

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 22-2-2018****Pronounced on 5-3-2018****ARBA No. 78 of 2017**

Union of India Railways through Chief Engineer (C)
Vishakhapatnam (Andhra Pradesh)

---- Appellant**Versus**

M. P. Goyal and Sons, Contractor Jagadalpur , District Bastar,
having its head office at Raipur and branch office at PO
Jagdalpur, Distt. Bastar (CG)

---- Respondent

For appellant	: Mr. Abhishek Sinha and Ms. S. Harshita, Advocates
For State	: Mr. Manoj Paranjpe, Advocate

Hon'ble Mr. Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Mr Sharad Kumar Gupta, Judge****C.A.V. JUDGMENT****Sharad Kumar Gupta, Judge**

1. I.A. No. 2/2018 for taking document on record is allowed.

The documents are taken on record.

2. There is delay of 107 days in filing this appeal. I.A. No. 1/2017 has been filed for condonation of the same.

3. Sufficient cause has been shown in the application for the delay in instituting this appeal. Accordingly, the delay of 107 days in instituting this appeal is condoned.

4. Challenge in this appeal is levied to the decree dated 30-4-2016 passed by the Additional District Judge, Bastar at Jagdalpur in Civil Suit No. 9A/12 which is the part of the judgment dated 30-4-2016 vide Annexure A-1, arising out of the order dated 29-4-2016 vide Annexure A-2 passed by the same judge in same civil suit whereby and whereunder he rejected the application filed by the appellant under Sections 30 and 33 of the Arbitration Act,

1940 (hereinafter called as 'Act 1940'), consequent order dated 6-1-2017 by the same Judge in the same civil suit vide Annexure A-3 whereby and whereunder he allowed the application of respondent filed under Section 152 of the Civil Procedure Code (in brevity 'CPC') for rectification in judgment Annexure A-1 and the aforesaid decree.

5. Brief facts of the case which are essential to adjudicate this appeal are that the appellant and the respondent entered into three agreements No. 33/76, 34/76 and 41/76 in the year 1976-1977. After completion of the work a dispute arose between the parties regarding final payment. Pursuant to the order of the Additional District Judge, Bastar, the General Manager, Railway appointed two Arbitrators. On 24-8-2000, the Arbitrators passed an award vide Annexure A-4 which was filed before the Additional District Judge, Bastar at Jagdalpur who passed the order Annexure A-2, judgment Annexure A-1 along with decree and order Annexure A-3 as aforesaid.

6. Mr. Abhishek Sinha and Ms. Harshita, Counsel for the appellant vehemently argued that :-

(A) While deciding the Claim No. 5 of the agreement No. 33/76, the Arbitrators awarded a sum of Rs. 32,000/- on the head of reimbursement of advance given to the quarry owners, labourers, etc., though they have made an observation that convincing proof of advance given to quarry owner and labourers is not available, its non-realization subsequently is also doubtful;

(B) While deciding the claim No. 18 of the agreement No. 33/76, Claim No. 16 of the Bill No. 34/76, the Arbitrators have

awarded 14% interest per annum for delayed release of EMD and SD which is contrary to the provisions of Clause 16(2) of the General Conditions of the contract, thus the arbitrators had no legal authority to award the pre-reference period interest on aforesaid claim;

(C) While deciding the claim no. 2 of the agreement No. 34/76, the Arbitrators have overlooked the fact that the respondent had claimed only the amount of Rs. 48,174/-;

(D) While deciding the claims No. 1, 18 and 19 of agreement No. 33/76, the Claims No. 1, 2 and 16 of agreement No. 34/76, and Claims No. 1, 11, 12 of agreement No. 41/76, the Arbitrators have awarded the pre-reference period interest in favour of the respondent, which is contrary to the provisions of Clause 16(2) of the Standard General Conditions of the contract, thus the arbitrators had no legal authority to award the pre-reference period interest on aforesaid claim;

Thus, the aforesaid decree, order Annexure A-2, order Annexure A-3 may be set aside.

7. Shri Manoj Paranjpe, Counsel for the respondent supported the aforesaid decree and orders submitting that they are just, proper and in accordance with the provisions of the Act, 1940 and do not call for any interference.

8. For adjudication of the appeal in hand, material question is as to whether the Arbitrators had legal authority to award the pre-reference period interest on the amounts which have been awarded in different heads of the aforesaid agreements.

9. Clause 16(2) of the General Conditions of the contract as

mentioned in Annexure A-6, is relevant in the matter and reproduced below :-

“16(2) **Interest on amounts.** No interest will be payable upon the earnest money or 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.

Interest on the said Government Security will be drawn by the Railway Administration and credited to the Contractor and the Contractor shall not be entitled to claim any other sum by way of interest or profit on the said Security Deposit than the amount actually drawn by the Railway Administration from the Government.”

10. In the matter of **Madnani Construction Cor. (P) Ltd. Union of India and others** [2010(1) SCC 549], an agreement was entered into between appellant and North Eastern Railway for the construction of bridge island Nos. 13 and 14 over Kosi river, a dispute arose between parties, an application filed by the appellant for appointment of an arbitrator to settle disputes, the Arbitrator gave his award holding that Railways should pay an amount of Rs. 4,48,873 along with compoundable bank interest prevalent at that time from 16.11.1983 to 21-3-1992, Award was made rule of court, the appeal preferred against was partly allowed by High Court holding that Clause 16(2) of the GCC contains a provision against grant of interest, High Court also relied on Clause 30 of SCC and Clause 52 of the GCC to hold that payment of interest had been barred, in these facts and circumstances of the matter, the **Hon'ble Supreme Court held that in the instant case relevant clauses, Clause 16(2) and 52**

of the GCC and Clause 30 of SCC do not contain any prohibition on the arbitrator to grant interest, hence the High Court was not right to interfere with the arbitrator's award on matter of interest on basis of said clauses. On a strict construction of said clauses, the hon'ble Supreme Court further held that said clauses did not impose any bar on the arbitrator in granting interest, no interference is called for with the award passed by the arbitrator.

11. Looking to the above-mentioned judicial precedent, this Court finds that in the case in hand, provisions of Clause 16(2) of the General Conditions of the contract does not restrict the arbitrator to allow the interest on money or the security or the amount payable to the respondent under the aforesaid agreements. Restriction is on the power of departmental officer of the appellant to allow interest because of the late payment. Thus, this Court rejects the argument raised by the counsel for the appellant regarding this matter.

12. Hon'ble Supreme Court in the matter of **Bhagawati Oxygen Ltd. -v- Hindustan Copper Ltd.** [2005(6) SCC 462], held that Section 34 CPC is not applicable to arbitration proceedings, an Arbitrator has power and jurisdiction to grant interest for all the three stages provided the rate of interest is reasonable, award of interest at eighteen per cent was held justified as at that rate HCL had given advance to BOL.

13. Hon'ble Supreme Court in the matter of **Manalal Prabhudayal -v- Oriental Insurance Co. Ltd.** [(2009) 17 SCC 296] held that an arbitrator, in absence of any prohibition in an

arbitration agreement, has power to award interest. Though it is not a “court” within the meaning of Section 34 of the Code of Civil Procedure, 1908, an arbitrator has power to grant reasonable rate of interest at all the three stages i.e. pre-reference period, *pendente lite* and post-award period. When interest is granted, appellate, revisional or writ court would not interfere with exercise of discretion unless the discretion has been exercised arbitrarily or capriciously.

14. Shri Manoj Paranjpe, Counsel for the respondent placed reliance on **Hyder Consulting (UK) Limited -v- Governor, State of Orissa** [(2015) 2 SCC 189], in which Hon'ble Supreme Court held that :-

“Under Section 31(7)(a), Arbitration and Conciliation Act, 1996, Arbitral Tribunal is empowered to include pre-award interest in “sum for which award is made”-Once so included, pre-award interest loses its character of interest and becomes part and parcel of “sum”. “Sum” for the purposes of Section 31(7)(b) comprises principal amount and such pre-award interest, as Arbitral Tribunal may award. If no pre-award interest is awarded, then “sum” would comprise only principal amount. Similarly, if only pre-award interest is awarded and there is no principal amount then such interest would become “sum” for which award is made under Section 31(7)(a). Hence, word “sum” means “a particular amount of money” whatever it may include, “principal” and “interest” both or one of the two. Therefore, under Section 31(7)(b), post-award interest has to be granted on “sum directed to be paid by award”, wherein “sum” is nothing more than what is arrived at under by section 31(7)(a) whether inclusive or exclusive of pre-award interest. In such situation, it cannot be said that what is being granted under Section 31(7)(b) is interest on

interest.”

15. Mr. Abhishek Sinha and Ms. Harshita, counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Union of India -v- Ambica Construction** [AIR 2016 SC 1441] wherein it is held in para 24 that :-

“24. Thus, our answer to the reference is that if the contract expressly bars the award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits.”

16. The appellant failed to prove that there was the term in aforesaid agreements that arbitrator will have no authority to award the interest for the pre-reference period, pedente lite, post-award period.

17. Looking to the above mentioned facts, judicial precedents laid down by the Hon'ble Supreme Court this Court finds that, the Arbitrators had legal authority to award the pre-reference period interest, pedente lite period interest, post-award period interest on the amounts which have been awarded in different heads of the aforesaid agreements. Thus this Court disallows the argument of the counsel for the appellant, regarding this matter.

18. Learned Advocates for the appellant cited judgment of the Hon'ble Supreme Court in **Sharma and Associates Contractors Private Limited vs. Progressive Constructions Limited** [(2017) 5 SCC 743] wherein the Hon'ble Supreme Court has laid

down that the arbitrator cannot ignore law, misapply. Ignorance of terms by Arbitrator amounts to jurisdictional error and such error can be corrected by Court.

19. Looking to the above mentioned facts and circumstances, materials placed on records, this Court finds that Arbitrators have not ignored any law or misapplied. Thus, appellant does not get any held from the above mentioned judicial precedent laid down Hon'ble Supreme Court.

20. In **Sharma and Associates Contractors Private Limited (Supra)** Hon'ble Supreme Court has also laid down the following judicial precedents -

“Court cannot substitute its own evaluations of conclusion of law or fact to come to conclusion that Arbitrator had acted contrary to bargain between parties. Where reasons have been assigned by Arbitrators for passing award, reasonableness of reasons cannot be examined by Court. Arbitrator is sole judge of quality and quantity of evidence and it will not be Court to take upon itself task of being judge.

21. While dealing with claim 5 of Bill No. 33/76 Arbitrators have made observations that inconveniences were caused to respondent.

22. While dealing with the claim No.2 of Bill No. 34/76 Arbitrators have given the finding that the appellant has admitted the workout to Rs. 1,65,281/-.

23. Looking to the facts and circumstances, aforesaid judicial precedents laid down by the Hon'ble Supreme Court, this Court finds that this Court cannot interfere with the aforesaid award by examining the material facts and evidence. Even otherwise the

aforesaid findings given by the Arbitrators dealing with claim 5 of the Bill No. 33/76, claim No. 2 of Bill No. 34/76 are reasonable and proper.

24. Looking to the above mentioned facts and circumstances, from materials placed on record, this Court finds that award Annexure A-4, order Annexure A-2, impugned decree dated 30.04.2016, order Annexure A-3, do not suffer from any illegality or jurisdictional error. Thus, this Court confirms Annexure A-4, Annexure A-2 decree dated 30.04.2016 and Annexure A-3.

25. Accordingly, the appeal sans substratum, deserves to be and is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge