
(2011) 11 JH CK 0076
In the Jharkhand High Court
Case No : Arbitration Appeal No. 7 of 2010

State of Jharkhand

APPELLANT

Vs

SM/s. H.P. Biswas and Co.

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 7

Citation : (2012) 1 JCR 17

Hon'ble Judges : Prakash Tatia, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Prakash Tatia, Chief Justice

1. Heard learned counsel for the parties.

2. Learned counsel for the appellant frankly stated that identical Arbitration Appeal No. 6 of 2010 has been dismissed by this Court (by me) vide order dated 25th July, 2011. However, while arguing the Arbitration Appeal No. 6 of 2010, it was not brought to the notice of this Court that there is specific provision under Sub-Section 7(a) and 7(b) of Section 31 of the Arbitration and Conciliation Act, 1996 which deals with the subject of award of interest and, therefore, the appeal of the appellant-State was dismissed vide order dated 25th July, 2011. Since it is a question of law, therefore, the order dated 25th July, 2011 passed in Arbitration Appeal No. 6 of 2010 cannot become res judicata nor there can be estoppel.

3. Learned counsel for the respondent submitted that Clause 3.22 of the general conditions of the contract provides different contingencies and it deals with the contingency of only delayed payment and it nowhere deals with total non-payment by the State. It is also submitted that this clause nowhere prohibits the Arbitrator from awarding the interest and, therefore, Sub-Section 7(a) of Section 31 of the Act of 1996 has no application.

4. I have considered the submissions of learned counsel for the parties and perused the relevant clause in juxtaposition with Sub-Sections 7(a) and 7(b) of Section 31 of the Act of 1996. The condition No. 3.22 is as under:

3.22 No claim for the interest or damage shall be entertained against the department with respect to any money balance which may be lying with the department arising due to any dispute, unsettled claim, difference or misunderstanding between the Engineer-in-charge on one hand and the contractor on the other hand with respect to any delay in payment.

5. Sub-Sections 7(a) and 7(b) of Section 31 are as under:

Sec. 31. (7)(a) Unless otherwise agreed by the parties, where and insofar 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.

6. From Sub-Section 7(a) of Section 31 it is clear that the parties may agree that no interest shall be payable for any of the amount found due in the parties and if so is not agreed, then the Arbitrator may award the interest. Here in this case, as apparent from Clause 3.22 of the contract quoted above, both the parties agreed that no claim for the interest or damage shall be entertained against the department with respect to any money balance which may be lying with the department, obviously on account of dispute or unsettled claim or difference or misunderstanding between the parties, therefore, it is clear that the department shall not be liable to interest and the contractor agreed to this term. Sub-Section 7(a) of Section 31 covers the subject of award of interest up to the date of award. Therefore, the Arbitrator could not have awarded the interest in view of Sub-Section 7(a) of Section 31 of the Act of 1996. To that extent the appeal of the appellant deserves to be allowed and the award of interest prior to the date of award is liable to be set aside.

7. Learned counsel for the respondent rightly pointed out that the award of interest in Sub-Section 7(b) of Section 31 is statutory award of interest which provides that wherever a sum is directed to be paid by an arbitral award, the award shall carry interest @ 18% per annum from the date of award to the date of payment, subject to any order in the award that the interest shall not be payable. As already noticed, the Sub-Section 7(a) has recognized parties contract with respect to award of interest during pendency of dispute and up to the date of award, i.e. pendent lite interest and Sub-Section 7(b) is clause for award of interest from the date of award. Sub-Section 7(b) indicates that unless interest after the date of award is refused specifically, the awarded amount shall

carry interest at the rate of 18% per annum. Here in this case, the Arbitrator, in fact, has awarded the interest, though low, and has not passed the order against award of interest, therefore, this statutory interest shall follow and the respondent shall be entitled to 18% interest on the awarded amount from the date of award.

8. Learned counsel for the appellant-State submitted that respondent has not filed any appeal against the impugned order for enhancement of interest and also has not filed any cross objection. May it be, but while exercising appellate jurisdiction, the appellate court can pass appropriate order with respect to the award of interest which is in consonance with the statutory provisions and which is in compliance of the statutory direction of award of interest as, in Sub-Section 7(b) of Section 31 it has been clearly directed that a sum directed to be paid by the Arbitrator shall carry interest @ 18% per annum, therefore the objection of the State is rejected.

9. The appeal of the appellant is allowed and award of the interest upto the date of award is set aside. The respondent contractor shall be entitled to 18% per annum interest upon the money awarded from the date of award, till the date of payment.