
(2002) 06 GAU CK 0039

In the Gauhati High Court

Case No : Arbitration Appeal No. 4 of 2001

Union of India (UOI)

APPELLANT

Vs

Major V.P. Nijhawan

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Citation : (2004) GLT 489 Supp

Hon'ble Judges : P.P. Naolekar, C.J.;J.N. Sharma, J

Bench : Division Bench

Advocate : J. Singh and I.A. Talukdar, for the Appellant; N.N. Saikia and G. Dekha, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—Heard Mr. J. Singh, learned senior counsel for the Appellant and Ms. G. Dekha, learned Counsel for the Respondent.

2. This arbitration appeal is filed by Union of India [Railways] challenging the order passed by the Civil Judge, Senior Division No. 1, Guwahati dated 16.3.2001 passed in Misc. [J] Case No. 154/2000 arising out of T.S. [Arb] Case No. 229/95 whereunder he has remitted the matter for fresh adjudication by the sole Arbitrator in respect of interest on items Nos. II, III, IV and V holding that the decision of the Arbitrator in not awarding interest on the said items is not in accordance with law. It is submitted by the learned Counsel for the Union of India that on account of Sub-clause [3] of Clause 16 of the General Conditions of Contract the contractor is not entitled for award of the interest and thus the Court has committed an error in setting aside the award so far it related to non-grant of interest to the contractor. Clause 16, Sub-clause [3] reads as under:

[3] No interest will be payable upon the earnest money or the 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 repayable with interest accrued thereto.

3. It is obvious from Sub-clause [3] that no interest will be payable upon the earnest money, security deposit or the amount payable to the contractor under the contract. Thus Sub-clause [3] prohibits the contractor from making any claim in regard to interest on the amount of earnest money, security deposit or any amount due to the contractor under the contract. There appears to be complete prohibition of grant of interest by virtue of Sub-clause [3] of Clause 16 of the General Conditions of Contract. In a majority decision rendered by the constitution Bench of the Apex Court, reported in 2001 2 SCC 721 [Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (deceased) by L.Rs. and Ors.] in para 26 it has been held that the Arbitrator has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. Thus the Arbitrator has the jurisdiction to grant interest on the sums found due and payable for the pre-reference period, but it will be subject to in the absence of any specific stipulation or prohibition in the contract to grant any such interest. If there is any such specific terms in the contract, prohibiting award of interest, the Arbitrator does not have any authority to grant interest.

4. Sub-clause [3] of Clause 16 of the General Conditions of Contract prescribes such prohibition and, therefore, the Arbitrator does not get any jurisdiction to grant interest to the contractor. When there is a prohibition in the contract for grant of interest, in view of the Apex Court judgment, the Arbitrator does not have jurisdiction to grant interest and no fruitful purpose will be served by remanding the matter to the Arbitrator on the question of interest. The Arbitrator's jurisdiction to grant interest, in view of the terms of the contract, is not available. That being the case, the directions issued by the court below remanding the matter for fresh adjudication on the question of interest is illegal and contrary to the provisions. Consequently, this appeal is allowed, the order dated 16.3.2001 passed in Misc. [J] Case No. 154/2000 arising out of T.S. [Arb] Case No. 229/95 by the learned Civil Judge, Senior Division No. 1, Guwahati is set aside to that extent. However, in the facts and circumstances of the case, there will be no order as to costs.