of award, cannot be faulted. The impugned judgment to the extent that it disallows the interest from the date of the award, is set aside.

12. In State of Haryana and Others Vs. S.L. Arora and Company, the Court considered that Section 29 of the Arbitration Act, 1940 provided for post decree interest and that the power of the Arbitral Tribunal to award interest was governed by the provisions of the Interest Act, 1978, it was held to the following effect:

16. In the Arbitration Act, 1940 ("the old Act", for short) there was no provision dealing with the power of Arbitral Tribunals to award interest. Section 29 of the old Act merely provided for post-decree interest and authorised the court to direct in the decree, where the award was for payment of money, payment of interest from the date of decree at such rate as the court deemed reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree. The power of Arbitral Tribunals to award interest was governed by the provisions of the Interest Act, 1978 and the law enunciated by courts.

13. In view of the above, I am of the opinion that the order passed by the learned first Appellate Court striking off the part of the Award granting four months'' time to the Respondents to make the payment of the principal amount failing which the Respondent was directed to pay interest @ 15% p.a. was an order, which was within the jurisdiction of the Arbitrator. However, I find that the award of interest @ 15% is excessive. Therefore, the rate of interest shall be @ 9% if the principal amount is not deposited within four months up to the date of decree and 9% from the date of decree till realization.

