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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (COMM) 227/2017**

MAHALAXMI LIGHT HOUSE

..... Petitioner

Through: Mr Suhail Dutt, Senior Advocate with
Ms Ajay Kumar Tondon, Mr Saran
Suri, Mr Roshan Kumar and Ms
Rishu Agarwal, Advocates.

versus

CHIEF ELECTORAL OFFICE & ANR.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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12.05.2017

IA No.5839/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

O.M.P. (COMM) 227/2017

3. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act') impugning the arbitral award dated 07.01.2017 (hereafter 'the impugned award') passed by the Sole Arbitrator, Justice Jaspal Singh (Retired).

4. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with an agreement dated 10.08.1999 (hereafter 'the Agreement') in respect of supply of tentage, furniture and electrical items for the General Elections held in the year 1999.

The Agreement was entered into pursuant to a tender invited by the respondent in July, 1999. The petitioner's bid for the same was accepted and it was awarded the contract for supply of tentage and furniture for two constituencies: Karol Bagh Parliamentary Constituency and Outer Delhi Parliamentary constituency. The petitioner supplied furniture and other supplies, thereafter, raised a bill for a sum of ₹19,98,426.24/- for the services rendered in connection with the Karol Bagh Parliamentary Constituency and ₹80,30,654.06/- for the bills pertaining to the Outer Delhi Parliamentary Constituency.

5. The aforesaid bills were duly verified by the Returning Officers holding the post at the relevant time - Shri Dharam Pal for the Karol Bagh Parliamentary Constituency and Shri Rajiv Yaduvanshi for the Outer Delhi Parliamentary Constituency - and were recommended for payment. However, the respondent declined to pay the said amount.

6. Apparently, the respondent found that the said bills were highly inflated and there were serious allegations that some of the bills were bogus. It was also alleged that there was no contract for supplying any of the items at the counting centres and yet bills in respect of those items had been raised and cleared. In addition, the respondent also alleged that there was no requirement for erecting pandal, boundary wall etc.

7. The said bills were re-examined by the new Returning Officer, who was the Deputy Commissioner (South-West). He found that against the earlier recommended amount of ₹80,30,362/- only a sum of ₹8,19,567/- was actually payable for the services pertaining to the Outer Delhi Parliamentary Constituency and only a sum of ₹7,03,205.17/- was payable in respect of the

Karol Bagh Parliamentary Constituency. The said bills had been examined by one Shri O. P. Arora, who was appointed to examine the bills for the Karol Bagh Parliamentary Constituency. He submitted a report on 24.10.2001 indicating that the allegations made against the petitioner were correct. The second report pertaining to the Outer Delhi Parliamentary Constituency was submitted by one Shri Ashwini Kumar and Mr J. S. Jolly on 08.06.2001.

8. Mr Arora as well as Mr J. S. Jolly were examined as witnesses before the arbitral tribunal. The petitioner also examined Mr Dharam Pal and Mr Yaduvanshi, who supported the claim of the petitioner.

9. After evaluating the relevant evidence, the arbitral tribunal came to the conclusion that the bills passed by the concerned Returning Officer, who was then present at the time of elections in 1999, ought to be accepted. Although the reports submitted subsequently clearly indicated that the bills were inflated and the arbitral tribunal found them to be “disturbing”, the arbitral tribunal decided not to accept the same. This was mainly for the reason that the reports were made at a later point of time after the structures had been dismantled and therefore, physical verification was not possible.

10. The principal grievance of the petitioner is that although the arbitral tribunal has held that the petitioner is entitled to the bills raised but the arbitral tribunal has not awarded any interest on the disputed amount of the said bills for the period prior to the award.

11. Mr Dutt, learned senior counsel for the petitioner referred to the decision of the Supreme Court in *Indian Hume Pipe Company Limited v.*

State of Rajasthan: (2009) 10 SCC 187 as well as the decisions of this Court in *Housing and Urban Development Corporation Ltd. v. Leela Hotels Ltd.: MANU/DE/1134/2004* and *Mahindra & Mahindra Ltd. v. Union of India: 2006(4) RAJ 82 (Del)* in support of his contention that once a party is held to be entitled to a certain sum, interest must be awarded. He contended that interest is normally awarded to compensate the party who has been deprived of the use of its money. In the present case, the arbitral tribunal having found that the bills raised by the petitioner ought to have been cleared, grossly erred in not awarding interest on the disputed amount.

12. The arbitral tribunal observed that the respondent had admitted that an aggregate sum of ₹15,22,772/- was payable to the petitioner but even the said amount had not been paid. Accordingly, the arbitral tribunal awarded interest at the rate of 9% p.a from February, 2000 (when the amounts were due) till payment. However, it declined to award any interest on the disputed amount. The operative part of the impugned award reads as under:

“The Claimant has asked for interest at the rate of 24% per annum with effect from February, 2000. I feel that keeping in view the totality of the facts and circumstances of the case including, the enquiry reports which, I feel do need attention as far as the claim of interest is concerned, I hold that as far as the amount of Rs.1522772/- is concerned the Claimant is entitled to interest thereon at the rate of 9% per annum with effect from February, 2000 till payment. As far as the remaining awarded amount, the Respondent is directed to pay the same within two months of the date of Award. If the said payment is not made within time, the said amount shall carry interest at the rate of 9% per annum from the date of award till payment. The Claimant shall also be entitled to costs assessed at Rs.2 lacs.”

13. It is apparent from the above that the arbitral tribunal felt that there was a justifiable reason why the disputed amounts were withheld by the respondent. Plainly, there were reports supporting the allegations that the petitioner had inflated the bills and this was not a clear case where the arbitral tribunal could conclude that the amount was withheld without any justification whatsoever. The arbitral tribunal accepted that the reports had questioned the veracity of the bills but chose to ignore the same mainly for the reason that physical verification at site was not possible. This is evident from the following extract from the impugned award:

"True the reports so submitted dig holes into the bills and their veracity but then that exercise was done much after the dismantling of the structures. In fact, and admittedly, there was no physical verification at the site. In truth there could not be any such physical verification at that point of time. It was too late in the day. Ofcourse, the reports are disturbing. But then for what has been noticed above I feel they need to be ignored."

14. Insofar as the admitted amounts are concerned, clearly, there was no justification of withholding the same and, therefore, the arbitral tribunal has awarded the interest at the rate of 9% p.a. However, in view of the serious disputes regarding the balance amount, the arbitral tribunal in its discretion has not considered it fit to award any interest.

15. This Court finds no infirmity with the said discretion. Mr Dutt's contention that in every case where the arbitral tribunal has come to the conclusion that money has been withheld the interest must be awarded is flawed. The reliance placed in the case of *Indian Hume Pipe Company Ltd.*

(*supra*) is also misplaced. In that case, the award was made under the Arbitration Act, 1940. The arbitrators had awarded pre-reference, *pendente lite* and future interest. The State of Rajasthan filed its objections; the Learned District Judge allowed the objections and awarded only simple interest at the rate of 9% from the date of decree. It is also relevant to mention that interest awarded on counterclaims by the arbitrators was not disturbed. The Single Judge did not interfere with the decision of the Learned District Judge. It is in the aforesaid context that the Supreme Court referred to various earlier decisions, wherein the power of arbitrators to award interest had been upheld, and allowed the appeal, set aside the orders passed by the Ld District Judge and the single judge and restored the award together with interest awarded by the arbitrators.

16. Paragraph 13 of the said decision, which was referred to by Mr Dutt, must be read in the aforesaid context. The said paragraph also indicates that interest is payable only in cases where it has been found that the amount has been wrongly withheld and without any justification. Paragraph 13 of the said decision reads as under:-

“13. 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 appeal 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. Both the aforesaid provisions make it abundantly clear that power to award interest at all stages vests with the arbitrators. The arbitrators are bound to make the award in accordance with

law and if there is no embargo or legal hurdle awarding interest for the aforesaid three stages mentioned hereinabove then there cannot be any justifiable reason to deny the same.”

[underlining for emphasis]

17. As stated above, the said paragraph must be read in the context where the courts below had set aside the interest awarded by the arbitrators to the appellant. It is not an authority for the proposition that the arbitrator has no discretion in awarding interest and in every case where the claims are accepted, award of interest must necessarily follow.

18. The Constitution Bench of the Supreme Court in ***Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy : (1992) 1 SCC 508***, had also explained that:

"44. Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (alongwith 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."

[underlining for emphasis]

19. The decision in the case of ***Housing and Urban Development Corporation Ltd. (supra)*** also does not assist the petitioner in any manner.

In that case, the arbitrator had awarded interest and the Court found that there was ample justification for not disturbing the award. It is well settled that in proceedings under Section 34 of the Act, this Court is not called upon to re-appreciate the material or re-evaluate the decision of the arbitral tribunal. The scope of judicial review under Section 34 of the Act is limited and an arbitral award can be set aside only for the reasons as set out in Section 34. Therefore, unless it is established that the decision of not granting interest is perverse, patently illegal or opposed to the fundamental policy of Indian law, no interference with the award on that count would be warranted.

20. Thus, the decision in the case of ***Housing and Urban Development Corporation Ltd.*** (*supra*) - where this Court had not find any reason to interfere with the award - cannot be read as an authority for the proposition that in every case where an award of money is made, interest on the same must be awarded too. The decision in the case of ***Mahindra & Mahindra Ltd.*** (*supra*) also turns on its own facts. In that case, the Court found fault with Union of India in withholding an amount much greater than damages to which it was entitled. The Court had concluded that there was no justification for the same and therefore held that interest was payable to the petitioner (therein).

21. There is some merit in the contention that the discretion to award interest must, in normal circumstances, be exercised to award interest in favour of the party who has been deprived of the use of money. The award of pre-award interest is the general rule; it is not an absolute rule. Interest can be denied where the ends of justice do not warrant such award. In the

facts of the present case, there is ample justification for the respondent to not have paid the disputed amount as indicated above. The investigation reports specifically found that the bills raised were partly bogus. There may be some merits in the said reports, however, a physical verification at site was not possible as the structures had been dismantled. It is difficult to accept that the respondent had no justification to hold the amounts prior to adjudication of the claims.

22. The arbitral tribunal has exercised its discretion not to award interest on the disputed amounts. In the facts of this case, the court does not find such exercise to be patently illegal or perverse. Thus, no interference with the impugned award is warranted.

23. Accordingly, the present petition is dismissed.

MAY 12, 2017
MK

VIBHU BAKHRU, J