
(2020) 06 GAU CK 0028

Gauhati High Court

Case No: Writ Appeal No. 243 Of 2019

M/S Ishwar Food
Products Private
Limited

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: June 12, 2020

Acts Referred:

Code Of Civil Procedure, 1908 & Section 34#Constitution Of India, 1950 & Article 14, 226

Citation: (2020) 06 GAU CK 0028

Hon'ble Judges: Ajai Lamba, J; Soumitra Saikia, J

Bench: Division Bench

Advocate: Dr. B.P. Todi, A. Todi, A. Kalita, G. Das, S.C. Keyal

Final Decision: Allowed

Judgement

Claim Period,"Date of claim forwarded by

District Industries and

Commerce Centre","Number and Date of

Approval of the State

Level Committee",Date of Disbursement

01.04.2007 to

31.03.2008",18.01.2010,"29th SLC dated

16.09.2011",03.12.2014

01.04.2008 to

31.03.2009",18.01.2010,"29th SLC dated

16.09.2011",03.12.2014

01.04.2009 to

31.03.2010",03.12.2010,"31st SLC dated

13.08.2012",03.12.2014

01.04.2010 to

31.03.2011",19.12.2011,"32nd SLC dated

27.12.2012",03.12.2014

India & Ors. passed in WP(C) No.389/2014, whereby on similar facts situation, this Court as well as the Meghalaya High Court directed payment of",,,

interest for the periods for which the subsidy was claimed because of delay in release of the subsidy payable.,,,

10. The appellant further relied upon the judgment of the Supreme Court of India in the case of Ghaziabad Development Authority -Vs- Union of India,,,

& Anr., reported in (2000) 6 SCC 113. In the said case, the Ghaziabad Development Authority announced a Scheme for allotment of developed plots,",,

the brochure issued for public information is an invitation to offer. Some persons, who have subscribed to the Scheme, approached different forums",,,

complaining of failure or unreasonable delay in accomplishing the Schemes. The matter was considered by the Allahabad High Court under Article,,,

226 of the Constitution of India, wherein the persons aggrieved sought refund of the amount paid or deposited. In the brochure, there was a term that",,,

in the event of the applicant withdrawing itÃ¢â€â€s offer or surrendering the same, no interest whatsoever will be payable to the claimants. The",,,

Allahabad High Court held such term to be unconscionable and arbitrary and hence, violative of Article 14 of the Constitution. The High Court",,,

directed the amount due and payable to be refunded with interest calculated @ 12% per annum from the date of deposit to the date of refund.,,,

The matter thereafter came to be considered by the Supreme Court and on the question whether in the absence of any contract or promise held out by,,,

the Ghaziabad Development Authority, any amount by way of interest can be directed to be paid on the amount found due and payable by the",,,

authority to the claimants, the Supreme Court held that on equitable grounds interest can be awarded in appropriate cases and accordingly an interest",,,

@ 12% was awarded. Relevant paragraphs of the said judgment rendered by Hon'ble Supreme Court of India are extracted below:-,,,

"9. The next question is the award of interest and the rate thereof. It is true that the terms of the brochure issued by the Authority relevant to any,,,

of the cases under appeal and the correspondence between the parties do not make out an express or implied contract for payment of interest by the,,,

Authority to the claimants. Any provision contained in the Consumer Protection Act, 1986, the Monopolies and Restrictive Trade Practices Act, 1969",,,

and the U.P. Urban Planning and Development Act, 1973 enabling the award of such interest has not been brought to our notice. The learned counsel",,,

for the claimants have placed reliance on a recent decision of this Court in Sovintorg (India) Ltd. v. State Bank of India wherein in similar,,,

circumstances the National Consumer Disputes Redressal Commission directed the amount deposited by the claimants to be returned with interest at,,,

the rate of 12 per cent per annum. This Court enhanced the rate of interest to 15 per cent per annum. To sustain the direction for payment of interest,,,

reliance was placed on behalf of the claimants on Section 34 CPC and payment of interest at the rate at which moneys are lent or advanced by,,,

national banks in relation to commercial transactions was demanded. This Court did not agree. However, it was observed: (SCC p. 409, para 6)",,,

"There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite,,,

party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically,,,

made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and",,,

good conscience would authorise the Redressal Forums and Commissions to also grant interest appropriately under the circumstances of each case.,,,

Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable groundsÃ¢â¬,Ã¢â¬,.,,,

* * *
.,,,

The State Commission as well as the National Commission were, therefore, justified in awarding the interest to the appellant but in the circumstances",,,

of the case we feel that grant of interest at the rate of 12% was inadequate as admittedly the appellant was deprived of the user of a sum of Rs one,,,

lakh for over a period of seven yeas. During the aforesaid period, the appellant had to suffer the winding-up proceedings under the Companies Act,",,

allegedly on the ground of financial crunch. We are of the opinion that awarding interest at the rate of 15 per cent per annum would have served the,,,

ends of justice.Ã¢â¬,Ã¢â¬,.,,,

10. We are therefore of the opinion that interest on equitable grounds can be awarded in appropriate cases. In Sovintorg (India) Ltd. case the rate of,,,

15 per cent per annum was considered adequate to serve the ends of justice. The Court was apparently influenced by the fact that the claimant had to,,,

suffer winding-up proceedings under the Companies Act and the defendant must be made to share part of the blame. However, in the cases before",,,

us, the parties have not tendered any evidence enabling formation of opinion on the rate of interest which can be considered ideal to be adopted. The",,,

rate of interest awarded in equity should neither be too high nor too low. In our opinion awarding interest at the rate of 12 per cent per annum would,,,

be just and proper and meet the ends of justice in the cases under consideration. The provision contained in the brochure issued by the Development,,,

Authority that it shall not be liable to pay any interest in the event of an occasion arising for return of the amount should be held to be applicable only,,,

to such cases in which the claimant is itself responsible for creating circumstances providing occasion for the refund. In the cases under appeal the,,,

fault has been found with the Authority. The Authority does not therefore have any justification for resisting refund of the claimants' amount with,,,

interest.,,,

11. For the foregoing reasons, the direction made by the MRTP Commission for payment of Rs.50,000 as compensation for mental agony suffered by",,,

the respondent claimants in Civil Appeal No.8316 of 1995 is set aside. In all the other cases the direction for payment of interest at the rate of 18 per,,,

cent shall stand modified to pay interest at the rate of 12 per cent per annum.Ã¢â¬â¸,,,

(Emphasized by us),,,

11. The respondents maintained their stand taken before the learned Single Judge and contended that the delay in release of the interest subsidy was,,,

not attributable solely to the respondent State and the disbursing authority, namely, North Eastern Development Finance Corporation Limited (NEDFi).",,,

The respondents contended by referring to the pleadings that there was substantial delay on the part of the appellant in furnishing the required,,,

document/information because of which consequential delay had occurred and, therefore, during the currency of the writ petition when the entire",,,

amount claimed as interest subsidy, has been released to the appellant, there is no occasion for the appellant to claim any interest and, therefore, the",,,

learned Single Judge has rightly dismissed the writ petition.,,,

12. The respondents have relied on the judgment of the Supreme Court in the case of Ferro Alloys Corporation Limited -Vs- A.P. State Electricity,,,

Board & Anr., reported in 1993 Supp (4) SCC 136. The respondents relied on Paragraphs 129 and 130 of the said judgment to contend that interest",,,

will apply only when there is a relationship of debtor and creditor.,,,

A perusal of the said judgment reveals that the judgment is on an issue relating to breach of contract between the parties and payment of interest,,,

thereon as a consequence. The facts cited in the case above are not similar to the present proceedings and, therefore, the said judgment does not help",,,

the respondents for support their contentions in the facts of the present case.,,,

13. A scrutiny of the pleadings revealed that for the claim period 01.04.2007 to 31.03.2008, the claims were disbursed on 03.12.2014. Admittedly,",,

there is a delay of 4(four) years from the date of approval of the claim of the appellant, which is 16.09.2011.",,,

For the claim period 01.04.2008 to 31.03.2009, the State Level Committee (SLC) approved the claim of the appellant on 16.09.2011. However, the" ,,,

claims were finally disbursed on 03.12.2014. Admittedly, there is a delay of 3(three) years in disbursing the claims." ,,,

For the claim period 01.04.2009 to 31.03.2010, the claims were approved by the SLC on 13.08.2012 and the claim amounts were disbursed on" ,,,

03.12.2014. There is evidently a delay of 2(two) years.,,,

For the claim period 01.04.2010 to 31.03.2011, the SLC approved the claim of the appellant on 27.12.2012 and the claims were disbursed on" ,,,

03.12.2014 and as such, there is a delay of 1(one) year." ,,,

These dates are not disputed by the respondents and the counsels appearing for the respondents fairly conceded to the period of delay, as indicated" ,,,

above.,,,

14. The learned Single Judge by the impugned judgment dated 14.05.2019, while considering the contra claims, held that there being no specific" ,,,

provision empowering the appellant to seek an interest for delayed payment of interest subsidy, the claim made by the appellant was rejected. The" ,,,

judgment of this Court rendered in the case of Union of India -Vs- J. Tariang (supra), which was pressed into service by the appellant was sought to" ,,,

be distinguished on the premise that there being no provision mandating payment of interest on delayed release of interest subsidy, the learned Single" ,,,

Judge held that the judgment rendered in the case of J. Tariang (supra) did not lay down any ratio that if there is a delay in release of subsidy, it would" ,,,

automatically carry interest.,,,

15. We have considered the judgments cited on behalf of the appellant, viz. (i) J. Tariang -Vs- Union of India, reported in (2011) 3 NEJ 434 (supra);",,,

(ii) Union of India -Vs- J. Tariang, reported in 2013 (3) GLT 16; (iii) M/s Balaji Cement Private Limited (supra); and (iv) M/s Barak Valley Cement",,,

Limited (supra). In all these judgments, although there was no provision for grant of interest, however, considering the facts and circumstances of the",,,

case, interest was awarded for delayed release of payment."",,,

In Ghaziabad Development Authority case (supra), the Hon'ble Supreme Court of India has specifically held that interest on equitable grounds can",,,

be awarded in appropriate cases, as can be noticed from the above extracted portion of the said judgment."",,,

16. In view of the judgments referred to above and the law laid down therein, in case the learned Single Judge was of a different view and opinion,"",,,

contrary to the view already taken by a Bench of equal strength in judgments " (i) J. Tariang -Vs- Union of India, reported in (2011) 3 NEJ 434",,,

(supra); (ii) Union of India -Vs- J. Tariang, reported in 2013 (3) GLT 16; (iii) M/s Balaji Cement Private Limited (supra); and (iv) M/s Barak Valley",,,

Cement Limited (supra), the appropriate course for him to adopt was to refer the question to a Larger Bench. For the said purpose, the matter could",,,

have been referred to the Hon'ble Chief Justice, after formulating such questions of law, as in his opinion might have arisen."",,,

In this context, we would like to refer to two judgments rendered by Hon'ble Supreme Court of India. In Official Liquidator -Vs- Dayanand &"",,,

Ors., reported in (2008) 10 SCC 1, whereby this Court elaborately discussed the authorities and reiterated the principles governing the rule of binding",,,

precedents. The relevant paragraphs of the said judgment are extracted herein below:-",,,

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving",,,

violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law",,,

laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become",,,

necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and,,,

encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in,,,

this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the,,,

system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one,,,

should be followed.,,,

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those,,,

who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in,,,

accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle",,,

is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon,,,

important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for,,,

effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and,,,

rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.Ã¢â¬â¢",,,

17. Similar view is held by the Supreme Court in the case of U.P. Gram Panchayat Adhikari Sangh & Ors. -Vs- Daya Ram Saroj & Ors., reported in",,,

(2007) 2 SCC 138. In Paragraph 26 of the said judgment, the Supreme Court held as under:-",,,

Ã¢â¬â¢26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a,,,

coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to",,,

take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger",,,

Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.Ã¢â¬â¢,,,

18. A reference to the judgments rendered by HonÃ¢â¬â¢ble Supreme Court of India in Ghaziabad Development Authority (supra), would make it clear",,,

that even in case where the inter-se-contract between the parties does not provide for award of interest, interest on equitable grounds can be awarded",,,

in appropriate cases, as noticed above."",,,

19. As mentioned in earlier part of the judgment, central interest subsidy scheme was floated to give incentive package for stimulating development of",,,

industries in the Northeastern Region. It is not in dispute that considering such attractive schemes, the appellant made investments and became entitled",,,

to payment of subsidy. The scheme for payment of subsidy was applied to all. Once a person fell within the parameters of the scheme, the",,,

respondents by virtue of the scheme were bound to release subsidy in favour of the investors. A time frame has also been provided under the said",,,

scheme. State Level Committee cleared the claims of the appellant for release of subsidy, however, for no good reason, for years together, as noticed",,,

above, subsidy was not released."",,,

20. The respondents under the scheme had no discretion, to either not release the subsidy claim or delay payment of subsidy. By virtue of such action,"",,,

the public servants have indulged in discouraging investors from coming to the Northeast. The very purpose of floating the scheme would be defeated",,,

if subsidy is not released within reasonable time of its maturing for release. Under the circumstances, the appellant has been able to make out an",,,

appropriate case for award of interest on delayed release of subsidy. If such actions of the respondents are accepted by the Court, which is also a",,,

Court of equity, manifest injustice would be caused to the rights of the appellant. Subsidy is not a largess that is being given by the respondents, rather",,,

every person who complies with the conditions of the scheme becomes entitled to payment of subsidy.,,,

21. Accordingly, the judgment & order dated 14.05.2019 impugned in the present appeal cannot be sustained and the same is, therefore, interfered",,,

with, set aside and quashed. In view of the admitted facts by the respondent Nos.1, 2, 3 & 4 that there was indeed a substantial delay in release of",,,

interest subsidy from the date it was approved by the SLC, we deem it just and proper to direct the State respondents and NEDFi, namely, respondent",,,

Nos.1, 2, 3 & 4, to release within a period of 3(three) months from today with interest @ 8% per annum on the subsidy amount paid to the appellant,",,

from the date the claims were approved by the SLC till the actual date of release/disbursement.,,,

22. The appeal is accordingly allowed, as indicated above, and the impugned judgment & order dated 14.05.2019 passed in WP(C) No.594/2012 is",,,

interfered with and set aside. No cost.,,,