

A

UNION OF INDIA

v.

M/S BRIGHT POWER PROJECTS (I) P. LTD.

(Criminal Appeal No. 2404 OF 2008)

B

JULY 02, 2015

**[ANIL R. DAVE, VIKRAMAJIT SEN AND
PINAKI CHANDRA GHOSE, JJ.]**

C

Arbitration and Conciliation Act, 1996 – s. 31(7) – Award of pendentelite interest on the amount of arbitral award – When the contract between the parties contained an express bar regarding award of interest – Propriety of – Held: s. 31(7) specifically provides that arbitrator is bound by the terms of the contract so far as award of interest is concerned – Once the parties agreed that no interest would be paid, they were bound by that understanding – Thus, neither the party was entitled to claim interest nor the arbitral tribunal could have awarded the interest.

E

Allowing the appeal, the Court

F

HELD: 1. When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal. [Para 12] [492-E-F]

G

2. Section 31(7) of the Act, by using the words “*unless otherwise agreed by the parties*”, categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest *from the date of*

H

cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. The Tribunal, failed to consider the provisions of Section 31(7) of the Act and clause 13(3) of the contract before awarding interest in the present case. [Paras 14 and 17] [493-C; 494-F]

Union of India v. Saraswat Trading Agency and Ors. (2009)16 SCC 504: 2009 (10) SCR 1063– relied on.

Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy (1992) 1 SCC 508: 1991 (3) Suppl. SCR 417 – distinguished.

Case Law Reference

2009 (10) SCR 1063 relied on. Para 15

1991 (3) Suppl. SCR 417 distinguished. Para 16

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2404 of 2008

From the Judgment and Order dated 07.08.2006 in Appeal (L) No. 124 of 2006 of the High Court of Judicature at Bombay

J. S. Attri, Manita Verma, S. N. Terdal, D. S. Mahra for the appellant.

Prashant Kumar, Triveni Potekar, Rajan Singh, Amarjit Singh Bedi for the respondent.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. - 1. Being aggrieved by the judgment delivered in Appeal (Lodging) No.124 of 2006 in

A Arbitration Petition No.321 of 2005 dated 7th August, 2006, delivered by the High Court of Judicature at Bombay, this appeal has been filed wherein the issue is whether the appellant is liable to pay interest to the respondent though there was a provision in the contract that no interest should be paid on the amount payable to the contractor. The facts which are relevant for the purpose of deciding the issue, in a nutshell, are as under.

2. The appellant and the respondent had entered into a contract whereby the respondent had to construct certain structures, which had been more particularly described in the agreement entered into by the parties on 20th January, 1997.

3. In the course of execution of the contract, a dispute had arisen between the appellant and the respondent contractor and as agreed by the parties, the dispute had been referred to the Arbitral Tribunal. After hearing the concerned parties, the Arbitral Tribunal declared an award on 17th May, 2005, whereby it also awarded interest to the respondent contractor on the amount awarded, from the date of the reference till the date of the award.

4. Relying upon the judgment delivered in the case of **Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy** (1992) 1 SCC 508, the Arbitral Tribunal awarded interest on the amount of the award. In the said case, this Court had considered the provisions of Section 29 of the Arbitration Act, 1940, which dealt with payment of interest pendente lite. After analyzing the scheme of the said Act, various earlier decisions and after considering the very same issue, namely, whether an arbitrator has power to award interest pendente lite and, if so, on what principles, this Court had observed that the Arbitral Tribunal had power to award interest.

5. Being aggrieved by the Award and especially because of interest being awarded by the Arbitral Tribunal, the appellant filed Arbitration Petition No.321 of 2005 in the High Court of Judicature at Bombay. The said arbitration petition was dismissed on 13th December, 2005. A

6. Being aggrieved by the dismissal of the Arbitration Petition, the appellant filed an appeal which was also dismissed by the Division Bench of the High Court of Judicature at Bombay on 7th August, 2006. Judgment of a Division Bench of the High Court of Judicature at Bombay dated 2nd July, 1997, delivered in the case of *Union of India v. Anand Builders* was relied upon and except for stating the above reason, no other reason was recorded by the High Court while dismissing the appeal. B C

7. According to the learned counsel appearing for the appellant, it was not open to the Arbitral Tribunal to award any interest to the contractor in view of a specific condition incorporated in the contract entered into between the parties that no interest would be paid to the contractor. D E

8. On the other hand, the learned counsel appearing for the respondent contractor submitted that the Division Bench of the High Court had rightly upheld the order passed by the learned Single Judge as well as the Arbitral Tribunal. F

9. On the aforesaid contentions, this Court has to decide whether the contract between the parties contained an express bar regarding award of interest and if so, whether the Arbitral Tribunal was justified in awarding interest for the period commencing from the date of reference till the date of the award. G

10. Clause 13 (3) of the contract entered into between the parties reads as under: H

A "13(3). No interest will be payable upon the earnest
money and 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 thereon."

B

11. Thus, it had been specifically understood between
the parties that no interest was to be paid on the earnest
money, security deposit and the amount payable to the
contractor under the contract. So far as payment of interest
C on Government Securities, which had been deposited by
the respondent contractor with the appellant is concerned, it
was specifically stated that the said amount was to be
returned to the contractor along with interest accrued thereon,
but so far as payment of interest on the amount payable to
D the contractor under the contract was concerned, there was
a specific term that no interest was to be paid thereon.

12. When parties to the contract had agreed to the
fact that interest would not be awarded on the amount
E payable to the contractor under the contract, in our opinion,
they were bound by their understanding. Having once agreed
that the contractor would not claim any interest on the amount
to be paid under the contract, he could not have claimed
interest either before a civil court or before an Arbitral
F Tribunal.

13. Section 31(7) of the Arbitration and Conciliation
Act, 1996 (hereinafter referred to as 'the Act') is clear to the
effect that unless otherwise agreed by the parties, the Arbitral
G Tribunal can award interest at reasonable rate for a period
commencing from that date when the cause of action arises
till the date of the award. Section 31(7) of the Act, reads as
under:

H "31(7) (a) Unless otherwise agreed by the parties,

where and in so far as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.”

A

B

14. Section 31(7) of the Act, by using the words “*unless otherwise agreed by the parties*”, categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest *from the date of cause of action to date of the award* is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest.

C

D

15. We may also refer to the decision of this Court in *Union of India v. Saraswat Trading Agency and others* (2009)16 SCC 504. This Court has observed in the said case that if there is a bar against payment of interest in the contract, the arbitrator cannot award any interest for such period. In view of the specific bar under Clause 13(3) of the contract entered into between the parties, we are of the view that the Arbitral Tribunal was not justified in awarding interest from the date of entering upon the reference to the Arbitral Tribunal till the date of the award.

E

F

16. The Arbitral Tribunal had mainly relied upon the judgment delivered by this Court in *G C Roy's case* (supra). In the said case, the situation was different. The contract between the parties did not contain any condition that interest would not be paid. In para 44 of the said judgment, it has been observed as under :

G

“44. Having regard to the above consideration, we think that the following is the correct principle which should

H

A be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes – or refer the dispute as to interest as such – to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.”

17. Relying upon the aforestated judgment delivered by this Court, the Arbitral Tribunal thought it proper to award interest on the amount payable to the contractor for the period commencing from the date on which the reference was entered upon till the date of the award. The Tribunal, however, failed to consider the provisions of Section 31(7) of the Act and clause 13(3) of the contract before awarding interest in the present case.

18. It is also pertinent to note that G.C. Roy's case (supra) had been decided on December 12, 1991 on the basis of the provisions of the Arbitration Act, 1940, which was not operative at the time when the dispute on hand was decided by the Arbitral Tribunal.

19. Section 31(7)(a) of the Act ought to have been read and interpreted by the Arbitral Tribunal before taking any decision with regard to awarding interest. The said Sec-

tion, which has been reproduced hereinabove, gives more respect to the agreement entered into between the parties. If the parties to the agreement agree not to pay interest to each other, the Arbitral Tribunal has no right to award interest pendente lite. A

20. By relying upon the judgments which pertained to different period when statutory provisions were different, the Arbitral Tribunal had awarded interest on the amount payable to the contractor for the period from the date when the reference was entered upon till the date of the award and the said view of the Arbitral Tribunal had been confirmed by the High Court. In our opinion, the Arbitral Tribunal and the High Court ought to have considered the provisions of the Act and the terms of agreement entered upon by the parties. B C D

21. In the aforestated circumstances, the Arbitral Tribunal ought not to have awarded interest to the respondent from the date of reference till the date of the award. E

22. For the aforestated reasons, we set aside the impugned judgment and the award so far as it pertains to payment of interest pendente lite and direct that no interest would be paid on the amount payable under the contract to the respondent from the date of the reference till the date of the award. F

23. The appeal is allowed with no order as to costs.

Kalpna K. Tripathy

Appeal allowed.

G

H