(2013) 10 CHH CK 0028

In the Chhattisgarh High Court

Case No : Arbitration Appeal No. 16 of 2012

Union of India and Another — APPELLANT

Vs

Jitendra Kumar Chawada — RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 1 MPHT 39

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : R.S. Patel and Ms. Mamta Sinha, for the Appellant; Dinesh K. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The appellants have preferred this appeal u/s 37 of the Arbitration and Conciliation Act, 1996 (henceforth "the Act of 1996") against the order dated 12-10-2011 passed by District Judge, Bilaspur in MJC Case No. 25/2008. The brief facts in nutshell required for adjudication of this appeal are as under:--

1.1. An agreement No. 40/DEN-BSP/90-91, dated 30-5-1990 was executed between the parties for completing the track renewal work from km 1013 to km 1005 on down line between RPD-CHD for 8 kms. with 60 kg. rails on PSC Sleepers including deep screening of ballast and welding of Rail joints.

1.2. Pursuant to the dispute arisen between the parties, matter was referred to the Arbitrator. The Arbitration Tribunal was appointed by General Manager/SECR through DGM (G)''s letter vide No. DGM/G/SECR/ARB/CE/JKC/63/59/2870, dated 13-11-2006.

1.3. Arbitration Tribunal, upon hearing the parties, has awarded an interest amount of Rs. 84,689/- @ 10% per annum from the date of claim.

1.4. Feeling aggrieved and dissatisfied with the part of award granting interest, the appellants herein preferred an application u/s 34 of the Act of 1996 before the District Judge, Bilaspur for setting aside the award directing the payment of interest in which respondent/Contractor appeared before the Trial Court and filed his reply opposing the application for setting aside the award directing payment of interest.

1.5. The learned Trial Court, vide its order dated 12-10-2011, has held that as per agreement, the interest would not be payable on the security when deposited in cash, but in the instant case no such material available on record to hold that security amount was paid in cash and, therefore, the Tribunal is justified in directing the payment of interest @ 10% per annum.

2. Mr. R.S. Patel and Ms. Mamta Sinha, learned Counsel appearing for the appellants would submit that award passed by the Arbitrator directing payment of interest on the security amount as affirmed by the Trial Court is absolutely illegal in view of the fact that as per Clause 16(3) of the General Conditions of the Contract and Standard Specifications, 2001 issued by the South Eastern Railway, no interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the contract and, therefore, part of award by which interest has been awarded as well as order of the Trial Court deserves to be set aside.

3. On the other hand, Mr. D.K. Tiwari, learned Counsel appearing for the respondent would submit that the order directing the payment of interest by the learned Claims Tribunal as affirmed by the learned Trial Court is absolutely justified in granting interest, which does not call for any interference.

4. I have heard learned Counsel appearing for the parties and considered the rival submissions made therein.

5. In view of factual and legal submissions made by the parties, following point for determination arises in this case:--

Whether the respondent/Contractor is entitled for interest on the security amount made by him with the appellants in connection with work awarded to him?

6. The agreement was entered into between the parties on 30-5-1990 for work in question.

7. A bare perusal of the agreement entered into between the parties would show that no interest will be paid on the said Security Deposit when deposited in cash.

8. A clause relating to Security Deposit contained in agreement states as under:--

Security Deposit may be:-- A deposit of cash, Govt. Security at 5% below the market value, deposit receipts of the State Bank of India or any Nationalised Banks, Guarantee Bonds executed by the State Bank of India or any Nationalised Banks, Guarantee Bonds of the Scheduled Banks, counter-signed by the State Bank of India or advised by the Reserve Bank of India for acceptance, a deposit in the Post Office Saving Bank or a deposit in National Saving Certificates. Deposit receipt of Banks and Post Office Saving Bank Deposit should be pleaded any hypothecated in favour of FA & CAO/S.E. Rly. No interest will be paid on the said security when deposited in cash.

9. The matter was listed before this Court on 21-10-2013 and time was granted to the appellant''s Counsel to ascertain as to whether in this case the Security Deposit of Rs. 59,100/- was deposited in cash or by other means on instructions, Counsel for the appellant has submitted that entire amount of Rs. 59,100/- was not deposited in cash and it was deposited by way of Fix Deposit Receipt.

10. Clause 16 of the General Condition of Contract & Standard Specifications, 2001 held as under:--

16. (1) Earnest Money deposited by the Contractor with his tender will be retained by the Railways as part of security for the due and faithful fulfillment of the contract by the Contractor. The balance to make up the Security Deposit, the rates for which are given below, may be deposited by the Contractor in cash or in the form of Government Securities or may be recovered by percentage deduction from the Contractor''s ''on account'' bills. Provided also that in case of defaulting Contractor the Railway may retain any amount due for payment to the Contractor on the pending ''on account bills'' so that the amounts so retained may not exceed 10% of the total value of the contract.

16. (2) *** *** ***

16. (3) No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be payable with interest accrued thereon.

11. Sections 31(7)(a) and 31(7)(b) of the Act of 1996 read as under:--

31. (7)(a) Unless otherwise agreed by the parties, where and in so far 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 cent per annum from the date of the award to be date of payment.

12. The Supreme Court in case of McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has held as under:--

The power of the Arbitrator to award interest for pre-award period, interest pendente lite and interest post-award period is not in dispute. Section 31(7)(a) provides that the Arbitral Tribunal may award 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 award is made, i.e., pre-award period. This, however, is subject to the agreement as regard the rate of interest on unpaid sum between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre-award period would depend upon the facts and circumstances of each case. The Arbitral Tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on whole or part of the award money; and (iii) whether interest should be awarded for whole or any part of the pre-award period.

13. Thus, in the instant case, in the agreement between parties as executed on 30-5-1990, it has been specifically agreed that no interest will be paid on the said security when deposited in cash. In the present case, it is undisputed fact that security amount deposited is Rs. 59,100/-, on which, the interest has been granted by the Arbitrator was not deposited in cash but deposited as Fix Deposit Receipt. Therefore, the prohibition contained in agreement for non-payment of interest on the security amount is not attracted and by virtue of Section 31(7)(a) of the Act, 1996, Arbitration Tribunal was entitled to award interest on the amount of Security Deposit and the same has been awarded by the Arbitral Tribunal and has been affirmed by the First Appellate Court.

14. Thus, the finding of the Arbitral Tribunal granting interest on the Security Deposit, deposited as Fix Deposit Receipt, and affirmed by First Appellate Court is a finding of fact requiring no interference by this Court in exercise of its power u/s 37 of the Arbitration and Conciliation Act, 1996. Consequently, the appeal filed by the appellant deserves to be and is hereby dismissed. No order as to costs.

