

(1997) 10 MAD CK 0116
In the Madras High Court
Case No : O.S.A. No's. 81 and 82 of 1992

Tamil Nadu Electricity Board

APPELLANT

Vs

The Accredited rep. Trichy-Srirangam Electrical Undertaking
of the South Madras Electric Supply Corpn. Ltd. and Another

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Arbitration Act, 1940 — Section 29, 30

Citation : (1997) 2 CTC 547

Hon'ble Judges : Shivaraj Patil, J; R.R. Jain, J

Bench : Division Bench

Advocate : K.V. Venkatapathi, General for V. Rengabashyam, for the Appellant;
A.L. Somayaji, Sr. Counsel for Aiyar and Dolia, for the Respondent

Judgement

R.R. Jain, J.—Since both these appeals are between the same parties involving identical question of law and facts, are disposed of by this common judgment. These appeals are arising from the arbitration proceedings ended between the appellant and the first respondent through the respondent No. 2, the arbitrator. Dispute between both the parties was referred to the second respondent the arbitrator, who after hearing both the parties, passed reasoned and elaborate award. The award published by the second respondent was filed in the court u/s 14(2) of the Arbitration Act, 1940 and upon receiving the notice, the appellant and the first respondent filed applications u/s 30 of the Act for setting aside the award to the extent they were aggrieved. The learned Single Judge, after hearing both the parties, upheld the award and made a rule of Court, rejecting the objections filed u/s 30 of the Act with modification for payment of interest at the rate of 15% p.a. from the date of the order. Aggrieved by this order, the appellant the first respondent had filed these appeals.

2. In each of the cases, three applications for identical relief were filed and were disposed of by the common order under challenge. Since in both these appeals purely a question of law has been raised for our consideration, we need not refer

to the facts and prayers made in the respective applications and we are confining our observations to the question of law raised before us.

3. The legality of the award passed by the second respondent was challenged u/s 30 of the Act. It cannot be gainsaid that the powers of court to disturb an award u/s 30 are limited and an award can only be disturbed if it is proved and established by cogent and concrete evidence that the arbitrator has misconducted himself, that the award is passed in inherent lack of jurisdiction or alleged to have been procured improperly. The learned Single Judge has dealt with all these aspects and on the strength of the material placed before him, has come to conclusion that the award is legal and valid and is passed in accordance with law. The learned Judge has observed in his judgment that the award passed by arbitrator was a reasoned and elaborate and was passed on the basis of material placed before him. Despite challenging the award u/s 30, the appellant could not point out any mistake of law or fact apparent on the face of record, vitiating the legality of the award. Similarly, no material could be pointed out by the appellant suggesting any misconduct or lack of inherent jurisdiction in passing the award. Consequently, the learned Judge was justified in not interfering with the award in question. On perusal of the impugned judgment, it appears that several judgments were also cited before the learned Judge for his consideration and keeping in mind the ratio laid down by the Apex Court, has delivered his well considered judgment under challenge.

4. The learned Advocate General Mr. Venkatapathy for the appellant has assailed the impugned judgment with great vehemence but has not been able to bring any concrete and cogent material to our notice so as to disturb the judgment under challenge. We are fully satisfied about the reasonings adopted and does not call for any interference on merits except on the question of award of interest at the rate of 15% from the date of the impugned order till realisation. The learned arbitrator awarded 6% interest pendente lite and since the award could not be disturbed on merits, grant of interest at the rate of 6% as awarded by the arbitrator has also been upheld by the learned Judge, but invoking powers u/s 29 of the Arbitration Act, the learned Judge has awarded interest at the rate of 15% p.a., from the date of order, i.e., decree till realisation. It is true that u/s 29 of the Act, the court may award payment of interest as the court deems fit and reasonable from the date of the decree till realisation. Thus, the award of interest u/s 29 for post decretal period is a discretionary relief. As a cardinal rule, discretion has to be exercised reasonably and with some rationale. In other words, even in exercise of discretion also, the court must be armed with some basis and material. The learned Advocate General for the appellant has argued that the discretion has been exercised without any basis. We do find some substance in this contention. According to him, the interest could be awarded at the prevailing bank rate, i.e., 12% p.a., In support of his contention, he also relies upon the judgment of this court reported in *The Superintending Engineer, National Highways Vs. T. Chellagursamy and Another*, . Mr. Somayaji, learned counsel for the first respondent has no objection if the impugned order is

modified to the extent of varying the rate of interest from 15% to 12% from the date of order till realisation. The appellant's contention, to our mind, has some legal force and deserves consideration; since the contesting party has also no objection; we would like to modify the order to the extent indicated as above.

5. Irrespective of the merits, even the award regarding the principal amount need not be examined on merits as the parties agree that the principal amount has already been paid by the appellant to the respondent No. 1 and now the claim remains in respect of payment of interest only.

6. For the reasons stated above, we have no good reasons to interfere with the impugned judgment rendered by the learned Single Judge. Hence, these appeals being devoid of merits, deserve to be dismissed. The judgment of the learned Single Judge is hereby confirmed with modification that the appellant should pay interest at the rate of 12% p.a. instead of 15% as ordered by the learned single Judge.

7. The appeals are ordered accordingly. However, there will be no orders as to costs. In view of the dismissal of the main appeals, CMP. Nos. 8177 and 8178 of 1997 are also dismissed.