

(2004) 03 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 24/93

Union of India (UOI)

APPELLANT

Vs

Jai Forging and Stampings Private Ltd.

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Arbitration Act, 1940 — Section 13, 29

Citation : (2004) 3 ARBLR 132 : (2004) 3 MPHT 340 : (2004) 3 MPLJ 263

Hon'ble Judges : Narain Singh "Azad", J; Arun Mishra, J

Bench : Division Bench

Advocate : K.S. Wadhwa, for the Appellant; V.R. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This appeal has been preferred by Union of India aggrieved by order dated 23-11-1992 passed by 1st Addl. District Judge, Jabalpur.

The facts in short giving rise to the appeal indicate that respondent/contractor supplied certain products to the factory owned by Union of India as per the terms of contract and other conditions mentioned in Annexure-B to the agreement. Respondent/contractor M/s. Jai Forgings & Stampings Private Ltd. raised a dispute with regard to payment of transportation charges with respect to supply made. The matter was referred to the Arbitrator named in the agreement. Arbitrator passed an interim award on 22-12-1986 relating to the payment of transportation charges and left the matter of payment of interest with respect to delay in making the payment of transportation charges undetermined. Final award was passed by Arbitrator on 4-8-87. An application was tiled to make the award rule of the Court. Vide order dated 19-7-88 learned District Judge remitted the matter to the Arbitrator to determine the question of interest on the amount of withheld transportation charges. The Arbitrator has thereafter passed an award which was again filed in the Court to make it a rule of the Court. The

learned 1st Addl. District Judge set aside the award on 18-2-89 on the ground that Arbitrator had no jurisdiction to award pendente lite interest. Reliance was placed on decisions of the Supreme Court in *State of Orissa and Others Vs. Construction India*, and *Y.K. Mehta and Others Vs. Union of India (UOI) and Another*, . So far as quantum of interest awarded by the Arbitrator was concerned, the District Judge reduced it by granting only 6% interest on the principal sum from 19-7-1988, i.e., the date on which it had passed the order remitting the award for determination of the interest.

A Misc. Appeal No. 100/89 was preferred against the said order dated 18-2-89 which was set aside by My Lord Hon"ble Mr. Justice D.M. Dharmadhikari (as He then was, now Hon"ble Judge of Apex Court). The order of the District Judge, to the extent it set aside award of the Arbitrator and directed payment of interest at the rate of 6% from 19-7-88 was set aside. This Court also held that Clauses 11 and 12 of the contract are not applicable to the present claim of interest. Clauses 11 and 12 pertains to the claim against the contractor and right to withhold the payment of purchaser. This Court also held that Arbitrator had jurisdiction to award interest prior to the date of reference and after the award till payment of the principal sum. With respect to pendente lite award, the matter was remitted back to the Arbitrator to determine the "quantum of interest" and pass a fresh award. Thereafter Arbitrator has passed an award granting simple interest at 12% p.a. on the principal amount already pronounced in the interim award and final award from the Mean date of supply against each consignment. Lastly award was passed on 11-4-92. The award was filed before the Court below.

Union of India again filed objection on 4-8-92. Union of India objected that Arbitrator had misconducted as such the award be set aside. The award of interest is not in terms of agreement. The Court below has held that award passed is proper and made it rule of the Court.

Shri K.S. Wadhwa, learned Counsel appearing for appellant has submitted that it was not open to the Arbitrator to pass the award with respect to interest. Arbitrator has not considered the agreement and the fact that it was not permissible to transport the goods by road, thus, the award of interest is bad in law.

Shri V.R. Rao, learned Counsel appearing for respondent has submitted that objection raised is untenable in view of order passed by this Court in M.A. No. 100/89, decided on 8-5-91. He has further submitted that there is no bar under the agreement to transport the goods by road. Thus, Arbitrator has not misconducted. He has further submitted that it is open to Arbitrator to grant pendente lite interest.

The question whether Arbitrator can grant pendente lite interest is settled by a decision of the Apex Court in *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy*, , in which the Apex Court has laid down that it is open to the Arbitrator to award pendente lite interest and the decision in

Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, , has been overruled. Thus, in our opinion, it is permissible for the Arbitrator to award pendente lite interest.

Coming to the submission that whether Arbitrator has exceeded jurisdiction while awarding the interest pendente lite in the facts of the case. This Court in M.A. No. 100/89, decided on 8-5-91 has clearly held that Clauses 11 and 12 of the agreement can not come in the way of claiming interest. This Court has held thus :--

"6. So far as the contention raised by the learned Counsel for the respondents is concerned, since the aforesaid Clauses 11 and 12 of the agreement have neither been appended nor made part of the award of Arbitrator, the same can not be construed by the Civil Court to find an error in it. Copy of the award has been made available to me for perusal by the Counsel for the parties and I find that the Arbitrator has not construed Clauses 11 and 12 of the agreement and has not even made a mention of them. There was, thus, no apparent error on the fact of the award within the meaning of Section 30, Sub-clause (c) of the Arbitration Act and the Civil Court has no jurisdiction to interfere. (See Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., . The objection based on Clauses 11 and 12 of the contract was raised before the Trial Court but was not accepted by it but the respondents have not preferred any appeal against the same. It is, therefore, not open to the respondents to raise aforesaid objection for the first time as respondents in this appeal. I have been supplied a copy of Clauses 11 and 12 of the Contract which on the face of it are not applicable to the present claim of the interest. Clauses 11 and 12 pertain to claims against the contractor and right to withhold the payments by the purchaser. It stipulates that the contractor shall, in such cases, have no right to claim interest. In this present case the claim is against the purchaser for interest payable to the contractor in respect of price of supplies.

The question now is what course is to be adopted in this case for upholding the valid part of the award towards interest. The Trial Court was right in holding that the Arbitrator had no jurisdiction to award pendente lite interest, i.e., interest payable between the date of reference to the date of the award. The Arbitrator, had, however, jurisdiction to award interest prior to the date of the reference and after the award till payment of the principal sum. In the award the interest has been calculated in Appendix A, B and C, annexed to it but from them it can not be discovered how much interest is paid pendente lite and how much is for the period prior to the reference and after the award. This is, therefore, a fit case for remitting the matter to the Arbitrator to re-determine the quantum of interest and pass a fresh award. The above course is open in this appeal by virtue of the provisions of Section 16 of the Arbitration Act.

Consequently, the appeal is allowed. The impugned order dated 18-2-1989 is hereby set aside and the award is remitted to the sole Arbitrator appointed in the case to re-determine and quantify the amount of interest payable to the

contractor in the light of the observations made above. It is reiterated that the Arbitrator will exclude the interest paid pendente lite and shall re-determine interest for the remaining period payable in accordance with law. Since it is an old dispute, the Arbitrator is granted three months time to pass a fresh award on the claim of interest and submit the said award to the Lower Court within the above time fixed."

This Court has remitted the matter to the Arbitrator to determine and quantify the amount of interest payable to the contractor in the light of the observations made by this Court. The objection raised that as per agreement contractor can not claim interest was not accepted. In any view of the matter as the Counsel for appellant has now placed reliance on Clause 4 of Annexure-B which provides that store should be despatched normally by a goods train. There is no complete bar on sending the goods by other modes in case of non-availability of the goods train or other circumstances. Grant of transportation charges has already attained finality. It was held that amount was withheld. Thus Arbitrator is right in awarding interest. This submission based on Clause 4 of Annexure-B has not been raised before the Court below and has been raised, for the first time, in this appeal. I find no merit in the objection raised and the award passed by the Arbitrator can not be said to be unjustified in the facts and circumstances of the case, particularly in view of order passed by this Court in M.A. No. 100/89 on 8-5-1991.

Thus, I find no merit in the appeal. The same is dismissed.