

(1994) 09 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 6360 of 1994 (Arising out of S.L.P. (C) No. 7723 of 1992)

Rajasthan State Electricity Board, Jaipur

APPELLANT

Vs

Narmada Industries

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (1994) 4 SCALE 358 : (1994) 3 SCC 458 Supp : (1994) 2 UJ 618

Hon'ble Judges : S. C. Agrawal, J;N. Venkatachala, J;M. K. Mukherjee, J

Bench : Full Bench

Final Decision : Partly Allowed

Judgement

1. Leave granted.

2. Rajasthan State Electricity Board (appellant herein) invited tenders for supply of Aluminium Conductors. The tender submitted by M/s. Narmada Industries (respondent herein) was accepted and the parties entered into an agreement which contained an arbitration clause for referring the dispute arising between the parties to an arbitrator. Dispute arose between the parties with regard to the claim of Rs. 2,88,643.73p made by the respondent towards the difference between the excise duty and duty draw back and certain other claims. One Shri M.L. Arora, Advocate was appointed by the respondent as the arbitrator to decide the dispute. The appellant did not appoint an arbitrator and Shri J.P. Mittal was appointed as the other arbitrator and Shri P.P. Dharwarkar was appointed as the Chairman of the Arbitration Committee by the Institution of Engineers (India). The appellant, however, submitted an application u/s 11 read with section 5 of the Arbitration Act before the District Judge, Jaipur City, Jaipur for removal of the arbitrators. The said application was allowed by the District Judge by order dated November 30, 1988 and Shri N.L. Jain, advocate, was appointed as the sole arbitrator to decide the dispute between the parties. The arbitrator submitted his award before the District Judge, Jaipur City, Jaipur on November 20, 1990. Under

the said award the arbitrator has awarded Rs. 6,56,740.74p against the various heads of claim made by the respondent and a sum of Rs.8,15,833.93p was awarded by way of simple interest at the rate of 16.1/2% from July 13, 1981 to January 21, 1989. Future interest was awarded at the rate of 18% till the payments were made on the principal sum of Rs. 6,56,740.74. The District Judge, on November 23, 1990, passed an order for issuing notices to both the parties for January 16, 1991. When the matter was taken up on July 16, 1991 the notices had not been served and the Court directed that fresh notices be issued for March 4, 1991. On January 29, 1991, the respondent submitted an application to make the award a rule of the court. On the said application the District Judge passed an order, on February 2, 1991, for issuing notice of the application to the appellant. In pursuance of the said order notice was issued to the appellant on the said application and it was sent by registered post. The said notice was received on behalf of the appellant on February 6, 1991. On March 4, 1991 the Court adjourned the case to March 13, 1991 as the period of 30 days after the service of notice had not expired. On March 13, 1991 nobody appeared for the appellant. The service of notice to the appellant was held to be sufficient and after hearing the arguments the matter was fixed for pronouncement of order on March 23, 1991. On March 23, 1991, the District Judge passed a decree against the appellant. The decree was amended by order dated April 4, 1991 so as to make it in accordance with the award. The appellant filed an appeal in the Rajasthan High Court against the said decree passed by the District Judge. One of the contentions that was urged on behalf of the appellant before the High Court was that service of notice u/s 14(2) of the Arbitration Act before the award is made the rule of the Court is mandatory and that no such notice was served on the appellant and, therefore, the decree passed in terms of the award is liable to be set aside. The High Court, by its judgment dated May 6, 1992, rejected the said contention of the appellant on the view that prior to passing of the decree the appellant had the notice of the filing of the award inasmuch as a copy of the application submitted by the respondent on January 29, 1991 had been served on the appellant by registered post. The High Court, therefore, dismissed the appeal of the appellant. The present appeal has been filed against the said decision of the High Court.

3. Supporting the judgment of the High Court the learned Counsel for the respondent submitted that the matter stands concluded by the judgment of this Court in Food Corporation of India and Ors. v. E. Kuttappan . Though this Court found plausibility in the contention urged by the learned Counsel for the respondent but having regard to the facts and circumstances of the case and in order to do complete justice between the parties, the court, by order dated August 27, 1993 directed the appellant to file its objections to the award within two weeks from the date of the said order before the District Judge, Jaipur City, Jaipur and the District Judge was directed to hear the objections in accordance with law and record his findings on the same within a period of three months and send his report containing his findings on the objections filed by the appellant. In

accordance with the said order of this Court the appellant filed its objections to the award which have been considered by the District Judge who has sent his report dated December 18, 1993. In his report the District Judge has expressed the view that the claim for Rs. 2,00,000/- made by the respondent towards loss and compensation due to failure in the issue of payment certificates could not be allowed. We have gone through the reasons given by the District Judge in his report regarding the said claim of Rs. 2,00,000/ and we are of the view that the said claim should not have been allowed and as a consequence the amount of interest that has been awarded should also be correspondingly reduced.

4. We have considered the whole matter in the light of the report of the District Judge, Jaipur City, Jaipur. In order to do complete justice in the matter, exercising our powers under Article 142 of the Constitution, we direct that the amount awarded by way of compensation and damages under the various heads of claim be reduced by Rs. 2,00,000/ to Rs. 4,56,740.74p and, instead of the sum of Rs. 8,15,833.93p awarded by way of interest, simple interest @ 16.1/2% be awarded on the said sum of Rs. 4,56,740.74p for the period from July 13, 1981 to January 21, 1989. Future interest will be payable @ 18% still the payment is made on the said sum of Rs. 4,56,740.74p. The decree will stand modified accordingly and the appeal is partly allowed to this extent. Ten weeks' time is granted to comply with the decree.

5. The parties are left to bear their own costs.