

(1972) 01 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal and Petition No. 136 of 1971

State of Madhya Pradesh

APPELLANT

Vs

Saith and Skelton (P) Ltd.

RESPONDENT

Date of Decision : 28-01-1972

Acts Referred:

Arbitration Act, 1940 — Section 12(2), 14, 14(1), 14(2), 17, 29
Civil Procedure Code, 1908 (CPC) — Section 34
Sales of Goods Act, 1930 — Section 61, 61(2)

Citation : AIR 1972 SC 1507 : (1972) 1 SCC 702 : (1972) 3 SCR 233

Hon'ble Judges : I. D. Dua, J;G. K. Mitter, J;C. A. Vaidyalingam, J

Bench : Full Bench

Advocate : I.N. Shroff, for the Appellant; S.V. Gupte, S. K. Mehta and K.L. Mehta, for the Respondent

Final Decision : Allowed

Judgement

C.A. Vaidialingam, J.—civil Miscellaneous Petition No. 5801 of 1971, is by the first respondent, is an application under Sections 17 and 29 of the Arbitration Act, 1940 (hereinafter to be referred as the Act) to pass a judgment and decree according to the Award of the arbitrator dated August 24, 1971 and to grant interest from the date of the decree, on the amount found payable by the appellant.

2. civil Miscellaneous Petition No. 5802 of 1971, by the State of Madhya Pradesh, the appellant in the civil Appeal, is an application requesting this Court to decline to take the Award dated August 24, 1971 on its file. Without prejudice to the above prayer, there is a further request made to this Court to set aside or modify the Award in certain respects.

3. The relevant facts leading up to the filing of the two applications may be adverted to : The erstwhile State of Madhya Bharat had entered into a contract with M/s. Saith and Skelton (P.) Ltd., the first respondent, for the supply and erection of Pen stocks for Gandhi Sagar Power Station, Chambal Hydel works.

The acceptance of the contract was by tender No. Project/SE 2522-F/2/25 dated June 5, 1956. Under the said contract, the first respondent firm was required to supply material for the five penstocks of P.O.R. Jhalwar Road, Railway Station at Rs. 1,570 per M. Ton within the time stipulated, the total quantity being 463.939 M. Tons. The material was to be transported from Jhalwar Road Railway Station to the works site by the consignee, the Madhya Bharat Government, and the work of erection was to commence on the receipt at the work site of running length of 96 ft. for any of the penstocks. Clause 21 of the contract provided for any question or dispute, arising under the conditions of the contract or in connection therewith, to be referred to the arbitrators, one to be nominated by the State and the other by the firm. The said clause also provided for the matter being referred to an Umpire to be appointed by the arbitrators in case of disagreement between them. That clause also referred to certain other matters relating to arbitration proceedings.

4. Disputes arose between the appellant and the respondent firm with reference to the performance of the contract. The firm intimated the appellant on December 31, 1959 nominating one Shri T.R. Sharma, as an arbitrator under Clause 21 of the contract and also called upon the appellant to nominate an arbitrator. The Directorate General of Supplies and Disposals, who were acting as the agent of the Madhya Bharat Government, nominated one Shri G.S. Gaitonde, as an arbitrator on behalf of the appellant. But the said arbitrator resigned his appointment and in consequence on April 26, 1960 one Shri R.R. Desai, was nominated as an arbitrator on behalf of the appellant. This nomination was also by the Directorate General of Supplies and Disposals. On September 6, 1960, the two arbitrators appointed one Shri R.C. Soni, as an Umpire. The two arbitrators disagreed in their views resulting in the matter being referred to the Umpire on October 20, 1961. According to the appellant, the appointment of Shri Gaitonde, in the first instance and of Shri R.R. Desai, later, as an arbitrator, by the Directorate General of Supplies and Disposals was without any authority from the appellant. Later on, the Directorate General of Supplies and Disposals again reappointed Shri R.R. Desai as an arbitrator on behalf of the appellant on January 4, 1961.

5. According to the appellant the appointment of Shri R.C. Soni, as Umpire on September 6, 1960 was not valid. Accordingly, the appellant filed in the Court of the Additional District Judge, Mandsaur, civil Miscellaneous Case No. 16 of 1962 u/s 5 of the Act, for setting aside the nominations, as arbitrators of Shri T.R. Sharma and Shri R.R. Desai, as well as the appointment by them of Shri R.C. Soni, as the Umpire. By order dated October 19, 1960, the Addl. District Judge, Mandsaur held that the appointments of Shri R.R. Desai, as an arbitrator and Shri R.C. Soni, as Umpire, were both invalid and not binding on the appellant. The firm filed an appeal before the High Court of Madhya Pradesh against the order of the Addl. District Judge. This appeal was later on treated as a Revision and numbered as civil Revision No. 415 of 1969. The High Court, by its order dated August 6, 1970 appointed Shri R.C. Soni as the Sole Arbitrator u/s 12(2) of

the Act and accordingly modified the order of the Addl. District Judge, Mandsaur.

6. The appellant filed SLP No. 2370 of 1970 in this Court for grant of Special Leave to Appeal against the order of the High Court dated August 6, 1970. The firm entered caveat. On January 29, 1971, this Court granted Special Leave; and, by consent of parties, appointed an arbitrator, whose Award is sought to be made a decree of the Court by the respondent in its application C.M.P. No. 5801 of 1971 and is sought to be set aside by the appellant by C.M.P. No. 5802 of 1971. As the terms of the order passed by this Court are material, it is reproduced below:

Special Leave is granted. The appeal is allowed. The appointment of Shri R.C. Soni as the sole arbitrator is set aside by consent of the parties.

Mr. V.S. Desai, Senior Advocate, is appointed Arbitrator by consent of the parties to go into all the questions in this matter and make his award. The remuneration for the arbitrator would be Rs. 5,000, which will be shared by both the parties equally.

The arbitrator will make his award within three months from today. The parties mention for extension of time for making the award.

Sd. G.K. Mitter J. Sd. A.N. Ray J.

January 29, 1971.

7. On February 1, 1971 this Court gave directions in the appeal, in the presence of the Counsel for both parties, that the records of the arbitration be called for forthwith and sent to the sole arbitrator Mr. V.S. Desai, appointed as per order dated January 29, 1971. Again on April 30, 1971, this Court, in the presence of the Counsel for both the parties, extended the time for making the Award by four months and also permitted the arbitrator to hold the arbitration proceedings at Bombay. The arbitrator gave his Award on August 24, 1971 and filed the same in this Court, the next day. He also gave notice to the parties of the making and signing of the Award. A signed copy of the Award was also sent to both the parties. The operative part of the Award is as follows:

(1) The opponents, the State of Madhya Pradesh will pay to the claimants a sum of Rs. 1,79,653.18 p. for the balance payable to them in respect of the price of supply and erection of the 5 penstocks.

(2) The State will also pay interest on the said amount at 9% per annum simple interest from 7th June, 1958 to the date of decree. The State will also refund to the claimants a sum of Rs. 15,414, 19 p. which they have recovered from the claimants as excess railway freight.

Sd. V.S. Desai, Sole Arbitrator.

8. In C.M.P. No. 5801 of 1971, the firm prays for passing a judgment and decree, according to the Award and also prays for grant of interest from the date of

decree at the rate of 9% per annum. On the other hand, the appellant State, in its application C.M.P. No. 5802 of 1971 prays for an order declining to take the Award on its file or in any event to set aside or modify the award in respect of interest granted prior to August 24, 1971 as well as the direction regarding the refund by the appellant of the sum of Rs. 15,414.19 P. The Award is also sought to be modified on the ground that the award of interest at 9% is very excessive.

9. The question of pronouncing judgment according to the Award, as provided u/s 17 of the Act and which is the prayer in C.M.P. No. 5801 of 1971 will arise only if the prayer to set aside the Award made in C.M.P. No. 5802 of 1971, by the State, is rejected. therefore, we will proceed to consider the contentions raised by Mr. I. N. Shroff, learned Counsel for the appellant, in support of the application C.M.P. No. 5802 of 1971.

10. Mr. Shroff has raised the following four contentions : (1) The arbitrator had no power to suo motu file his Award, as he has done in this case, and as such no action can be taken on such an Award; (2) This Court is not the Court as contemplated by Section 14(2) read with Section 2(c) of the Act. Hence the filing of the Award in this Court is illegal and ineffective in law; (3) The arbitrator had no jurisdiction to award interest from a period anterior to the date of the award or reference; and (4) The Arbitrator has committed a manifest error in directing the refund of Rs. 15,414.19 P. when this amount has already been taken into account in arriving at the figure of Rs. 1,79,653.18 P.

11. We will now proceed to deal with these contentions scriatim.

12. With regard to the first contention, which relates to the validity of the filing of the Award in this Court suo motu, reliance is placed by Mr. Shroff on Section 14(2) of the Act. It is the contention of the Counsel that under this Section an arbitrator can cause an award to be filed in Court only under two circumstances : (a) when a request to do so is made by any party to the arbitration agreement or any person claiming under such party; and (b) when the arbitrator is directed by the Court to file the award. In this case, it is pointed out, that no such request was made by any of the parties to the arbitration agreement or any person claiming under such party to the arbitrator to file the Award. It is pointed out that there was no direction by this Court to the arbitrator to file the Award. Hence it is urged that the filing of the Award suo motu is illegal, as being contrary to the terms of Section 14(2) of the Act.

13. Mr. S.V. Gupte, learned Counsel for the respondent firm, referred us to Section 38 of the Act and pointed out that the scheme of the Act clearly shows that the Award has to be filed in the Court by the arbitrator either suo motu or on request made by the parties to the arbitration agreement or any person claiming under such party or on being directed by the Court. The Counsel pointed out, there is no prohibition in Section 14(2) of the Act, against the arbitrator filing the Award in Court suo motu.

14. The question specifically arose before the Nagpur High Court in Narayan

Bhawu v. Dewajibhawu AIR 1945 Nag. 117. The High Court held that there is nothing in Section 14(2) of the Act, which precludes the arbitrator from filing the Award suo motu and it is not correct to say that the Award should be filed only if the parties make a request to the arbitrator to file the award or make an application to the Court for that purpose. We are in agreement with this view of the law, especially when there is no prohibition in the Act, particularly in Section 14(2) against the arbitrator filing suo motu his Award in Court.

15. Mr. Shroff referred us to the decision in Parasramka Commercial Company Vs. Union of India (UOI), . From the facts stated in the said decision, it is seen that the arbitrator made his Award and signed the same on April 26, 1950. The arbitrator without sending any notice of the making and signing of the Award, sent a copy of the signed Award to the parties. The appellant therein acknowledged receipt of the said signed copy of the Award by his letters dated 5th and 16th May, 1950; but he filed an application on March 30, 1951 in the Subordinate Judge's Court for passing a decree in terms of the Award. An objection was raised by the opponent that the application was out of time under Article 178 of the Indian Limitation Act, 1908, as not having been filed within 90 days of the date of service of the notice of the making of the Award. It is also seen that the arbitrator on July 3, 1951 filed the original Award before the Court suo motu. The Subordinate Judge rejected the application filed on March 30, 1951 as barred by time. That order was confirmed by the High Court. This Court, after a consideration of Section 14(1) of the Act held that the serving, by the arbitrator on the, appellant before this Court of a signed copy of the Award amounted to giving him notice in writing of the making of the Award. This Court further upheld, as correct, the view of the Subordinate Judge and the High Court that the application filed by the appellant, beyond the period prescribed under Art. 178 of the Indian Limitation Act, 1908, was barred. This Court did not express any view regarding the action taken by the arbitrator in filing suo motu the Award and left open the question as follows:

...But we make it clear that the other part of the case, namely what is to happen to the award sent by the Arbitrator himself to the Court has yet to be determined and what we say here will not affect the determination of that question. Obviously enough that matter arises under The Second Sub-section of Section 14 and will have to be considered quite apart from the application made by the company to have the award made into rule of Court.

16. Again the question whether a plea of limitation can be raised with respect to the suo motu filing of the award by the arbitrator was left open as follows:

...As to whether similar objections can be raised in answer to the award filed at the instance of the arbitrator is a question which we cannot go into the present appeal and no expression of opinion must be attributed to us on that point.

17. therefore, it is clear from what is stated above that in the said decision this Court had no occasion to consider whether an award can be filed suo motu by an

arbitrator; nor the further question whether such filing should be within the period of limitation provided under the relevant provisions of the Limitation Act. In the case before us the period of limitation is dealt with under Entry 119 of the Schedule to the Limitation Act, 1963. As the arbitrator in this case made his Award on August 24, 1971 and filed the same the next day, the question of limitation, if any, does not at all arise. We do not express any opinion whether the period of limitation will apply when the arbitrator files his award suo motu the filing of the Award by the Arbitrator suo motu is legal, the first contention of Mr. Shroff has to be rejected.

18. The second contention of Mr. Shroff is that this Court is not the "Court" as defined u/s 2(c) of the Act, where the Award could be filed. Section 2(c) of the Act is as follows:

2. In this Act, unless there is anything repugnant in the subject or context,-

(c) "Court" means a civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court.

19. According to Mr. Shroff the Award should have been filed, not in this Court, but in the Court of the Addl. District Judge, Mandsaur, as that is the Court which will have jurisdiction to entertain the suit regarding the subject matter of the reference. We are not inclined to accept this contention of Mr. Shroff. It should be noted that the opening words of Section 2 are "In this Act, unless there is anything repugnant in the subject or context. therefore the expression "Court" will have to be understood as defined in Section 2(c) of the Act, only if there is nothing repugnant in the subject or context. It is in that light that the expression "Court" occurring in Section 14(2) of the Act will have to be understood and interpreted. It was this Court that appointed Shri V.S. Desai on January 29, 1971, by consent of parties, on an arbitrator and to make his Award. It will be seen that no further directions were given in the said order which will indicate that this Court had not divested itself of its jurisdiction to deal with the Award or matters arising out of the Award. In fact the indications are to the contrary. The direction in the order dated January 29, 1971 is that the arbitrator is "to make his Award". Surely the law contemplates further steps to be taken after the Award has been made, and quite naturally the forum for taking the further action is only this Court). There was also direction to the effect that the parties are at liberty to apply for extension of time for making the Award. In the absence of any other Court having been invested with such jurisdiction by the order, the only conclusion that is possible is that such a request must be made only to the Court which passed that order, namely, this Court.

20. That this Court retained complete control over the arbitration proceedings is made clear by its orders dated February 1, 1971 and April 30, 1971. On the former date, after hearing Counsel for both the parties, this Court gave direction

that the record of the arbitration proceedings be called for and delivered to the Sole Arbitrator Mr. V.S. Desai. On the latter date, again, after hearing the Counsel, this Court extended the time for making the Award by four months and further permitted the arbitrator to hold the arbitration proceedings at Bombay. The nature of the order passed on January 29, 1971 and the subsequent proceedings, referred to above, clearly show that this Court retained full control over the arbitration proceedings.

21. Mr. Shroff referred us to the fact that in the order dated January 29, 1971, it is clearly stated. "The appeal is allowed". According to him, when the appeal has come to an end finally, this Court had lost all jurisdiction regarding the arbitration proceedings and therefore the filing of the Award should be only in the Court as defined in Section 2(c) of the Act. Here again, we are not inclined to accept the contention of Mr. Shroff. That the appeal was allowed, is no doubt correct. By the appeal was allowed by setting aside the order of the High Court and this Court in turn appointed Mr. V.S. Desai as the Sole Arbitrator. All other directions contained in the order dated January 29, 1971 and the further proceedings, as pointed out earlier, indicate the retention of full control by this Court over the arbitration proceedings.

22. In Ct. A. Ct. Nachiappa Chettiar and Others Vs. Ct. A. Ct. Subramaniam Chettiar, , the question arose whether the trial Court had jurisdiction to refer the subject-matter of a suit to an arbitrator when the decree passed in the suit was pending appeal before the High Court. Based upon Section 21, it was urged before this Court that the reference made by the trial Court, when the appeal was pending, and the award made in consequence of such reference, were both invalid as the trial Court was not competent to make the order of reference. This Court rejected the said contention and after a reference to Sections 2(c) and 21 of the Act held that the expression "Court" occurring in Section 21 includes also the Appellate Court, proceedings before which are a continuance of the suit. It was further held that the word "suit" in Section 21 includes also appellate proceedings. In our opinion, applying the analogy of the above decision, the expression "Court" occurring in Section 14(2) of the Act will have to be understood in the context in which it occurs. So understood, it follows that this Court is the Court u/s 14(2) where the arbitration Award could be validly filed.

23. The decision in Union of India v. Surjeet Singh Atwal [1969] 2 S.C.R. 211 relied on by Mr. Shroff, dealt with a different aspect and therefore, it is not necessary for us to refer to the same.

24. The above reasoning leads us to the conclusion that the filing of the Award in this Court by the arbitrator was valid and legal. The second contention of Mr. Shroff will stand rejected.

25. The third contention of Mr. Shroff is that the arbitrator had no jurisdiction to award interest from a period anterior to the date of award or reference. Before we deal with this contention, it is necessary to refer to the findings of the

arbitrator in his Award. Issues Nos. 6, 7 and 19 frame by the arbitrator and which are relevant on this aspect are as follows:

6 (a) Was the claimant entitled to the payment for supply as well as for erection on the total weight of 463.939 M. tons inclusive of electrodes?

6 (b) If not, what are the weights on which the price of supply and the erection charges are to be calculated.

7. What is due to the claimant from the respondent in respect of the supply and erection of the penstocks?

19. Are any of the parties entitled to interest and/or any other relief.

26. On issue No. 6(a) the arbitrator found that the firm was entitled to the same weight both for the calculation of price as well as for the price for erection and the said weight was 463.939 M. Tons inclusive of electrodes. In view of the above finding on issue No. 6(a), the arbitrator held that issue No. 6(b) does not survive. On issue No. 7 he found that for the price of supply and erection of 463.939 M. Tons at the rate specified in contract, the total price due to the firm comes to Rs. 12,15,520.18 P. It was admitted before the arbitrator that the firm had been paid by the State of sum of Rs. 10,35,867/-. In view of this admission the arbitrator found that the balance payable to the firm towards the price for supply and erection is Rs. 1,79,653.18 P.

27. On issue No. 19, the arbitrator found that the firm is entitled to interest at 9% per annum on the balance of Rs. 1,79,653.18 P. from June 7, 1958, the date on which the final inspection of the penstock took place. The interest was to be paid till the date of the decree. It is on the basis of the above findings that the arbitrator made the Award, the operative part of which has already been extracted in the earlier part of the judgment. The direction regarding the payment of Rs. 1,79,653.18 P. is not challenged by the State. It is only the direction regarding the period from which interest is payable, that is under challenge. The arbitrator has made the interest payable from June 7, 1958, on the ground that it was the date on which final inspection took place and when the amount become payable to the respondent.

28. Mr. Shroff referred us to a decision of the Judicial Committee and to certain decisions of this Court to the effect that Section 34 of the CPC will not apply to the proceedings before an arbitrator, as he is not a Court and that interest cannot be awarded by way of damages. He further referred to those decisions in support of his contention that in the absence of any usage or contract, express or implied, or of any provision of law, to justify the award of interest on an amount for a period before the institution of the suit, interest anterior to the date of the suit Cannot be allowed. The decisions referred to by Mr. Shroff are Bengal Nagpur Railway Company Limited v. Ruttanji Ramji and other L.R. 65 I.A. 66, Seth Thawardas Pherumal Vs. The Union of India (UOI), , Mahabir Prashad Rungta Vs. Durga Datt, , Union of India (UOI) Vs. A.L. Rallia Ram, and Union of

India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., . It is no doubt true that for awarding interest under the Interest Act, 1939, or u/s 34 of the CPC, certain circumstances must exist. But one of the principles laid down is that interest prior to the institution of a suit can be awarded if there is any provision of a suit can be awarded if there is any provision of law to justify the award of such interest. In the cases, referred to above, it is seen that there was neither any agreement pleaded for payment of interest; nor was any provision of law entitling the party to recover interest prior to the period of the suit or arbitration proceedings, referred to or relied upon. Under such circumstances it was held that the arbitrator or a Court had no power to award interest prior to the date of the Award.

29. In Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., 4 this Court recognised the power of an arbitrator to award interest on the amount of the award from the date of the award till the date of the decree. According to Mr. Shroff, the power of the arbitrator to award interest is only from the date of the award and not for any period anterior to that date.

30. In Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, the power of the arbitrator, to whom the subject matter of a suit had been referred for arbitration, to award pendente lite interest Was considered by this Court. It was held in the said decision that all the disputes in the suit were referred to the arbitrator for his decision. One of the disputes, so referred, was whether the respondent therein was entitled to pendente lite interest. It was held that though in terms, Section 34 CPC does not apply to the arbitration, it was an implied term of the reference in the suit that the arbitrator was to decide the dispute, according to law, to grant such relief with regard to pendente lite interest as the Court itself could give, if it decided the dispute. It was further held that such a power of the arbitrator was not fettered either by arbitration agreement or by the Act. The decision in Seth Thawardas Pherumal v. The Union of India [1959] 2 S.C.R. 48 distinguished on the ground that the said decision is silent on the question whether an arbitrator can award interest during the pendency of the arbitration proceedings, if all the disputes in the suit including the claim for interest were referred for arbitration.

31. From the decision in Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, it is clear that if all the disputes are referred for arbitration, the arbitrator has power to award interest pendente lite, i.e. during the pendency of the arbitration proceedings.

32. In the case before there is no controversy that all the disputes including a claim for payment of the amount with interest was referred to the arbitrator. The arbitrator, as pointed out earlier, found that the firm was entitled to the payment as price in the sum of Rs. 1,79,653.18 P. The arbitrator has further found that this amount became payable as balance price for the goods supplied by the firm on June 7, 1958, on which date the final inspection took place. If that is so, Section 61 of the Sale of Goods Act, 1930 squarely applies and it saves the right

of the seller (in this case the firm) to recover interest, where by law interest is recoverable. Sub-section 2 of Section 61, which is material is as follows:

61 (2) In the absence of a contract to the contrary the Court may award interest at such rate as it thinks fit on the amount of the price-

(a) to the seller in a suit by him for the amount of the price-from the date of the tender of the goods or from the date on which the price was payable.

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part, of the seller-from the date on which the payment was made.

33. In the case before us, admittedly the contract does not provide that no interest is payable on the amount that may be found due to any one of them. If so, it follows that the seller, namely, the firm is entitled to claim interest from the date on which the price became due and payable. The finding of the arbitrator in this case is that the price became payable on June 7, 1958. As held by this Court in Union of India (UOI) Vs. A.L. Rallia Ram, which related to an arbitration proceeding, under Sub-section 2 of Section 61, in the absence of a contract to the contrary, the seller is eligible to be awarded interest on the amount of the price for the goods sold. On this principle it follows that the award of interest from June 7, 1958 is justified.

34. If the contention of Mr. Shroff that under no circumstances an arbitrator can award interest prior to the date of the Award, or prior to the date of reference, is accepted, then the position will be very anomalous. As an illustration, we may point out that there may be cases where the only question that is referred to the arbitrator is whether any of the parties is entitled to claim interest on the amount due to him from a date which may be long anterior to the date of reference. When such a question is referred to the arbitrator, naturally he has to decide whether the claim for award of interest from the date referred to by the parties is acceptable or not. If the arbitrator accepts that claim, he will be awarding interest from the date which will be long prior even to the date of reference. therefore, the question ultimately will be whether the dispute referred to the arbitrator included the claim for interest from any particular period or whether the party is entitled by contract or usage or by a provision of law for interest from a particular date.

35. Mr. Shroff further contended that the award of interest at 9% per annum is exorbitant. The short answer for negating this contention is that it is seen from the claim statement filed by both the appellant and the respondent-firm that each of them claimed for payment of the amount, due to them with interest at 12% per annum u/s 61 of the Sale of Goods Act. therefore, it follows that the rate of interest awarded is not excessive. As we have already held that the arbitrator has got power in this case to award interest from June 7, 1958 at the rate specified by him, the third contention of Mr. Shroff will have to be rejected.

36. The last contention of Mr. Shroff relates to the direction regarding the refund of Rs. 15,414.19 P. The contention is that this amount has already been taken into account by the arbitrator when he directed the payment of Rs. 1,79,653.18 P. Mr. Shroff was not able to satisfy us that the amount, directed to be paid as refund, has been already taken into account in the amount fixed as the balance price payable by the State. therefore, this contention also will have to be rejected.

37. Now that we have rejected all the contentions of Mr. Shroff raised in C.M.P. No. 5802 of 1971, it follows that the prayer asked for therein cannot be granted.

38. Now coming to C.M.P. No. 5801 of 1971, filed by the firm, that application is accepted and a judgment and decree are passed on the basis of the Award as against the State is favour of the respondent-firm. The appellant State will pay to the respondent-firm a sum of Rs. 1,79,653.18 P. with 9% per annum simple interest from June 7, 1958, till the date of the decree and thereafter at 6% till the date of payment. The appellant State will also refund to the respondent-firm a sum of Rs. 15,414.19 P. which they have recovered from them as excess railway freight.

39. In the result, C.M.P. No. 5802 of 1971 will stand dismissed with costs. C.M.P. No. 5801 of 1971 is allowed with costs. A decree as stated above will issue.