THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 42 OF 2008
AND
CIVIL REVISION PETITION NOs.2890 OF 2007 & 2887 OF 2008

COMMON JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

1. C.M.A.No.42 of 2008 arise out of dismissal of O.P.No.5 of 1991 filed by the Andhra Pradesh Beverages Corporation Limited.

2. C.R.P.No.2890 of 2007 is filed by Mrs. Prema Ramanathan - Proprietrix of M/s.Continental Cap Manufacturers and C.R.P.No.2887 of 2008 is filed by the Andhra Pradesh Beverages Corporation Limited. Both revisions arise out of O.P.No.33 of 1991, wherein the award passed by the arbitrator dated 30.09.1990 as rule of the Court.

3. Since O.P.Nos.5 of 1991 and 33 of 1991 arise out of the award passed in Arbitration Case No.4 of 1989, dated 30.09.1990, the parties are referred to as arrayed before the arbitrator, viz., 'the claimant' (Mrs. Prema Ramanathan - Proprietrix of M/s.Continental Cap Manufacturers) and 'the Corporation' (The Andhra Pradesh Bevarages Corporation Limited).

4. The case of the petitioner-Corporation in O.P.No.5 of 1991 is as follows:

It is a Government company incorporated under the Indian

Companies Act, 1956 for supply of pure, hygienic and unadulterated arrack to consumers in the State of Andhra Pradesh in pilfer proof bottles and sachets. The Corporation called for tenders for supply of Pilfer Proof Caps (PP Caps) on 3.7.1986. In response to the same, several tenders were received and the petitioner selected 20 tenders out of tenders so received. The claimant (1st respondent) is one of the successful tenders and he was awarded the contract for supply of approximately 96 lakhs of PP Caps. The Corporation entered into a contract Ex.B.6, dated 07.10.1986 with the claimant. As per the contract, the claimant is required to supply PP Caps as per the delivery schedule for a period of one year i.e. from 01.11.1986 to 31.10.1987. The first supply must be made not later than 20.11.1986. The first respondent supplied 75,84,000 PP Caps. The Corporation has to pay the claimant at Rs.138/- per 1000 PP Caps. In pursuance of the representations made by the claimant and other contractors, the Corporation increased the contract rate of Rs.5/- per 1000 PP Caps and the said rate applies to supplies made from 01.04.1987.

According to the Corporation, the claimant did not supply PP Caps as per the delivery schedule, as such the Corporation deducted certain amounts from the bills of the claimant towards liquidated damages. There was a diminution in the demand for bottled arrack, as such the Corporation informed the claimant not to manufacture and supply any PP Caps till further orders by a letter dated 28.09.1987. Even after the said date, at the request of the claimant, the Corporation agreed to accept the supply of PP Caps. After the contract period was over, the claimant raised certain untenable claims against the Corporation and got issued a legal notice requesting the Corporation to appoint an arbitrator.

The claimant filed O.S.No.710 of 1988 on the file of the V Additional Judge, City Civil Court, Hyderabad against the Corporation under Section 20 of the Arbitration Act for appointment of an arbitrator. The V Additional Judge, City Civil Court, Hyderabad appointed 2nd respondent therein as an arbitrator for resolving the dispute between the parties.

The claimant filed the claim petition in Arbitration Case No.4 of 1989 before the arbitrator for a total amount of Rs.9,98,500/- under three grounds – The first ground is that the Corporation changed the specification of the aluminium raw material necessary for manufacturing PP Caps. The second ground is that the Corporation changed the specification of the height of the caps after the agreement was entered into on 07.10.1986. The third ground is curtailment in the contracted quantity.

According to the Corporation, the claimant agreed to use aluminium sheets manufactured by INDAL for the purpose of manufacturing PP Caps; that there is no change in the specification of the aluminium; that there is no change in the specification of the height of caps; that the curtailment in the contracted supply was necessitated in view of the diminution in the demand for bottled arrack and the Corporation has right to curtail contracted quantity under the terms of the agreement.

According to the Corporation, they have examined two witnesses and 91 documents got marked before the arbitrator, whereas the claimant examined five witnesses and got marked Exs.A.1 to A.59(a). After hearing the arguments, the learned Arbitrator framed six points and decided points 1 to 5 in favour of the claimant against the Corporation. The arbitrator also awarded compensation to the claimant on the ground of premature termination of contract. The arbitrator awarded an amount of Rs.5,76,484/- including interest upto the date of award and also awarded Rs.25,000/- towards costs of arbitration proceedings.

According to the Corporation, the arbitrator misconducted himself and misconducted the proceedings, and the award is biased one and perverse. The learned arbitrator did not look into the oral and documentary evidence adduced by the Corporation and while passing the award, the arbitrator has not applied his mind at all.

The Corporation stated that the claimant did not purchase 13.8 metric tons of INDAL aluminium as claimed by him, but he purchased only 6.24 metric tons for discharging his obligation under the contract Ex.B.6. The arbitrator awarded compensation on the ground that the claimant purchased 13.8 metric tons of INDAL aluminium. The arbitrator has not considered the evidence of RW1, who clearly stated in his evidence that all the manufacturers of PP Caps prefer to use aluminium sheet manufactured by INDAL because of its ductility and uniform thickness. In this regard, the learned Arbitrator has not considered the written arguments filed by the Corporation. In the counter before the arbitrator, it is clearly stated all these facts and the claimant never protested against the alleged changes.

According to the Corporation, Exs. A.6 and A.7 are fabricated documents. But, the arbitrator without considering the documentary evidence held the said documents are not a fabricated documents. Hence, the arbitrator misconducted the proceedings. The Corporation further stated regarding the claim of the claimant about the wastage of 8% raw material due to change in the specification in the height of the cap. The Corporation resisted the said claim contending that there is no change in the specification of the height and the height fixed is within the range of the standard specification in order to see that caps properly fit the neck of the bottles. The Corporation requested the arbitrator to visit the PP Caps Manufacturing Factory of RW1 and inspect the manufacturing process of caps in order to satisfy himself whether there would be any wastage. The arbitrator inspected the factory of RW1 on 05.01.1990 and in his presence, it was demonstrated that by alteration in the height of the caps, there would not be any wastage of metal owing to reduced tolerance. The learned arbitrator did not make any note of his inspection.

The Corporation contended that the claimant never stated that he would use the aluminium manufactured by BALCO alone if he was not compelled by the Corporation to use INDAL aluminium only. The learned arbitrator calculated the damages payable to the claimant on the basis of difference in the cost between BALCO and INDAL companies.

According to the Corporation, the arbitrator while awarding compensation to the claimant, did not take into consideration the increase in price given by the Corporation to the claimant. The arbitrator failed to consider that the claimant is estopped from making any ground of change of specifications, thus the entire award is not based on record. The arbitrator erred in awarding compensation to the claimant without any proof and the said finding of the arbitrator is perverse. The arbitrator also misconducted the proceedings by ignoring Clause 9 of Ex.B.6 provides that payments are to be made within 30 days after receipt, inspection and acceptance of caps. There is no evidence to show that the amounts were paid after 30 days of inspection and acceptable of caps. Therefore, the award passed by the arbitrator suffers from error apparent on record and the compensation is awarded without evidence.

The learned arbitrator ignored the fact that there was no diminution in the business of bottled arrack. The arbitrator awarded the interest @ 18% per annum on all the claims awarded by him. The arbitrator has no jurisdiction to award the interest during pendency of the arbitration proceedings. According to the Corporation, for the subsequent year
1987-88, the claimant has submitted two quotations when tenders were called for supply of PP Caps to be manufactured out of INDAL aluminium and the height of the caps should be in the range of 18.3 mm maximum and 18 mm minimum. In spite of escalation in prices of raw material and escalation in price of aluminium from 01.04.1987, the claimant quoted the original rate per 1000 caps. In

stead of rejecting the claim of the claimant, the arbitrator did not consider the said fact, thus he misconducted the arbitration proceedings. Therefore, the award passed by the arbitrator is to be set aside.

As per Clause 13 of Ex.B.6 contract, the Corporation is entitled to withhold the amount due towards the liquidated damages. The understanding of the Corporation and the claimant is concerned, the claimant should use aluminium manufactured by INDAL and the height was fixed between
18 mm to 18.3 mm under Clause 10 of the contract. Thus, the award of the arbitrator is vitiated. When the Corporation increased the price by Rs.5/- per 1000 caps, the claimant did not address any letter during the contractual period. The arbitrator ignored the material document which was produced in the proceedings and the award is contrary to the evidence and established principles of law. The award is also vitiated by the fact that the claimant was compensated twice for the alleged loss and awarded damages beyond the terms of the contract. The arbitrator without considering the oral and documentary evidence, passed award on 30.09.1990. Therefore, the Corporation prayed the Court to set aside the award dated 30.09.1990.

5. The case of the 1st respondent-claimant in O.P.No.5 of 1991 as follows:

The claimant denied the allegations made by the Corporation for dragging the proceedings to see that the claimant put in maximum discomfort, therefore the petition is liable to be dismissed *in limine*.

Originally, the claimant requested the dispute to be refereed to arbitration as per the agreement and the Corporation curiously stated that the matter was not referable to arbitration. Thereafter, the claimant filed O.S.710 of 1988 for reference of the dispute to the arbitrator and on 03.01.1989, the petition was ordered. Aggrieved by the order dated 03.01.1989, the Corporation filed C.M.A.No.340 of 1989 and ultimately the C.M.A. was dismissed on 06.07.1989. After dismissal of the C.M.A., the Corporation participated in the arbitration proceedings and also filed S.L.P.No.13231 of 1989 before the Hon'ble Supreme Court of India. On 13.12.1989, the said S.L.P. was dismissed. Then, the arbitrator passed the award on 30.09.1990, the said order was filed into the Court on 27.10.1990 and the notice was served to the Corporation on 09.11.1990. The claimant filed O.P.33 of 1991 for passing a decree in terms of the award.

The claimant denied that the award passed by the arbitrator is biased, one sided and perverse. On the other hand, the arbitrator had only been more sympathetic towards the Corporation even after reaching a conclusion that fresh tools were necessary. As per the oral and documentary evidence, it would establish that the Corporation has been cooking up several documents with ulterior motive and denied that the arbitrator did not look into the oral and documentary evidence adduced on behalf of the Corporation. The claimant further stated that it would be evident from the award itself that he has relied more on the

Corporation's documents and evidence. The claimant contended that the arbitrator came to his own conclusion after careful considering of all the documents. Therefore, the allegation that the arbitrator has not considered the documents Exs.B.50 to B.107, is misconceived, false and misleading. The claimant and other manufacturers, in unambiguous terms, objected the change in the specifications of both in respect of metal and height of the caps.

The claimant further stated that the Courts are precluded to reopen the case or reassess the evidence and Courts cannot sit in appeal over the award. The learned arbitrator has gone into the matter and felt that there was an objection when changes in the specification were introduced and the documents are true and valid. There is neither misconduct on the part of the arbitrator nor misconducting the proceedings. As the arbitrator has found the truth, the Corporation cannot go to the extent of calling the arbitrator as one sided, biased and perverse. The arbitrator has granted a reasonable compensation basing on the material available, particularly when Corporation itself has committed the breach of contract. The claimant further stated that in the first appeal, no fresh grounds can be raised and no additional documents can be let in as the evidence. The allegation that the award passed by the arbitrator suffers as the error apparent on the record, is misconceived and the arbitrator has given credit to the price paid by the Corporation which include the increase of Rs.5/- given and passed the award. The learned arbitrator categorically stated about the breach of contract by the Corporation and consequently held that there is no waiver. The claimant denied that the arbitrator ignored the material available with the Corporation and the damages were awarded basing on the documentary evidence and the oral evidence produced by the claimant. The arbitrator rightly accepted that there is no misconduct or misconducting of the proceedings by the arbitrator. Granting of *pendent elite* interest was also a specific subject-matter of the dispute between the parties as the arbitration proceedings were dragged on by the Corporation. Therefore, the claimant is entitled for *pendent elite* interest and awarding interest is permissible under the Interest Act and finally the Corporation has not made out any grounds to set aside the award. The Corporation cannot challenge the award on the facts and this Court has no jurisdiction to entertain the petition. There is no cause of action for the Corporation to file the petition and the petition is vexatious and frivolous and is liable to be dismissed with costs, and to make the award rule of court.

6. The pleadings in the O.P.No.33 of 1991 are the same as that of O.P.No.5 of 1991 except the categorization of the parties.

7. After considering the pleadings, the learned Senior Civil Judge held that the arbitrator has gone all through the records and gave reasons for awarding compensation. The learned Senior Civil Judge further held that due to the subsequent changes in respect of the specifications in the raw material and height of the caps, the arbitrator awarded compensation and *pendente lite* interest.

The Court also held that “There is no dispute that the petitioner Corporation terminated the contract due to diminishing demand for bottled arrack in respect of 375 ml. arrack bottles and consequently, there was curtailment of contracted quantity under the contract. Therefore all the above points are questions of facts and not questions of law to be taken into consideration to fit them into the second part of clause (a) of Sec.30 of the Act captioned as mis-conduct of the proceedings. Therefore the Court opined as discussed above that no grounds are made out to interfere with the award passed by the learned arbitrator and no grounds are made out to set aside the award as contemplated under the provisions of Sec.30 of the Arbitration Act 1940 and consequently the award is to be made as rule of the Court only."

8. Against the findings of the learned Senior Civil Judge, the Corporation filed C.M.A.No42 of 2008 and C.R.P.No.2887 of 2008 and the claimant filed C.R.P.No.2890 of 2007.

9. The learned counsel for the Corporation argued before us that the arbitrator committed an error apparent on the face of record in assuming that the claimant would have used aluminium manufactured by Bharat Aluminium Company Limited and not INDAL for supplying P.P. caps to the Corporation and awarding damages; that the Court below ought to have seen that the arbitrator adopted the written arguments filed by the claimant and ignored the evidence and arguments of the Corporation; that the Court below also not seen that the arbitrator ignored the material evidence of local inspection where it was demonstrated that the caps of varying height could be manufactured by changing the

forming punch only; that the Court below also not considered the material documents Exs.B.27, B.28 and B.32 and that the arbitrator ignored the evidence produced by the Corporation.

The learned counsel for the Corporation also relied on *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C.Roy with Secretary to Government of Orissa and others Vs. Ragunath Mohapatra*[1]*,* wherein the Hon'ble Suprme Court held at Para 45 as follows:

> "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 of principal amount or independently) is refereed to the arbitrator, he shall have the power to award interest pendent elite. 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 pendent elite. 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."

10. The learned counsel for the claimant argued before us that the trial Court has erred in not considering the prayer of the claimant with respect to the future interest i.e. from the date of the decree till realization i.e. date of payment at 18% per annum.

The learned counsel relied on *Satna Stone and Lime Company Limited, Madhya Pradesh and others Vs. Union of India* *and another*[2], wherein the Hon'ble Supreme Court held at Para 18 as follows:

> "From the discussion of the aforementioned cases, it is clear that the error apparent on the face of the award contemplated by Section 16(1)(c) as well as Section 30(c) of the Arbitration Act is an error of law apparent on the face of the award and not an error of fact. Same principle has been reiterated in *Thawardas Pherumal v. Union of India*. The court reiterated the legal position that an arbitrator cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The legal position has been crystallized in a series of judgments of this Court that the arbitrator has got ample power in giving an award. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself a task of being a judge of the evidence before the arbitrator. The court should approve the award with the desire to support it, if that is reasonably possible rather than to destroy it, by calling it illegal. This Court has very limited jurisdiction to interfere with the reasoned award. Only when the award is based upon a proposition of law which is unjustified in law, the error of law must appear from the award itself or from any document or note incorporated in it or appended to it. It is not permissible to travel beyond and consider material not incorporated in or appended to the award."

The learned counsel also relied on *Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Corporation Limited*[3], wherein the Hon'ble Supreme Court held at Para 42 and 43 as follows:

> "Can the findings and the award in the present case be described as perverse? This Court has already laid down as to which finding would be called perverse. It is a finding

which is not only against the weight of evidence but altogether against the evidence. This Court has held in *Triveni Rubber & Plastics v. CCE* that a perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu v. State.*

In the present case, the findings and award of the umpire are rendered after considering the material on record and giving due weightage to all the terms of the contract. Calling the same to be perverse is highly unfair to the umpire. The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in *Kwality Mfg. Corpn. v. Central Warehousing Corpn.* the court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding."

11. After hearing both sides, the points that arise for consideration are:

1. Whether the Corporation is entitled to set aside the Common Judgment passed in O.P.Nos.5 of 1991 and 33 of 1991?

2. Whether the claimant is entitled for future interest from the date of award till the payment by the Corporation @ 18%?

12. **POINTS**:

A perusal of the oral and documentary evidence, it is clear that the claimant filed O.S.No.710 of 1988 before the V Additional Senior Civil Judge, City Civil Court, Hyderabad against the respondent-Corporation for appointment of an arbitrator for resolving the dispute between the parties i.e. regarding the agreement between the parties relating to the contract for supply of P.P. Caps for arrack bottles and on 03.01.1989, the second respondent-arbitrator appointed to resolve the disputes between the parties. On behalf of the claimant, PWs 1 to 5 were examined and Exs.A.1 to A.59(a) got marked. On behalf of the respondent-Corporation, RWs 1 and 2 were examined and Exs.B.1 to B.91 got marked.

13. As per the pleadings and evidence on record, there is no dispute that the Corporation invited tenders for supply of Pilfer Proof Caps and claimant was one of the successful tenderers and the respondent awarded a contract under Ex.B.6, dated 07.10.1986 for supply of 96 lakhs of caps in a period of one year to two centers i.e. Chittoor and Cuddapah in equal monthly instalments. It is also an admitted fact that after entering into the contract on 07.10.1986 under Ex.B.6, the Corporation insisted the claimant

that the claimant should use the aluminium metal manufactured by the Indian Aluminium Company Limited branded by them as 98-S and also insisted with the height range has been changed between 18 to 18.3 mm instead of the original stipulated height of 17.5 to 18.3 mm. According to the claimant, due to the above reasons, they sustained loss due to increase in the cost for the material used as insisted by the Corporation.

14. The claimant also contended that the respondent-Corporation unilaterally effected the change in the specification of aluminium material and also change in the specification of height of the cap and curtailment in the contracted quantity contrary to the terms and conditions of Ex.B.6 entered between them.

15. Basing on the pleadings and oral and documentary evidence, the arbitrator framed six issues and the arbitrator awarded compensation to the claimant on three points i.e.
a) the respondent changed the specification of aluminium sheet, b) the respondent changed the height of the cap and
c) there was curtailment in respect of the contracted quantity. Aggrieved by the order of the arbitrator, the Corporation as well the claimant preferred O.P.Nos.5 of 1991 and 33 of 1991 respectively before the V Additional Senior Civil Judge, City Civil Court, Hyderabad. On 18th Setpember, 2006, the learned Senior Civil Judge passed the orders, dismissing O.P.No.5 of 1991 and allowing O.P.No.33 of 1991 by making the award passed by the arbitrator dated 30.09.1990 as rule of Court.

16. It is the case of the claimant that after entering into the

contract dated 07.10.1986 under Ex.B.6, the Corporation unilaterally changed the specifications of aluminium sheets for the purpose of manufacturing PP caps to be supplied to the Corporation and insisted the claimant to use only aluminium sheets manufactured by Indian Aluminium Company Limited (hereinafter INDAL) branded as 98.S. This insistence by the Corporation to the claimant was after 20 days after entering into contract under Ex.B.6. A perusal of Ex.B.6 shows that the claimant has to manufacture the caps for aluminium sheets confirming to IS.737/74 in
H2 hardness and thickness of the sheet shall be 0.20 +/- 0.02 mm.

17. The main grievance of the claimant is that due to unilateral decision to change in specification of the aluminium material sheets of INDAL, the claimant has to incur more expenditure. On the other hand, the respondent-Corporation contends that all the other manufacturers preferred to use aluminium sheets manufactured by INDAL for the purpose of manufacturing PP caps, as the aluminium sheets of INDAL have a high ductility and uniform thickness and if the same are used, there will be minimum waste of raw material and the rejection will be far from less. As per Ex.B.6, the claimant and other tenderers will manufacture PP caps with aluminium sheets of the company of their choice and further the cost of the aluminium manufactured by INDAL is far higher than the aluminium sheets manufactured by other companies.

18. The contention of the Corporation is that there was no change in the specification and it was merely fixing the height and confirming about the particular make of the metal in respect of what was originally specified. It is also contended by the Corporation that the claimant accepted their demand. On the other hand, the claimant denied the said fact and contended that the Corporation unilaterally insisted the claimant to use the aluminium manufactured by INDAL. As there is no clause in Ex.B.6, giving any authority to the Corporation to change the specification of the raw material and further changes, the Corporation is alone responsible for increasing the height of the cap from 17.5 mm to 18.3 mm. The Corporation, without any notice, changed the terms of the contract without concurrence and consent of the claimant. Therefore, the arbitrator rightly held that as the changes effected on the material changes, they affect the right and liabilities of the parties and also held that the contract Ex.B.6 does not say that even if there is any change in the type of the metal of the cap to be supplied by the claimant, the claimant should accept the same price as fixed in the contract. Therefore, under Section 70 of the Indian Contract Act, the claimant is entitled for compensation for the loss suffered by them due to unilateral change of the material terms of the contract as the Corporation committed breach of contract and same has to be compensated by way of damages. Therefore, changing the type of metal and fixing or changing the height of the cap would be definitely a change in the specification and what was insisted to the claimant to supply was a different product than what was agreed upon under Ex.B.6. Thus, the

Corporation has committed the breach of terms of the condition of the contract Ex.B.6 entered into by both the parties as the Corporation was not justified in law in unilaterally changing the terms of the contract.

19. The arbitrator awarded interest at 18% per annum as per the prevailing interest of nationalized banks. The arbitrator held that as the proceedings have been pending before the Court for the long time, the claimants are entitled to *pendente lite* interest by relying upon the various judgments of the Hon'ble Supreme Court.

20. Admittedly, the Corporation claimed liquidated damages in pursuance of the clause 13 of Ex.B.6 against the claimant. The respondent has not made any claim in the counter towards liquidated damages as the subject-matter of the arbitration proceedings. Further, in Clause 13 of the contract Ex.B.6, no claim for liquidated damages is maintainable unless the respondent proves that the claimant was at fault in due performance of the contract. The Corporation has to prove by way of evidence that what is the sum to be paid by the claimant towards liquidated damages, and at no point of time the Corporation invoke clause 13 of the contract Ex.B.6 for liquidated damages. The claimant denied about the allegation of the breach of contract by not adhering to the delivery schedule and stated that the Corporation itself guilty by changing important and viable terms of the contract. The claimant also contended that in the contract, it was mentioned that manufacturing of caps from aluminium sheet without specifying a particular brand of aluminium

sheet. Thereafter, unilaterally the Corporation insisted the claimant to use the aluminium sheets manufactured by INDAL which will cause a great financial loss to the claimant and the price of aluminium sheets manufactured by INDAL company is higher than the aluminium sheets manufactured by other aluminium companies. Further, it is contended that the Corporation insisted for the change in the specification of the height of the cap unilaterally. Therefore, the valuable right given to them as per Ex.B.6 terms and conditions was taken away by the Corporation without their concurrence and consent. Therefore, the demand for payment for liquidated damages by the claimant does not arise. Further, on account of changes in the terms and conditions of the contract, the claimant naturally cannot keep up the programme of the schedule of the supply and consequently, the period fixed under the contract for compliance gets automatically changes and thus, the claimant does not held responsible for the delay caused in supply and not adhering to the delivery schedule and the Corporation is estopped from claiming the liquidated damages against the claimant. The arbitrator rightly held this aspect that the Corporation is not entitled to claim any liquidated damages against the claimant under Ex.B.6 contract.

21. Ex.B.17 is the statement given by the respondent about the particulars mentioned regarding the date of receipt of material and for payment made by the respondent. The arbitrator after perusing the Ex.B.17, held that there has been delay in payments beyond the period of 30 days as per Ex.B.6 contract and awarded 18% interest in favour of the claimant.

22. The claimant contended that the respondent-Corporation committed breach of contract by prematurely terminating the contract and illegally rejected the material of the claimant. According to the respondent-Corporation, in view of G.O.Ms.No.715, Revenue (OSD) Department, dated 24.07.1987, the Government directed that there can be no further bottling of 375 ml. bottles. The arbitrator rightly held that there is no prohibition for bottling of 180 ml. bottles as the caps for both the bottles were admittedly same and the Corporation without any reason stopped to receive the contracted quantities of the claimant. There is no evidence produced by the Corporation that G.O.Ms.No.715, dated 24.07.1987 never been communicated to the claimant and it was placed by the Corporation only before the arbitrator. It is also observed by the arbitrator that subsequent to G.O.Ms.No.715, dated 24.07.1987, the Corporation invited tenders for next year and said fact was not clearly established that the Corporation is required the material from the claimant. Thus, the Corporation committed the breach of contract by prematurely terminating the contract. Thus, the arbitrator rightly held that the Corporation is liable to pay damages for the breach committed by the Corporation in refusing to accept the contracted quantities. Hence, the first point is answered against the Corporation.

23. The arbitrator rightly negatived the request of the claimant for awarding damages on the ground that the claimant failed to prove that he has suffered general damages. Further, the claimant has pleaded to grant interest from the date of award till the payment by the Corporation. Hence, the claimant is entitled for

the interest @ 6% p.a. from the date of award till realization.

24. Therefore, the Orders passed by the Court below and the learned Arbitrator need no interference by this Court with regard to all aspects except the claim of interest. Hence, the appeal and revision filed by the corporation are devoid of merit and are liable to be dismissed.

25. In the result, C.R.P.No.2890 of 2007 is partly allowed granting interest @ 6% p.a. from the date of award till realization. However, C.M.A.No.42 of 2008 and C.R.P.No. 2887 of 2008 filed by the corporation are dismissed. No order as to costs.

26. Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal and Civil Revisions Petitions shall stand closed.

(K.C. BHANU, J)

(ANIS, J)

04.02.2015
Anr

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[1] AIR 1992 S.C. 732

[2] (2008) 14 S.C.C. 785

[3] (2010) 11 S.C.C. 296