

A

SUDHIR BROTHERS

v.

DELHI DEVELOPMENT AUTHORITY AND ANR.

NOVEMBER 16, 1995

B

[DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

Arbitration Act, 1940 : Sections 14, 17 and 29.

C

Arbitration—Pre-reference period—Award of interest for—Held Arbitrator can award interest for pre-reference period in references made after coming into force of the Interest Act, 1978.

D

The appellant was awarded a contract by the respondent- Authority for construction of certain work. Disputes having arisen between the parties a reference was made to an Arbitrator on 1.4.1984 who entered upon the reference on 8.2.1985. He made an award on 15.7.1987 in favour of the appellant and also awarded 12% simple interest on the amount awarded from 1.4.1984 to the date of payment. A single Judge of the High Court made the award Rule of Court except in respect of claims under clauses 1, 3 and 4 amounting to Rs. 23,685 and rejected the appellant's claim relating to both the award of *pendente lite* interest (between 8.2.1985 and 15.7.1987) as well as the pre-reference interest (from 1.4.1984 to 8.2.1985). On appeal the Division Bench restored the order of Arbitrator regarding *pendente lite* interest but upheld the order of the Single Judge refusing the pre-reference interest as well as the claims under clauses 1, 3 and 4.

E

F

In appeal to this Court on the question whether the Arbitrator had jurisdiction to award interest for the period between the making of the reference to him and his entering upon the reference (pre-reference period) after the coming into force of the Interest Act, 1978 :

G

Allowing the appeal in part, this Court

H

HELD : 1. The arbitrator has the power and jurisdiction to grant pre-reference interest in references made after the coming into force of the Interest Act, 1978. The Division Bench of the High Court, therefore, erred

in holding that the arbitrator had no jurisdiction to award interest from 1.4.1984 till 8.2.1985 in the post Interest Act, 1978 era. The order of the Division Bench in that regard is set aside and the award of the arbitrator in that behalf is restored. [428-G; 429-B] A

2. No error has been committed by the High Court in disallowing the claim of the appellant for Rs. 23,685 under Clauses 1, 3 and 4. [428-H] B

Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy, JT (1991) 6 SC 349, explained and distinguished.

Executive Engineer (Irrigation), Balimela & Ors. v. Abhaduta Jena & Ors., [1988] 1 SCC 418; Jugal Kishore Prabhatilal Sharma & Ors. v. Vijayendra Prabhatilal Sharma & Anr., [1993] 1 SCC 114 and State of Orissa v. B.N. Agarwala, [1993] 1 SCC 140, relied on. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10613 of 1995. D

From the Judgment and Order/decreed dated 15.7.92 of the Delhi High Court in F.A.O. (OS) No. 85 of 1991.

Dr. A.M. Singhvi and P.K. Manohar for the Appellant.

Sunil Gupta and Mrs. Indu Malhotra for the Respondents. E

The following Order of the Court was delivered :

Leave granted.

The only issue involved in this appeal relates to the power and jurisdiction of an arbitrator to award interest for the period between the making of the reference to the arbitrator and his entering upon the reference (pre-reference period) after the coming into force of The Interest Act, 1978 (post Interest Act era). F

A reference to brief facts for deciding the issue would be apropos. The first respondent - Delhi Development Authority-Awarded certain work of construction of middle income group houses at Pitam Pura, New Delhi to the appellant and entered into a contract with him. Differences and disputes arose between the parties relating to the execution of the G H

- A contract on 1.4.1984, when a reference to arbitration was sought by the appellant and in terms of Clause 25 of the General Conditions of Contract, the same were referred to arbitration of the second respondent. The arbitrator entered upon the reference on 8.2.1985. He made an award on 15.7.1987. The award together with the proceedings was filed in the court by the learned arbitrator. The award was substantially in favour of the appellant. The arbitrator also awarded 12% simple interest on the amount awarded from 1.4.1984 to the date of payment. The appellant filed an application under sections 14 and 17 of the Arbitration Act for making the Award a Rule of the Court. On notice being issued to respondent No. 1, objections were filed to the award being made a Rule of the Court. On 21.12.1990, the learned Single Judge of the Delhi High Court made the award Rule of the Court except in respect of claims under Clauses 1, 3 and 4. The Court also rejected the claim of the appellant relating to both the award of *pendente-lite* interest as well as the pre-reference interest and set aside the award to that extent. On appeal before the Division Bench, *pendente-lite* interest, (between 8.2.1985 and 15.7.1987) as awarded by the arbitrator, was restored but the order of the learned Single Judge refusing the pre-reference interest as well as the claims under Clauses 1, 3 and 4 amounting to Rs. 23, 685 was upheld. The Division Bench opined :
- E "In view of the decision of the Supreme Court in *Secretary, Irrigation Department, Government of Orissa and Others v. G.C. Roy JT* (1991) 6 SC, 349, the Arbitrator had the jurisdiction to award interest during the pendency of the reference before him i.e. from 8th February, 1985 till 15th July, 1987 when he gave the Award. However, the Arbitrator had no jurisdiction to award interest from 1st April, 1984 till before 8th February, 1985, the date when he entered into reference".

This order of the Division Bench has been put in issue in this appeal.

- G Learned counsel for the appellant submitted that the Division Bench fell in error in interpreting the judgment in *G.C. Roy's* case (supra) to have laid down that the arbitrator has no jurisdiction to award interest from 1.4.1984 to 8.2.1985 (pre-reference period) because no such proposition of law was either under consideration or decided in *G.C. Roy's* case (supra).
- H In our opinion, the grievance projected by Dr. Singhvi is well founded.

In *Executive Engineer (Irrigation), Balimela and Others v. Abhaduta Jena & Others*, [1988] 1 SCC, 418, a three Judge Bench of this Court while dealing with pre-reference interest observed:

"Out of the remaining cases, we find that in all cases except two (Civil Appeals Nos. 6019-22 of 1983 and Civil Appeal No. 2257 of 1984, the reference of arbitration were made prior to the commencement of the new Act which was on August 19, 1981. *In the cases to which the Interest Act, 1978 applies, it was argued by Dr. Chitale learned counsel for the respondents, that the amount claimed was a sum certain payable at a certain time by virtue of a written instrument and, therefore, interest was payable under the Interest Act for the period before the commencement of the proceedings.* In support of his contention that the amount claimed was a sum certain payable at a certain time by virtue of a written instrument, the learned counsel relied upon the decision of this Court in *State of Rajasthan v. Raghbir Singh*. *The case certainly supports him and in the cases to which the 1978 interest Act applies the award of the interest prior to the proceeding is not open to question*" (Emphasis ours)

The Constitution Bench in *G.C. Roy's* (supra) was dealing with the question relating to the award of interest *pendente-lite* and not with the question of the award of interest for the pre-reference period and it was in that context that the Constitution Bench held that the view expressed in *Jena's* case with regard to award of *pendente-lite* interest could not be said to have laid down good law. The Constitution Bench did not deal with the question of pre-reference interest in cases coming after the enforcement of Interest Act, 1978, which came into force from 19.8.1981. In *G.C. Roy's* case itself, it is stated that the reference to the Constitution Bench had been necessitated only for deciding the question whether the decision in *Jena's* case was correct in so far as it held that arbitrator had no power to award interest *pendente lite*. On a doubt being raised whether the Constitution Bench in *G.C. Roy's* case had over-ruled the law laid down in *Jena's* case relating to the power of the arbitrator to award interest for the pre-reference period in the post Interest Act, 1978 era, the position was clarified by a three Judge Bench in *Jugal Kishore Prabhatilal Sharma & Ors.*

A v. *Vijayendra Prabhatilal Sharma & Anr.*, [1993] (1) SCC 114, wherein it was specifically held that the decision in *G.C. Roy's* case was concerned only with the power of arbitrator to award interest *pendente-lite* and that it was not concerned with his power to award interest for the pre-reference period.

B Again, in *State of Orissa v. B.N. Agarwala*, [1993] 1 SCC 140, Jeevan Reddy, J. clarified the matter and speaking for the Bench observed :

C *"The next contention of learned counsel for the appellant/State relates to the power of the arbitrator to award interest for the pre-reference period. Reliance is placed upon the decision of this Court in Executive Engineer (Irrigation) v. Abhaduta Jena, Shri Bhagat, learned counsel appearing for the respondent, however, submits that the said decision is no longer good law in view of the Constitution Bench decision in Secretary, Irrigation Department, Govt. of Orissa v. G.C. Roy. We cannot agree with Shri Bhagat. Both of us were members of the Constitution Bench which decided G.C. Roy. It was confined to the power of the arbitrator to award interest pendente lite. It did not pertain to nor did it pronounce upon the power of the arbitrator to award interest for the period prior to his entering upon the reference (pre-reference period). This very aspect has been clarified by one of us. (B.P. Jeevan Reddy, J.) in his concurring order in Jugal Kishore Prabhatilal Sharma v. Vijayendra Prabhatilal Sharma. Accordingly, we hold following the decision in Jena that the arbitrator had no power to award interest for the pre-reference period in this case inasmuch as the award was made prior to coming into force of the Interest Act, 1978. (The Interest Act, 1978 came into force with effect from August 19, 1981)."*

G Thus, the law is now well settled that the arbitrator has the power and jurisdiction to grant pre-reference interest in references made after the coming into force of the Interest Act, 1978. The Division Bench of the High Court was thus clearly in error in holding that the arbitrator had no jurisdiction to award interest from 1.4.84 till 8.2.1985 (pre-reference period) in the post Interest Act, 1978 era. So far as the grievance of the appellant pertaining to the disallowance of the claim of Rs. 23,685 under H Clauses 1, 3 and 4 is concerned, we do not find any error to have been

committed by the High Court. The above view of the Division Bench A
therefore, cannot be sustained.

We accordingly set aside the order of the Division Bench in so far B
as it disallows the award of interest to the appellant for the pre-reference
period i.e. w.e.f. 1.4.84 to 8.2.1985 and restore the award of the arbitrator
in that behalf.

The appeal, accordingly succeeds to the above extent and is allowed.
No costs.

T.N.A.

Appeal allowed.