THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.6823 of 2005

and

CIVIL MISCELLANEOUS APPEAL Nos.1099 and 899 of 2005

COMMON JUDGMENT: (per Hon'ble Sri Justice M.Seetharama Murti)

The Civil Revision Petition No.6823 of 2005 and C.M.A.No.1099 of 2005 by the respondent are filed assailing the orders, dated 31.03.2005 respectively passed in O.P.No.102 of 1999 and O.P.No.101 of 1999 by the learned Senior Civil Judge, Gajuwaka. The C.M.A.No.899 of 2005 by the claimant is filed partly assailing the order dated 31.03.2005 of the learned Senior Civil Judge, Gajuwaka passed in the above said O.P.No.102 of 1999.

2. The above said two Original Petitions in O.P.No.102 of 1999 and O.P.No.101 of 1999 which were respectively filed before the Court of the Senior Civil Judge by the claimant and the respondent arise out of a common arbitration award, dated 27.02.1993. Therefore, all these three matters were taken up together and were heard as desired by the learned counsel for both the sides. Hence, these common orders.

3. The parties in these matters shall hereinafter be referred to as the claimant and the respondent as arrayed in the proceedings before the learned Arbitral Tribunal.

4. We have heard the submissions of learned counsel for the claimant who is the appellant in C.M.A.No.899 of 2005 and the learned counsel for the respondent who is the appellant in C.M.A.No.1099 of 2005 and the petitioner in C.R.P.No.6823 of 2005. We have carefully perused the material record.

5. To begin with, it is necessary to make a mention of the history of the case and the chronology of events, which lead to the filing of these matters before this Court, which are as follows:

5.1 The dispute between the claimant and the respondent had arisen out of the Civil Works MMSM Part II of contract agreement No.VSP/CONT/C.55/87-88 dated 12-01-1988. After the two Arbitrators namely Justice Sri K. Punnayya, Retired Judge of this Court and Sri G.M. Mishra, Advisor Bocaro Steel Plant as co-arbitrators had failed to come to an agreed award, they had referred the matter to the decision of the Umpire. The Umpire having held sittings and having given an opportunity of hearing to the parties had passed the award dated 27-02-1993.

5.2 The claimant was partly aggrieved as no direction as sought for under item no.ii of claim 2 was given and as no interest was awarded on the amounts awarded under the claims 1 and 2 (i). Therefore, the claimant had preferred O.P.No.102 of 1999 before the learned Senior Civil Judge, Gajuwaka under Sections 16, 17 and 33 of the Indian Arbitration Act, 1940 requesting to remit the award to the Umpire insofar as it related to claim No.2 (ii) and claim No.3 regarding interest for re-consideration of the above said claims and to pass a decree in terms of the award insofar as it related to claim Nos.1 and 2 (i) with future interest at 18% per annum and for award of costs. Thus, the claimant had also sought for making the award the Rule of the Court.

5.3 The respondent who is aggrieved of the award had preferred O.P.No.101 of 1999 before the learned Senior Civil Judge, Gajuwaka requesting to set aside the award passed by the Umpire and to hold that no amount is payable by the respondent to the claimant.

5.4 The learned Senior Civil Judge, Gajuwaka, on merits had passed orders on 31-03-2005 separately in both the above said Original Petitions and had accordingly dismissed the Original Petition in O.P.No.101 of 1999 of the respondent and had thus refused to set aside the award and had further partly allowed the Original Petition of the claimant in O.P.No.102 of 1999 and had accordingly refused to remit the matter to the Umpire for considering the claim No.2 (ii) and claim No.3 but made the award of the learned Umpire the 'Rule of the Court' in so far as claim Nos.1 and 2 (i).

5.5 Therefore, the aggrieved claimant had filed C.M.A.No.899 of 2005 claiming that the claimant is entitled to award of interest on the claim amounts awarded under the claims nos.1 and 2(i).

5.6 On the other hand, the respondent had filed the C.R.P. against the order in O.P.No.102 of 1999 in so far as it related to making the award the Rule of Court and had also filed C.M.A.No.1099 of 2005 against the order in O.P.No.101 of 1999 dismissing the said petition which is filed requesting to set aside the award.

6. Before proceeding further, it is to be noted that the claimant is now not assailing the orders of the Court below insofar as claim no.2 (ii) whereby the Court below had confirmed the finding of the Umpire negativing the said claim of the claimant. The details of the said claim No.2 (ii) which was not awarded by the Arbitrator (Umpire) and the reason for not awarding the same are as follows:

> **Claim No.2 (ii) is only a request to issue direction to the respondent to release payment of price variation due to revision of daily minimum wages of unskilled workers for all the quantities of work done after 31.01.1991.**
>
> **Reason assigned by the Umpire: The scope of arbitration is confined to the period of dispute specifically referred for arbitration and therefore, no general directive can be given for the period beyond the said period.**

7. Now for convenience and to avoid repetitions it is appropriate to consider the facts and rival contentions while dealing with the points that arise for determination in these matters. The said points are as under:

1. *Whether the claimant, as contended by the respondent, is not entitled to the amount of Rs.5,01,980-48 Ps, under claim No.1 in regard to payment of price variation due to change in labour wages, awarded by the learned Arbitrator as per the amended claim No.1 for the quantity of work done during the period from 12-10-1988 to 11-11-1988 but, measured after 11-11-1988?*

2. *Whether the claimant, as contended by the respondent, is not entitled to claim No.2 (i) in a sum of Rs.42,41,344-41 Ps. in regard to payment of price variation due to revision of daily minimum wages of un-skilled workers awarded by the learned Arbitrator?*

3. *Whether the claimant is entitled to claim interest on the awarded amounts? And if so, at what rates and for what periods?*

4. *Whether the orders of the Court below in O.P.No.102 of 1999 and O.P.No.101 of 1999, dated 31-03-2005 confirming the award of the learned Arbitrator and making it a Rule of the Court are liable to be set aside?*

5. *To what relief?*

8. <u>POINT NOS.1 AND 2</u>:

8.1 The details of the claims 1 and 2 (i) and the award of the Tribunal on the said claims as confirmed by the Court below are as under:

> **Claim No.1 as amended related to price variation due to change in labour wages for the quantities of work during the period from 12-10-1988 to 11-11-1988 but measured after 11.11.1988. The claim amount was Rs.5,01,980-48 Ps. The said amount was awarded to the claimant subject to verification of arithmetical correctness of the figures submitted in Annexure-I to the amended claim.**
>
> **Claim No.2 (i) related to payment of price variation (full escalation) due to revision of daily minimum wages of un-skilled workers. The claim amount was Rs.42,41,344-21ps. The said amount was awarded to the claimant subject to verification and arithmetical correctness of the figures submitted in Annexure-II to the claim for the work done upto 31.01.1991.**

2. Thus, the reason for these claims is price variations. The claims 1 and 2(i) awarded to the claimants by the learned Arbitrator (Umpire) are being disputed by the respondent.

8.3 Coming first to claim no.1 there is no dispute that there is price variation due to change in labour wages. Therefore, claim no.1 was made for payment of price variation due to change in labour wages for the quantities of work done during the period from 12.10.1988 to 11.11.1988 but measured after 11.11.1988. There is also no dispute that clause no.4 of special conditions for Civil Engineering Works deals with price variation and that there is also a clause for escalation. The said clauses read as under:

> ***4.0* - *<u>PRICE VARIATION</u>*:**
>
> *The formula as per Annexure – I shall be applicable. No other claim on account of any other variation either statutory or otherwise shall be applicable.*
>
> *Annexure – I*

***<u>ESCALATION</u>*:**

The following clauses relation to variations in wages, POL and material shall be applicable. No other claim on account of any other variations either statutory or otherwise shall be applicable.

*I. **VARIATION DUE TO CHANGE IN LABOUR WAGES**:*

Price Variation due to change in Labour wages shall be applicable as per formula given below:

$$V = K \times W \times \frac{(X - Xo)}{Xo}$$

Where	*V*	=	*Escalation/De-escalation payable to deductible.*
	W	=	*Gross value of work done computed on the basis of Contract rates for the period for which variation is applicable.*
	X	=	*Revised Minimum wages of the minimum rated unskilled Worker applicable for the area of site of work as per the Minimum wages act for the period under consideration as Notified in the Gazettee.*
	Xo	=	*Minimum wages of the minimum rated unskilled worker Applicable for the area of site of work as per Minimum Wages Act on the base date.*
	K	=	*The basic labour content of all the rates which is assumed as 30% (thirty percent).*

The variation shall be applicable only for the quantities measured one month after date of effect of the revised minimum wages. The price variation will be applicable only during the contract period."

8.4 At the inception i.e., at the time of entering into the contract there was in force a notification issued by the State Government in G.O.Ms.No.150, dated 31-03-1984. According to its terms, the rate of daily wage of the Mazdoor was Rs.11.50ps and the monthly wage is Rs.345/- and condition No.5 mentioned that to arrive at the daily wage the monthly wage will be divided by 30. However, during the currency of the contract, another G.O.Ms.No.101 dated 07.10.1988 was published in Gazettee dated 12.10.1988 and under the said GO, the daily rate of unskilled labour was fixed at Rs.18.70ps and the monthly wage at Rs.485/- and the condition No.4 stipulated that the wages shall include the rest day wages also while condition no.5 stipulated that to arrive at the daily wages the monthly wage shall be divided by 26 and to arrive at the monthly wage it shall be multiplied by 26. However, the price variation formula mentions only about the minimum wage and there is no mention as to daily wage or the monthly wage.

8.5 The price escalation clause in the contract is specifically meant for compensating the contractor for increase in the wages and to compensate in respect of labour content of the contract. However, the respondent contended that escalation is applicable as per the contract only for the work measured one month after the effective date of minimum wages and therefore, escalation is payable only for the work done and measured 30 days after the effective date of increase in minimum wages i.e., from 11.11.1988. It is not in dispute that measurement of work done was carried out on a monthly basis. The contract had also specifically provided for price escalation on the basis of work measured 30 days after the effective date of increase in minimum wages. Admittedly the effective date of increase in minimum wage was 12.10.1988. The amended claim no.1 of the claimant relates to the work done from 12.10.1988 to 11.11.1988 and measured after 11.11.1998. If the contention of the respondent is to be accepted that the escalation is applicable only for the work done and measured 30 days after the effective date of increase in minimum wages i.e., from 11.11.1988 that would amount to not following the increase in minimum wages from 12.10.1988, which is impermissible. From the material record, it is clear that as per prevailing billing procedure, all bills are raised on measurements of work done for one month period from the previous date of measurement. As such there are two aspects, i.e., (i) period of work done, and (ii) the time of taking measurement. As wages have to be paid at revised rates from the effective date of revision of minimum wages, i.e., from 12.10.1988 itself, it appears that the claim by the Claimant is not only in accordance with the terms of the price variation stipulated in the contract and the billing procedures, but also in line with the intent and purport of the price variation clause of the agreement. In the facts and circumstances of the case, the amended claim no.1 of the claimant cannot be said to be contrary to the terms of the contract and on the other hand, it conforms to the terms of the contract as held by the learned Arbitrator (Umpire).

8.6 Before taking up the next claim no.2(i) it is pertinent to note that the next aspect to be considered is the aspect concerning difference in minimum wages to be considered in the application of the price escalation formula namely the values of the revised minimum wage (X) and the minimum wage at the base rate (Xo). Since this aspect is also to be considered under the claim no.2 (i) as well, we shall deal with this aspect later while dealing with the said claim.

8.7 Coming to claim no.2 (i) as already noted the contract stipulates the formula indicated infra which is to be followed while compensating the contractor for increase in the cost of carrying out the work, due to increase in labour component on account of increase in minimum wages to workers. The formula is as follows:

$$\text{“}V = K \times W \times \frac{(X - Xo)}{Xo}$$

Where	*V*	=	*Variation in cost of work to be compensated due to wage escalation*
	K	=	*Basic labour content at 30% of the gross value of the contract work*
	W	=	*Gross value of the contract work for the relevant period*
	X	=	*Revised minimum wages of the minimum rated unskilled worker applicable for the site work as per the Minimum Wages Act for period under consideration, as per Gazette notification*
	Xo	=	*Minimum wages of the minimum rated unskilled worker Applicable for the site work as per Minimum Wages Act applicable on the base date i.e., 03.07.1987*

It is pertinent to note that the contract is silent as to whether the wage referred to is daily wage or monthly equivalent wage for the minimum rated unskilled worker. This aspect is pertinent in view of the fact that Gazette notification indicates both the daily rate of wages and the monthly rate of wages. At the inception the monthly wage notified in the Gazette was equivalent to 30 days daily wage in the month i.e., on multiplying the daily rate of Rs.11.50ps with 30 days the monthly rate of Rs.345/- was arrived at. However, in the Gazette notification revising the minimum wages from 12.10.1988 the daily rate of wage was Rs.18.70ps and the monthly rate indicated was Rs.485/-. And condition No.4 of the GO stipulated that the wages shall include the rest day wages also while condition no.5 stipulated that to arrive at the daily wages the monthly wage shall be divided by 26 and to arrive at the monthly wage it shall be multiplied by 26. However, the price variation formula mentions only about the minimum wage and there is no mention as to daily wage or the monthly wage. Therefore, what is the wage to be adopted while working out the figures in the formula, is the question. In this context the learned Arbitrator (Umpire) relied upon the practice that was prevailing and that was followed by the parties to the contract. From the award it is evident that he had examined all the contracts being operated by the respondent herein at the relevant time and had noticed that only daily minimum wages have been taken as the basis in all cases and that even in the case of the parties herein the respondent had calculated the basic daily wages as Rs.13.20ps instead of Rs.11.50ps as indicated in the Gazette notification and had made payments to the claimant on that basis and that later on, when the claimant made protest stating that the Gazette clearly spelt out the daily minimum wage as Rs.11.50ps the respondent had revised the basis to monthly minimum wages from 30^{th} RA Bill onwards. Thus, having taken note of the prevailing practice and the practice that was followed, the learned Arbitrator (Umpire) had observed that the change over to monthly minimum wages later by the respondent is only an after thought and the same does not reflect the intention of the parties and had held that the basis for calculating the difference should be by assuming 'X' as Rs.18.70ps and 'Xo' as Rs.11.50ps in the spirit in which the contract and other similar contracts have been operated.

8.8 Accordingly, the learned Arbitrator (Umpire) having examined the matter and having assigned reasons had awarded claim nos.1 and 2(i) as already stated supra.

8.9 The learned counsel for the respondent had contended that the respondent is a Public Sector Undertaking and that Section 2 of the Minimum Wages Act, 1948 deals with 'interpretation' and that Section 2(b) of the said Act states that 'appropriate Government' means 'in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port or any corporation established by a Central Act, the Central Government', and that therefore, the Gazettes issued by the State Government have no application to the facts of the case. This contention was not raised before the learned Arbitrator and also the Court below. However, the learned counsel had submitted that the respondent is entitled to make such submission as the said submission concerns an aspect, which is a pure question of law. In support of his contention, reliance was placed on the decision in **Regional Labour Commissioner, Bangalore and Authority under the Minimum Wages Act and others v. T.K.Verkey & Company and another** and it is further contended that the employment of the labourers had taken place in the place belonging to the respondent and that the work carried out was for the purpose and benefit of the respondent, which is a Central Government establishment, and, therefore, under the Act the minimum wages notification issued by the Central Government would be applicable in regard to the wages payable to the workmen engaged in the works and hence, the notifications issued by the State Government have no application. Per contra, the learned counsel for the claimant had contended that this contention is not a pure question of law as it is associated with the facts and the terms of the contract, and it cannot be permitted to be raised for the first time before this Court. He had alternately contended that throughout the contract and even after the revision of the wages, only the Gazette notifications issued by the State Government have been followed not only in the case of the claimant-contractor but also in the case of other contractors, who are similarly placed, and that as per the practice and procedure and the conduct of the parties, by which the respondent is estopped, the contention of the respondent is untenable. It is also contended that notifications of the Central Government are not produced to show that the wages were different and that it is not the case of the respondent that the minimum wages fixed by the Central Government were less than the minimum wages fixed by the State Government and that the thumb rule is that the wages whether fixed by the State Government or the Central Government for similar work shall be and will be the same as the intendment of legislation in fixation of minimum wages is to obviate the chance of exploitation of labour. In the light of the argument advanced by the learned counsel for the claimant, the question raised on behalf of the respondent cannot be said to be a pure question of law. Be that as it may, it is an admitted and undisputed fact that throughout the contract and even after price variation the Gazette notifications of the State Government were followed and the said aspect was highlighted in the Award by the learned Arbitrator (Umpire) while referring to the practice that prevailed and the practice that was followed by the respondent in its spirit insofar as the contract between the parties and other similar contracts, which were operated by the respondent. Therefore, we see no merit in this contention and accordingly, this contention is not countenanced.

8.10 We have thus analytically examined the claims and also the sustainability of the claims nos.1 and 2(i) and the correctness and the sustainability of the award of the Tribunal which was confirmed by the Court below. Having so examined, we find that the award, which is well reasoned, is sustainable under facts and law insofar as it related to claim nos.1 and 2 (i), which were awarded by the learned Arbitrator(Umpire).

8.11 Before concluding our discussion on these points and before taking up the next point, it is necessary to advert to the vital aspect in regard to the extent of judicial intervention or the scope of interference of the Court which was laid down in the following precedents. **(1) Delhi Development Authority v. R.S.Sharma and Company, New Delhi; (2) Associate Builders v. Delhi Development Authority; (3) M/s.Navodaya Mass Entertainment Ltd., v. M/s.J.M.Combines; and (4) Oil And Natural Gas Corporation Limited v. Western Genco International Limited**. The settled principles for interference with an Arbitral Award under Section 34(2) of the 1996 Act as per the decision of the Supreme Court in **Delhi Development Authority** (2 supra) are as follows:

a. **An award, which is**

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996 or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

> **(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.**
>
> **(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.**

In the decision in **Associate Builders** (3 supra), the Hon'ble Supreme Court had referred to the ratios in various earlier decisions including the decision **Delhi Development Authority** (2 supra) cited and had further elucidated the law on the point and held that when a Court is applying the public policy test to an arbitration award, it does not act as a Court of appeal and consequently errors of fact cannot be corrected and that a possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon when he delivers his Arbitral award and thus, an award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score and that once it was found that the Arbitrator's approach is not arbitrary or capricious then, his word is the last word on facts. In the decision in **M/s. Navodaya Mass Entertainment Ltd** (4 supra) the scope of interference of the Court was considered and it was held that even if two views are possible the view taken by the Arbitrator would prevail. In the decision in **Oil and Natural Gas Corporation Limited** (5 supra) it was held that the expression "fundamental policy of Indian law" includes all such fundamental principles that provide basis for administration of justice and enforcement of law in India. In the case on hand, it cannot be said that the award is arbitrary or capricious or against the fundamental policy of India or that the decision of the learned Arbitrator (Umpire) is perverse or irrational or not in compliance of the Principles of Natural Justice. Therefore, we find no grounds to interfere with the award on the aspects involved under these points. The points 1 and 2 are accordingly answered in favour of the claimant and against the respondent.

9. <u>POINT No.3:</u>

Claim No.3 of the claimant is in regard to interest from the date of the first arbitration meeting after appointment of the Umpire (19.10.1991) at the rate of 24% on the amounts awarded under the claims 1 and 2(i). No interest was awarded on the amounts awarded under claims nos.1 and 2 (i) as there were no straight forward dues pending and as the issue, which was complicated in nature, was not brought out earlier and as the amount became due only after the arbitration award and the same was expected to be settled expeditiously. However, even after the confirmation of the award by the civil Court by making it a Rule of the Court, the amounts were not paid. Therefore, the aggrieved claimant contends that interest should have been awarded as claimed. It is alternately contended that interest should have been awarded by the learned Arbitrator (Umpire) at-least from the date of the award; and, it is also submitted that the Court below had erred in confirming the award without awarding any interest inspite of the fact that the amount awarded was not paid as per the award keeping in tune with the learned Arbitrator's expectations that the same would be paid expeditiously by the respondent. He had placed reliance on the decisions in **M/s.Jagdish Rai and Brothers v. Union of India and T.P. George v. State of Kerala and another** and had contended that it is not in dispute that the Arbitrator is competent to award interest from the date of the award even in respect of claims covered by the provisions of the 1940, Act (Act 10 of 1940). He had further submitted that in the decision in **M/s.Jagdish Rai (**6 supra), the Supreme Court had held that the refusal of interest from the date of the decree to date of its realization by the Court which made the award the Rule of Court was incorrect and that such interest could be awarded and decree could be corrected when application in that regard has been filed in appeal. It is undisputed that as envisaged in the award and as foreseen by the learned Arbitrator the amounts awarded were not paid expeditiously. Indisputably, interest was not awarded even from the date of the award on the expectation that the amounts will be paid expeditiously. However, since the amounts were not paid, much less within a reasonable time, it is just and fair to award interest on the amounts awarded under both the claims at the rate of 12% per annum simple from the date of the Award till the date of payment or realization. Interest is accordingly awarded. Point is accordingly answered.

10. POINT No.4:

In the result, the Civil Revision Petition No.6823 of 2005 and C.M.A.No.1099 of 2005 filed by the respondent are dismissed. The C.M.A.No.899 of 2005 filed by the claimant partly assailing the order dated 31.03.2005 of the learned Senior Civil Judge, Gajuwaka passed in the O.P.No.102 of 1999 is allowed and on the amounts awarded under claims 1 and 2 (i) interest is awarded at the rate of 12% per annum simple from the date of the award till the date of payment or realization and the order of the Court below confirming the award of the Tribunal (Umpire) is modified to that extent.

Miscellaneous petitions, if any, pending in these matters shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

28th April, 2015

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