

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2017

Delivered on: 06.12.2017

Coram

The Honourable **Mr.Justice V.PARTHIBAN**

W.P. No.9186 of 2012

M/s.Raja Constructions,
rep.by its Partner

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Petitioners

Versus

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31 Kamarajar Salai,
Chepauk, Chennai-600 005.

2. The Superintending Engineer,
TWAD Board,
216 Arumugam Street,
Periyar Circle,
Thirunagar Colony,
Erode-638 003.

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No.101985/LC/AE/1996 dated 30.03.2012, quash the same and further direct the respondents to pay the petitioner a sum of Rs.28,53,900/- towards interest calculated from the date of arbitration Award viz., 07.09.1999 till 07.04.2012 at the rate of 18% per annum together with furture interest till the date of

payment as per Section 31(7)(b) of the Arbitration and Conciliation Act, 1996.

For Petitioners : Mr.K.S.Viswanathan

For Respondents : Mr.S.Thamizharasi

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No.101985/LC/AE/1996 dated 30.03.2012, quash the same and further direct the respondents to pay the petitioner a sum of Rs.28,53,900/- towards interest calculated from the date of arbitration Award viz., 07.09.1999 till 07.04.2012 at the rate of 18% per annum together with furture interest till the date of payment as per Section 31(7)(b) of the Arbitration and Conciliation Act, 1996."

2. According to the petitioner, he was awarded with a contract in the year 1993 by the Tamil Nadu Water Supply and Drainage Board (in short, 'the Board') in respect of laying and

jointing of distribution systems in Doddampalayam and 116 other habitations in Sathy and Bhavani Sagar Unions by the respondent Board. In regard to execution of the contract, there arose a dispute between the petitioner and the respondent Board and as per the terms of the agreement, the dispute was referred before the arbitration.

3. This Court, in O.P.No.605 of 1996, was pleased to appoint a retired Judge of this Court as Arbitrator to adjudicate the dispute. The learned Judge, on conclusion of the arbitration proceedings, passed an award on 7.9.1999 for a sum of Rs.26,43,417/- in favour of the petitioner herein. The respondent Board challenged the award in O.P.No.459 of 2000 before this Court and by judgment dated 15.6.2006, learned single Judge of this Court, dismissed the said Original Petition. An appeal was filed in OSA No.249 of 2008. But the Division Bench of this Court also, by judgment dated 3.2.2009 confirmed the order passed by the learned single Judge in the above said O.P. and dismissed the appeal.

the learned Division Bench of this Court had made certain arithmetical corrections and finally held that the petitioner was entitled 23,18,074/- instead of original award of Rs.26,43,417/-.

5. The Board filed an appeal before the Hon'ble Supreme Court vide S.L.P.(Civil) CC No.15360 of 2010 along with condone delay application. However, the Hon'ble Supreme Court, while condoning the delay, dismissed the SLP. After dismissal of the SLP by the Hon'ble Supreme Court, the original award passed by the learned Arbitrator dated 7.9.1999 became final.

6. According to the petitioner, apart from the award amount which was modified by the learned Division Bench in OSA No.249 of 2008 dated 3.2.2009 to the tune of Rs.23,18,074/-, the petitioner is entitled to Rs.2,00,000/- towards cost of arbitration and a sum of Rs.46,59,325/- towards interest calculated at the rate of 18% per annum on the total amount due till October 2010. Altogether, according to the petitioner, they were entitled to a sum of Rs.71,77,399/-.

the petitioner would submit that in the absence of any direction by the learned Arbitrator in regard to the calculation of interest or payment of interest thereof, Section 31(7) of the Arbitration and Conciliation Act, 1996 would be pressed into service.

Section 31(7) of the Act, reads as under:

"31. Form and contents of arbitral award.—

(1) to (6)

(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.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

Therefore, the petitioner had claimed interest on the outstanding amount at the rate of 18% per annum as provided in the afore said Section of the Act.

8. The learned counsel would point out that after dismissal of the SLP by the Hon'ble Supreme Court, the petitioner issued a notice on 30.11.2010 to the respondent Board, calling upon it to pay the amount due under the award. In response to the notice issued by the petitioner, the respondent Board issued proceedings vide B.P.Ms.No.119 dated 21.12.2010, sanctioning an amount of Rs.23,18,704/- towards the principal amount and Rs.2,00,000/- towards cost of the arbitration. The petitioner had received the said amounts under protest. Thereafter, the petitioner had issued another notice dated 10.2.2011 stating that the above payment was made only towards principal amount and the cost of the arbitration and no amount towards interest claim, had been settled. In view of the non-compliance of the demand despite dismissal of the appeals filed by the respondent Board against the award, the petitioner was constrained to file a contempt petition in Cont.Petn.No.1901 of 2011 against the respondent Board for disobeying the orders passed by this Court on 3.2.2009.

Division Bench of this Court held that the respondent Board cannot be said to be guilty of contempt and accordingly, dismissed the contempt petition vide order dated 23.1.2012. In the meanwhile, it appears that in response to the request made by the petitioner for grant of interest, an order was passed vide proceedings in Lr.No.101985/LC/AE/1996, dated 30.3.2012, rejecting the claim of the petitioner in regard to payment of interest. Since this order came to be passed after filing of the writ petition, the petitioner moved a petition seeking to amend the prayer to challenge the above said Board proceedings dated 30.3.2012. The said petition came to be allowed by this Court and consequently, the prayer was also amended to that effect.

10. Mr.K.S.Viswanathan, learned counsel appearing for the petitioner would submit that the issue of payment of interest is directly covered by the decision of the Hon'ble Supreme Court of India, reported in "2010 (3) SCC 690 (***State of Haryana and others versus S.L.Arora and Company***)", wherein, the Hon'ble Supreme Court has held as under in para 24.6:

"24.6. Clause (b) of [Section 31\(7\)](#) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the "sum directed to be paid by an arbitral

award" shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till date of payment, or if the award specifically refused interest, clause (b) of [Section 31](#) will not come into play. But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post- award interest, the claimant will be entitled to post- award interest at the higher rate of 18% per annum. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award."

the rate of 18% per annum for the post award period. The learned counsel would submit that in the absence of any direction in that regard, Section 31(7)(b) of the Act, as interpreted by the Hon'ble Supreme Court would reign and therefore, the Writ Petition will have to be allowed on that ground also.

12. Per contra, the learned counsel appearing for the respondent Board, would submit that there is no specific direction by the learned Arbitrator regarding the post-award interest payable to the petitioner and the rate of interest to be calculated. In the absence of specific direction, the petitioner is not entitled to payment of interest as claimed by them.

13. This Court does not see any merit in the contention put forth by the learned counsel for the respondent Board for the simple reason that the Hon'ble Supreme Court has clearly held that the award debtor is liable to pay the interest as per Section 31(7)(b) of the Act in terms of the ruling of the Hon'ble Supreme Court in the decision cited supra.

14. In fact, the above said provision is pressed into service

only when award is silent in regard to payment of interest.

Therefore, the argument advanced by the learned counsel for the respondent Board does not merit any serious consideration and hence, the same is liable to be rejected outright.

15. This Court has no hesitation in accepting the contention of the learned counsel for the petitioner that the issue of interest claimed in the writ petition is squarely covered by the ratio laid down by the Hon'ble Supreme Court, particularly, with reference to para 24.6 of the judgment of the Hon'ble Supreme Court, extracted above. The learned counsel appearing for the respondent Board is unable to make any distinction as to how the claim of the petitioner herein, cannot be brought under the ruling as held by the Hon'ble Supreme Court in the afore said decision. In the absence of any distinguishable factor and any contra legal principle canvassed by the learned counsel for the respondent Board, this Court has no other option except to accept the case of the petitioner.

16. For the foregoing reasons, the Writ Petition is allowed and the impugned proceedings of the first respondent Board in Letter No.101985/LC/AE/1996 dated 30.03.2012 are hereby set aside. The first respondent Board is directed to pass appropriate

orders in regard to payment of interest payable to the petitioner, within a period of three months from the date of receipt of a copy of this order. No costs.

06-12-2017

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Index: Yes/No

Internet: Yes/No

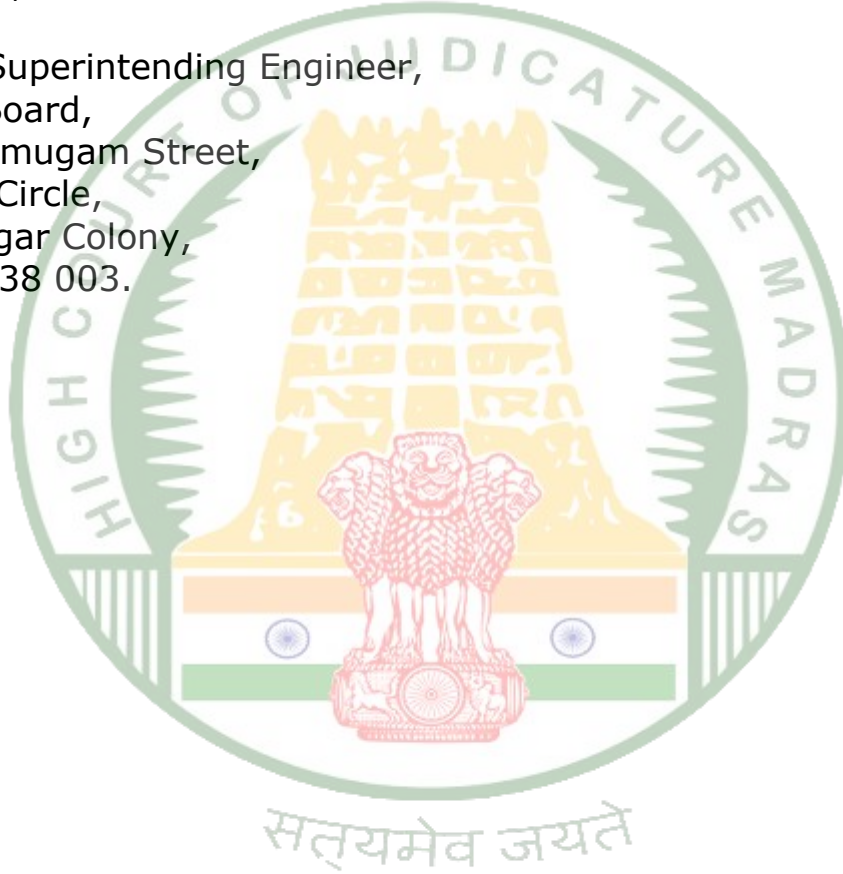


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To

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V.PARTHIBAN, J.

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Pre deliver order in
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