

(2017) 09 CAL CK 0055
In the Calcutta High Court
Case No : 403 of 2013

Union of India & Anr.

APPELLANT

Vs

M/s. S.S Civil Construction Pvt. Ltd.

RESPONDENT

Date of Decision : 20-09-2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 34](#), [Section 31\(7\)](#), [Section 31\(7\)\(b\)](#)
a> - Application for setting aside arbitral award - Form and contents of arbitral award
- Form an

Citation : (2017) 09 CAL CK 0055

Hon'ble Judges : I.P. MUKERJI

Bench : SINGLE BENCH

Advocate : P.S. Bose, Aparna Banerjee, Biswanath Chatterjee, Ashish Mukherjee

Judgement

1. This is an application under Section 34 of the Arbitration and Conciliation Act, 1996. It is made by the Union of India. It challenges an undated award said to have been received by the Union of India on 19th December, 2012.

2. Mr. P.S. Bose, learned Senior Advocate for the petitioner, knows how to place an application to set aside an award, most efficiently. An award ought to be attacked on specific points and as briefly as possible. The Court hearing an application of this nature is not a court of appeal. Mr. Bose conducts Section 34 applications in the way they should be, making the burden of the Court, much lighter. In this application also, he has done so with the same skill.

3. He attacked the award made in claims 4 and 6. The contract underlying the arbitration agreement was a very usual works contract between the parties. In claim No. 4 the respondent claimant claimed the value of extra cost amounting to Rs. 25,30,960/- said to have been incurred by them during the period for which the contract was extended, for maintaining the establishment. The claim was allowed in its entirety by the learned Arbitrator. Claim no. 6 of the respondent was for Rs. 6,87,980/- claiming the wages allegedly paid by them to

their labour during the period of delay. It was allowed to the extent of Rs. 4,34,430/-. Mr. Bose relied on Clause 17(A) (ii) of the terms and conditions of the contract. Under these terms and conditions, no compensation was payable to the respondent for the delay in the completion of the work, on any ground whatsoever. Mr. Bose argued that when the contract was extended, it was so done on the same terms and conditions, including the terms of payment unless specifically stated otherwise.

4. In my opinion, Mr. Bose is absolutely correct. The arbitrator was bound to follow the terms of the contract between the parties. The terms did not permit grant of compensation, irrespective of fault of any party. This point was specifically taken before the learned arbitrator as would appear at page 24 of the award. The learned arbitrator could not have granted compensation on his own.

5. Therefore, the award in respect of claims 4 and 6 is set aside. Mr. Bose has also challenged the interest awarded by the learned arbitrator. The said portion of the award is as follows: "In view of the above findings the claimant is held entitled to receive a sum of Rs.35,74,907.00/- against claim nos.1,4,6 and 7 with interest @ 10% per annum from 04.09.2006 till the date of this award and a further sum of Rs.21,46,355.00 against claim nos. 2 and 12 and for further interest on the aforesaid total amount of Rs. 57,21,262.00 @ 18% p.a. from the date next to the date of this award till the date of actual recovery from the respondent."

6. Mr. Bose relies on Clause 16(2) read with Clause 64(5) of the General Conditions of Contract, which on a combined reading prohibit grant of any interest, upto the date of the award. He also showed me Section 31 (7) of the said Act which says that unless otherwise agreed the Arbitrator can award interest upto the date of the award. This point was also categorically taken before the learned arbitrator as would appear at pages 33 to 34 of the award. The ruling of the Supreme Court in *Union of India vs. Krafters Engineering & Leasing(P) Ltd.* reported in 2011 (3) Arb. LR 153 (Supreme Court) cited by him is that if there was no prohibition against interest in the contract or arbitration agreement the learned arbitrator could grant interest for each of the three periods of time, pre-reference, pending reference or pendente lite and post-award. If there was a bar he could not. Since there was a bar in the contract, the learned arbitrator could not have granted interest for any of those three periods. *M/s. Ambica Construction vs. Union of India* reported in AIR 2017 SC 2586 (Full Bench) brought to the notice of this court by Mr. Chatterjee affirms this principle.

7. If you read Section 31 (7) (b) you will find that the Arbitrator's power to grant post award interest has been recognised. Clause 64 (5) allows the grant.

8. In my opinion, any bar to grant of interest, in the contract, does not affect this right of the Arbitrator.

9. I hold that the respondent will be entitled to interest on the principal sum awarded from the date of the award. The rest of the award regarding interest is

only set aside. The award for claims 4 and 6 is set aside. The impugned undated award at pages 113 to 147 of the petition is modified to the above extent.

10. This application is accordingly disposed of.

11. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.