(2014) 02 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : CIMA No. 29 OF 2011

Ved Parkash Rathore and Co. — APPELLANT

Vs

State of Jammu & Kashmir and Another — RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Arbitration Act, 1940 — Section 20, 33

Citation : (2014) 2 JKJ 1

Hon'ble Judges : M.M. Kumar, C.J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : K.S. Johal and Mr. Ashray Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.—This order shall dispose of four appeals*. Two of the appeals have been filed by the State whereas other two have

been preferred by the Contractor. Facts are common. These appeals have been preferred by the State and the against the judgment and order

dated 15.10.2010 passed by the learned Single Judge of this Court while disposing of AA Nos. 4 & 5 of 2001. The learned Single Judge has

dismissed the applications for setting aside the awards dated 22.02.2001 and up held the same. It is appropriate to mention that the arbitrator has

awarded a sum of Rs. 33,139.75 in one award and Rs. 1,09,598.00 in other award. The learned Single Judge while upholding the Awards has

reduced the rate of interest at all the three stages from 12% per annum to 9% per annum. The operative portion of the order reads as under:-

In the present case, the agreement between the parties, does not expressly prohibit grant of interest pendent elite or otherwise. So viewed, the

Arbitrator acted within his powers when he allowed interest on the claimed amount pre-reference, pendent elite and future. For the reasons

discussed, none of the grounds urged for setting aside the award, is established. The applicants have failed to prove that the Arbitrator has

misconducted himself or the proceedings issues 1 and 2 are accordingly decided in favour of non-applicant and against the applicants. So viewed,

applications CMP No. 24/2001 and CMP No. 30/2001 for setting aside the award, are dismissed.

Resultantly, the award is made rule of the court. However, the rate of interest as also the direction that post award interest would be payable on

the claimed amount along with the interest accumulated on the claimed amount pendente lite, warrant a second look. It would in the facts and

circumstances of the case, be in the interest of justice to reduce the rate of interest at all the three stages from 12% per annum to 9% per annum.

Further future interest i.e. post award interest at the rate of 9% per annum would be restricted to the claim amount i.e. Rs. 33,139.75 in the case of

Claim-I, and Rs. 1,09,598.00 in the case of Claim-II only. Decree sheet be drawn up.

2. Mr. K.S. Johal, learned senior counsel, has supported the appeal filed by the Contractor whereas none has appeared in support of the appeals

filed by the State of Jammu and Kashmir.

3. The only issue raised before us by Sh. K.S. Johal, learned Senior Counsel on behalf of the contractor is that once the findings recorded by the

arbitrator have not been interfered with then the grant of interest @ 12% could not have been reduced to 9% without any sustainable reasons.

According to the learned counsel, the order passed by the learned Single Judge did not set out any cogent reasons to reduce the rate of interest

and is thus liable to be set aside to that extent.

4. We have heard Mr. K.S. Johal in support of the appeal filed by the contractor. We have also perused the memo of appeal filed by the State of

Jammu and Kashmir. Keeping in view the nature of the controversy, we do not feel the necessity of adjourning the case on account of absence of

the State counsel.

5. There was one contractor with the name of Shri Ved Parkash Rathore. He had entered into a contract in the year 1972 with the Superintending

Engineer, Electric Construction Circle No. 1 for supply of skilled and unskilled labour in connection with construction of Upper Sindh Hydel

Project at Sumbal (Kashmir). The arrangement was extended from time to time and the extended period continued to be governed by the terms

and conditions incorporated at the time of executing the initial contract. The contractor raised two claims. Under claim No. 1 a sum of Rs.

33,139.75 was claimed to be payable to him on account of overtime wages in respect of the period of June, 1973 to August 1974. Another claim

for payment of bills on account of expenses for travelling, lodging and boarding for an amount of Rs. 30,000 was also raised. Under claim No. 2

the contractor asked for a sum of Rs. 1,45,260.44 on account of unpaid bills, unauthorized rebates and non-payment of overtime wages in respect

of period from March 1976 to August, 1976. The Superintending Engineer, Electric Construction Circle No. 1 rejected both the claims. As a

necessary consequence the contractor filed two applications for reference of the dispute to the arbitrator u/s 20 of the Jammu and Kashmir

Arbitration Act, 1940 (for brevity the Act?).

6. Shorn of unnecessary details, the arbitrator partially allowed claim No. 1 and awarded a sum of Rs. 33,139.75 with interest at the rate of 12%

per annum with effect from April 1976 till the date of award and future interest at the rate of 12% on the awarded amount till the date of final

realization of the amount. However, the claim of Rs. 30,000.00 on account of travelling, lodging and boarding etc. was rejected. Likewise the

arbitrator also awarded an amount of Rs. 1,09,598.00 under claim No. 2 with interest at the rate of 12% per annum on account of unpaid bills

with effect from January 1978 and rebate deducted unauthorizedly with effect from April, 1980 and the overtime work from January 1977. The

rate of interest at 12% per annum was fixed for all the three stages i.e. pre-reference, pendente lite and post award period.

7. The awards dated 22.01.2001 were challenged by the State of Jammu and Kashmir and its officer u/s 30/33 of the Act on the off taken ground

that the arbitrator has misconducted himself and the proceedings. It was urged that the award was contrary to the terms and conditions of the

agreement and no details of labour supplied for overtime were furnished. It was alleged that the arbitrator decided the matter without any evidence

on the file. The award was also challenged by questioning the competence of the arbitrator to impose interest on the awarded amount because

there was no provision in the contract for payment of interest nor interest act was applicable. The learned Single Judge framed the following

issues:-1. Has the Arbitrator misconducted himself or the proceedings ? O.P. on State. 2. Is the award otherwise invalid ? O.P. on State. 3. Relief.

8. On issue No. 1 the learned Single Judge held that the role of the Court while dealing with application u/s 30 read with Section 33 of the Act is

not that of an appellate Court or to enter into domain of re-appreciation and reappraisal of evidence adduced before the Arbitrator or to reach the

conclusion different than the one recorded by the Arbitrator. In cases where the Court is dealing with a non-speaking award. Its role is further

restricted because the material that weighed with the Arbitrator to accept or reject the claims of the parties is not available or known to the Court.

The learned Single Judge placed reliance on the observations made by Hon'ble the Supreme Court in the case of Puri Construction Pvt. Ltd. Vs.

Union of India (UOI), It was further held that the Arbitrator under the provisions of the Act was not required to pass a speaking award and spell

out reasons in support thereof. In that regard reliance has been placed on the observations made by Hon'ble the Supreme Court in the case of AIR

1990 1426 (SC) It is thus obvious that in the absence of expressed provision in the arbitration clause the Arbitrator was not required to pass a

speaking or reasoned award nor there was any direction issued by the reference Court to the Arbitrator to give a reasoned award. Therefore, the

challenge that the award is non-speaking or there is insufficiency of evidence or no evidence, were rejected by the learned Single Judge. In that

regard reliance has been placed on the passage from handbook of arbitration practice by Ronald Berstein which have been duly approved by

Hon'ble the Supreme Court in Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others,

9. The learned Single Judge also rejected the claim of the State of Jammu and Kashmir and its officer that the award of interest at the rate of 12%

per annum was without jurisdiction by holding that the Arbitrator, in the absence of any term of contract between the parties prohibiting the award

of interest, was fully entitled to award interest at all the three stages, namely, pre-reference period, pendente lite period and post award period.

The learned Single Judge took it that the law is well settled that interest in a way represent the damages for delayed payment and may be allowed

even in absence of the agreement unless of course the agreement expressly prohibits the grant of interest. In that regard reliance has been placed

on the observations made by Hon'ble the Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa and others Vs.

G.C. Roy, , Smt. Manjit Johl Vs. Dewan Modern Breweries Ltd., and Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C.

Budharaj (Dead) by Lrs. etc. etc., The position has been summed up by extracting para 30 from Rajendra Construction Company's case (supra),

which is set out below in extenso:-

The question then remains as to interest. The appellant had claimed interest in the suits. The Arbitrator awarded interest at the rate of 18 per cent

per annum on the principal amount from the date of the suits to the date of awards and also from the date of the awards to the date of payment or

up to the date of decrees, 'whichever is earlier'. This Court has dealt with the power of Arbitrator to award interest for (i) pre-reference period

Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc., (ii) pendente lite Secretary,

Irrigation Department, Government of Orissa and others Vs. G.C. Roy, and (iii) post-award period Hindustan Construction Co. Ltd. Vs. State of

Jammu and Kashmir, In Bhagawati Oxygen Ltd. Vs. Hindustan Copper Ltd., , one of us (C.K. Thakker, J.) had an occasion to consider the

relevant decisions on the power of Arbitrator to award interest at all the three stages. It was held that the arbitrator had power to award interest.

Keeping in view the facts and circumstances of the present case that the contract was entered into in 1987, the work was completed in 1990 after

extension granted by MHADA and the Arbitrator passed awards in 1995, it would be proper, equitable and in the interest of justice if we reduce

the rate of interest to 10 per cent per annum.

10. In the present case there is no express term or conditions which prohibit the grant of interest pendente lite or otherwise. Therefore, the learned

Single Judge holds that the Arbitrator acted within his power while allowing interest on the claimed amount in respect of pre-reference period,

pendente lite and future. The learned Single Judge did not find any ground to conclude that Arbitrator misconducted himself or the proceedings and

concluded by observing as under:-

In the present case, the agreement between the partiers does not expressly prohibit grant of interest pendente lite or otherwise. So viewed, the

Arbitrator acted within his powers when he allowed interest on the claimed amount pre-reference, pendent lite and future. Fort the reasons

discussed, none of the grounds urged for setting aside the award, is established. The applicants have failed to prove that the Arbitrator has

misconducted himself or the proceedings issues 1 and 2 are accordingly decided in favour of the non-applicant and against the applicants. So

viewed, applications CMP No. 24/2001 and CMP No. 30/2001 for setting aside the award, are dismissed. Resultantly, the award is made rule of

the court. However, the rate of interest as also the direction that post award interest would be payable on the claimed amount along with the

interest pendent lite, warrant a second look. It would in the facts and circumstances of the case, be in the interest of justice to reduce the rate of

interest at all the three stages from 12% per annum to 9% per annum. Further future interest i.e. post award interest at the rate of 9% per annum

would be restricted to the claim amount i.e. Rs. 33, 139.75 in the case of Claim-1, and Rs. 1,09,598.00 in the case of Claim-II only. Decree sheet

be drawn up.

11. In para 2 of the memo of appeals, grounds (a) to (j) have been set out which virtually raises the same issues which have been dealt with by the

learned Single Judge. For example, in ground (a) a new interpretation on Clause 18 of the agreement has been sought. The aforesaid Clause 18

has been set out by the learned Single Judge, which reads as under:-

Normally the labour to be supplied has to work for 8 (eight) hours every day. However sometimes the labour will have to work overtime in excess

of normal 8 hours either during day time or at night in which case the contractor shall have to supply the labour for such overtime working. The

contractor shall be entitled to 50% extra wages for such labour supplied by him. A separate record of labour normally employed as well as the

same engaged over time shall be kept properly by the Officer Incharge of the work and signed by both the parties.

12. A perusal of the aforesaid Clause would show that the labour to be supplied

has to work for 8 hours every day and for working overtime in

excess to normal 8 hours either during day time or at night, the contractor was required to supply the labour for overtime working. Thus the

contractor was under obligation to supply labour for such overtime working. There is no ambiguity in Clause 18 for payment of 50% of extra

wages for overtime hours. However, the Arbitrator has reached a conclusion by awarding an amount of Rs. 33,139.75 with interest at the rate of

12% per annum with effect from April 1976 till the date of award and future interest at the same rate till the final realization of the awarded amount.

There is no provision in the contract for passing a speaking or reasoned award, therefore, the department cannot argue that the claim accepted by

the Arbitrator is arbitrary or result in his misconduct. Likewise, challenge has been thrown to the award by disputing the exorbitant rate of interest,

the award is without any reasons and based on no evidence, against public policy etc. However, we are unable to persuade ourselves that any

ground set out in the memo of appeals would advance the cause of the appellant-State to nullify the awards dated 22.01.2001 or the judgment of

the learned Single Judge. Therefore, the appeals filed by the appellant-State do not merit acceptance and are thus liable to be dismissed.

13. Insofar as the argument of Mr. K.S. Johal, learned senior counsel, that rate of interest awarded by the Arbitrator should not have been

lowered in the absence of any cogent reasons, we are of the view that the discretion exercised by the Arbitrator should ordinarily be upheld.

14. There is no material on record to suggest that the rate of interest at any of the three stages was far lower than 12% so as to alter the same by

judicial intervention. A survey of case law would also indicate that the Court can reduce the rate of interest but there has to be some cogent

reason. For example, in Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another, the view taken in para 11 is that the rate of

interest was reduced from 18% awarded by the Arbitrator for the pre-arbitration period, for the pendente lite period and future interest to 9%

keeping in view that after economic reforms in our country the interest regime has changed and the rates of interest have substantially reduced.

Therefore, we are of the view that the award of interest at the rate of 12% per annum is not exorbitant and the discretion exercised by the

Arbitrator cannot be regarded as unreasonable. Therefore, we set aside the order passed by the learned Single Judge to the extent it reduces the

rate of interest to 9% per annum and restore the rate of interest at the rate of 12% per annum awarded by the Arbitrator.

15. As a sequel to the above discussion, the appeals of the contractor are partially allowed. As indicated above the contractor would be entitled to

interest at all the stages at the rate of 12% per annum as per the award of the Arbitrator. However, the appeals filed by the State of Jammu and

Kashmir are dismissed. No order as to costs.

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S. No.Case No. Title

1 CIMA No. 29/2011 Ved Parkash Rathore & Co. v. State of J & K and ors.

2 CIMA No. 30/2011 Ved Parkash Rathore & co. v. State of J & K and ors.

3 CIMA No. 18/2011 State of J & K & anr. v. Ved Parkash Rathore & Co.

4 CIMA No. 19/2011, CMA No. 20/2011State of J & K & anr. v. Ved Parkash Rathore & Co.

