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INDIAN HUME PIPE CO. LTD.

v.

STATE OF RAJASTHAN

(Civil Appeal No. 6971, of 2009)

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OCTOBER 19, 2009

[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Arbitration Act, 1940 – s.29 – Interest on arbitral award – Competence, jurisdiction and power of arbitrator to award interest – Held: If certain amount was withheld wrongly and without justification, then the aggrieved party would be fully justified in claiming interest – This is mandate of s.34 CPC as also s.29 of the Act – Power to award interest at all stages vests with the arbitrator – If there is no embargo or legal hurdle in awarding interest, there cannot be any justifiable reason to deny the same – Code of Civil Procedure, 1908 – s.34.

The parties entered into an agreement for laying of PSC pipeline. The agreement contained an arbitration clause. Dispute arose between the parties. The matter was referred for arbitration.

The arbitrator passed award substantially allowing the claim of appellant-contractor and also granted interest on the outstanding payment at all the three stages i.e. pre-reference, *pendente lite* interest and future interest from the date of the award till the date of payment or the date of making of the award a rule of Court, whichever is earlier. On Respondent-State filing objections under Section 30 read with Section 33 of the Arbitration Act, 1940, the District Court disallowed the grant of *pendente lite* interest and future interest. The order was upheld by the High Court. Hence the present appeal.

Allowing the appeal, the Court

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HELD:1.1. It is well settled that arbitrators have the competence, jurisdiction and power to award interest for the period from the date of award to date of payment as also for pre-reference, *pendente lite* and post award. The only caveat is that the amount of interest so awarded should be reasonable and agreement between the parties should not prohibit grant of such interest. [Para 14] [258-E-F]

1.2. The High Court erred in coming to the conclusion that even though arbitrator was competent to award interest but it was not mandatory on his part to do so. The said reasoning does not appear to be legally tenable and convincing, for the simple reason, if the amount has been withheld wrongly and without any justification then of course the aggrieved party would be fully justified in claiming interest. This is the mandate of Section 34 CPC as also Section 29 of the Arbitration Act, 1940. Both the aforesaid provisions make it abundantly clear that power to award interest at all stages vests with the arbitrators. Arbitrators are bound to make the award in accordance with law and if there is no embargo or legal hurdle in awarding interest for the aforesaid three stages mentioned hereinabove then there cannot be any justifiable reason to deny the same. [Paras 20 and 21] [263-D-F]

1.3. The impugned orders passed by District Court and the High Court insofar as they refused to grant interest *pendente lite* and future are quashed and the amount together with interest as awarded by the arbitrator is restored. [Para 23] [264-B]

Hindustan Construction Co. Ltd. Vs. State of Jammu & Kashmir (1992) 4 SCC 217 and Bhagawati Oxygen Ltd. etc. v. Hindustan Copper Ltd. etc. (2005) 6 SCC 462, relied on.

A **Case Law Reference:**

(1992) 4 SCC 217 relied on Para 16

(2005) 6 SCC 462 relied on Para 17

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6971 of 2009.

From the Judgment & Order dated 15.5.2007 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Misc. Appeal No. 1631 of 2006.

C K. Ramamoorthy, N. Shoba, Sriam J. Thalapathy and Adhi Venkataraman for the Appellant.

Mukul Kumar (for Milind Kumar) for the Respondent.

The Judgment of the Court was delivered by

D **DEEPAK VERMA, J.** 1. Leave granted.

E 2. This appeal arises out of order and Judgment dated 15.5.2007 passed by learned Single Judge of High Court of Judicature for Rajasthan, Jaipur Bench in SB Civil Miscellaneous Appeal No. 1631/2006, whereby and whereunder the appeal preferred by appellant herein under Section 39 of the Arbitration Act, 1940 (hereinafter shall be referred to as 'the Act') has been dismissed, which arose out of the orders dated 13.09.2005 & 26.11.2005 passed by F District Judge, Jaipur in Arbitration Case No. 143/1998 & Misc. Arbitration Application No. 443/2005 respectively.

3. Thumb nail sketch of the facts of the case is as under:-

G 4. Respondent/State of Rajasthan had issued notice inviting tender on 03.01.1981 and 11.02.1981 for grant of contract for laying PSC pipeline in Kota Division. Appellant herein, pursuant to the said notice submitted its tender.

H 5. The tender of the appellant being lowest was accepted on 18.04.1982. The agreement, thereafter, was executed

between the parties on 13.12.1982. The said Agreement contained an arbitration clause, to be invoked in case of any dispute arising between the parties. A

6. Since a dispute between the parties arose, the said arbitration clause was invoked and the matter was referred to three arbitrators. B

7. They entered into the reference on 12.02.1995 and gave their Award on 12.12.1997.

8. The arbitrators substantially allowed the claim of the appellant together with interest for pre-reference on outstanding payment, pendente lite interest and future interest from the date of award till the date of payment or the date of making of the award a rule of Court, whichever is earlier. C

9. Feeling aggrieved by the said award, respondent-State of Rajasthan preferred objections under Section 30 read with Section 33 of the Act before District Judge, Jaipur City. The appellant herein filed its reply to the said objections and prayed that the award be made rule of the Court. D

10. The matter was heard by the learned District Judge and vide order dated 13.09.2005 the objections preferred by respondent were allowed only to the extent of awarding pendente lite interest, future interest and compound interest on the total amount awarded by the arbitrators. E F

11. Since, while passing the said impugned order no direction was made by the learned District Judge to make the said award a rule of the Court and the pendente lite and future interest awarded by the arbitrators were disallowed, thus, an application for review was filed by the appellant. The same came to be heard and disposed of on 26.11.2005. The award was made rule of the Court and appellant was awarded only simple interest at the rate of 9% per annum from the date of decree of the award. It is against the aforesaid two orders and G H

A judgments passed by learned District Judge, appellant was constrained to carry the matter further before the learned Single Judge by filing Miscellaneous Appeal as mentioned hereinabove.

B 12. Learned Single Judge considered the matter from all angles and came to the conclusion that even though the arbitrators have got the power to grant interest at all the three stages i.e. pre-reference, pendente lite interest and future interest but it is not mandatory for the arbitrators to have awarded the same.

C 13. However, the learned Single Judge completely lost sight of the fact that on the counterclaim having been preferred by the respondent, the same, that is, pendente lite and future interest was awarded by the arbitrators and the same was not disturbed either by the learned District Judge or by the learned Single Judge, yet, on the same set of facts they were denied to the appellant. Thus, feeling aggrieved by the said orders, this appeal has been preferred.

E 14. By a long catena of cases decided by this Court from time to time, it is too well settled that arbitrators have the competence, jurisdiction and power to award interest for the period from the date of award to date of payment as also for pre-reference, pendente lite and post award. The only caveat is that the amount of interest so awarded should be reasonable and agreement between the parties should not prohibit grant of such interest.

F 15. In the light of several judgments of this Court, the question projected in this appeal is no more *res integra*.

G 16. The question with regard to grant of interest by an arbitrator for the period from the date of award to date of payment stands settled by a judgment of this Court in the case of *Hindustan Construction Co. Ltd. Vs. State of Jammu & Kashmir* reported in (1992) 4 SCC 217. The aforesaid question

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has been dealt with by this Court in para 5 of the said judgment reproduced hereinbelow:- A

"5. The question of interest can be easily disposed of as it is covered by recent decisions of this Court. It is sufficient to refer to the latest decision of a five Judge bench of this Court in *Secretary, Irrigation Department, Govt. of Orissa v. G.C. Roy* (1992) 1 SCC 508 : JT (1991) 6 SC 309. Though the said decision deals with the power of the arbitrator to award interest *pendente lite*, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realization, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest *pendente lite* as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply. In this connection, the decision in *Union of India v. Bungo Steel Furniture (P) Ltd.* (1967) 1 SCR 324 : AIR 1967 SC 1032 may be seen as also the decision in *Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) P. Ltd.* (1989) 1 SCC 532 : (1989) 1 SCR 318 which upholds the said power though on a somewhat different reasoning. We, therefore, think that the award on Item No. 8 should have been upheld." B
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17. The other question with regard to grant of interest by the arbitrator at three different stages that is pre-reference, *pendente lite* and post award also stands settled by judgment of this Court in the case of *Bhagawati Oxygen Ltd. etc. v. Hindustan Copper Ltd. etc.* reported in (2005) 6 SCC 462. The said question has succinctly been settled in paras 36, 37, 38 G
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A and 39 reproduced hereinbelow:-

B “36. The last question relates to payment of interest. The arbitrator awarded interest to BOL at the universal rate of eighteen per cent for all the three stages, pre-reference period, *pendente lite* and post-award period. It is not disputed that in the arbitration agreement there is no provision for payment of interest. The learned Single Judge as well as the Division Bench were right in observing that the arbitrator, in the facts and circumstances, could have awarded interest. The arbitrator had granted interest at the rate of eighteen per cent on the ground of loan so advanced by HCL to BOL at that rate.

D 37. Now Section 34 of the Code of Civil Procedure has no application to arbitration proceedings since the arbitrator cannot be said to be a “court” within the meaning of the Code. But an arbitrator has power and jurisdiction to grant interest for all the three stages provided the rate of interest is reasonable.

E 38. So far as interest for pre-reference period is concerned, in view of the conflicting decisions of this Court, the matter was referred to a larger Bench in *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* (2001) 2 SCC 721. The Court, by majority, held that an arbitrator has power to grant interest for pre-reference period provided there is no prohibition in the arbitration agreement excluding his jurisdiction to grant interest. The forum of arbitration is created by the consent of parties and is a substitute for conventional civil court. It is, therefore, of unavoidable necessity that the parties be deemed to have agreed by implication that the arbitrator would have power to award interest in the same way and same manner as a Court.

H 39. Regarding interest *pendente lite* also, there was cleavage of opinion. The question was, therefore, referred

to a larger Bench in *Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy* (1992) 1 SCC 508. The Court considered several cases and laid down the following principles: (SCC pp. 532-33, para 43)

"43. The question still remains whether arbitrator has the power to award interest *pendente lite*, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative forum for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest *pendente lite*, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of

A proceedings.

B (iii) An arbitrator is the creature of an agreement. It
 is open to the parties to confer upon him such
 powers and prescribe such procedure for him to
 follow, as they think fit, so long as they are not
 opposed to law. (The proviso to Section 41 and
 Section 3 of the Arbitration Act illustrate this point.)
 All the same, the agreement must be in conformity
 with law. The arbitrator must also act and make his
 award in accordance with the general law of the
 C land and the agreement.

D (iv) Over the years, the English and Indian courts
 have acted on the assumption that where the
 agreement does not prohibit and a party to the
 reference makes a claim for interest, the arbitrator
 must have the power to award interest pendente
 lite, *Thawardas Pherumal v. Union of India* (1955)
 2 SCR 48 : AIR 1955 SC 468 has not been
 followed in the later decisions of this Court. It has
 E been explained and distinguished on the basis that
 in that case there was no claim for interest but only
 a claim for unliquidated damages. It has been said
 repeatedly that observation in the said judgment
 were not intended to lay down any such absolute
 or universal rule as they appear to, on first
 F impression. Until *Executive Engineer (Irrigation) v.*
Abhaduta Jena case (1988) 1 SCC 418 almost all
 the courts in the country had upheld the power of
 the arbitrator to award interest pendente lite.
 G Continuity and certainty is a highly desirable feature
 of law.

(v) Interest pendente lite is not a matter of
 substantive law, like interest for the period anterior
 to reference (pre-reference period). For doing

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complete justice between the parties, such power has always been inferred.” A

18. In the light of the aforesaid judgments of this Court we have no hesitation to hold that impugned orders passed by learned District Judge as also by learned Single Judge of High Court cannot be sustained in law. B

19. Even though learned counsel for respondent tried to advance arguments that in this appeal no case for interference has been made out but at last, in the teeth of aforesaid judgments peevishly conceded that the impugned orders, cannot be sustained in law. C

20. Learned Single Judge also committed a grave error in coming to the conclusion that even though arbitrator was competent to award interest but it was not mandatory on his part to do so. The said reasoning does not appear to be legally tenable and convincing, for the simple reason, if the amount has been withheld wrongly and without any justification then of course the aggrieved party would be fully justified in claiming interest. This is the mandate of Section 34 of the Code of Civil Procedure as also Section 29 of the Act. D
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21. Both the aforesaid provisions make it abundantly clear that power to award interest at all stages vests with the arbitrators. Arbitrators are bound to make the award in accordance with law and if there is no embargo or legal hurdle in awarding interest for the aforesaid three stages mentioned hereinabove then there cannot be any justifiable reason to deny the same. F

22. It is also pertinent to mention here that the interest awarded by learned District Judge and learned Single Judge to the counter claim of respondent was not disturbed but it was set aside only for the appellant. If appellant was not entitled to claim interest then how respondent-State would get powers or competence to receive it. Same doctrine should have been G
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A made applicable for respondent's case also. Two persons, similarly situated, could not have been treated differently as the same may amount to discrimination.

B 23. In the light of the aforesaid discussion, we allow the appeal and set aside and quash the impugned orders passed by learned District Judge in so far as they refuse to grant interest pendente lite and future and also by learned Single Judge of High Court and restore the award together with interest as awarded by the arbitrators.

C 24. Respondent to bear the cost of litigation throughout. Counsel's fee Rs.10,000/-.

B.B.B.

Appeal allowed.