

(2012) 10 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 4541 of 2010 (O and M)

Executive Engineer, Haryana
State Agricultural Marketing
Board

APPELLANT

Vs

Azad Singh and Another

RESPONDENT

Date of Decision: Oct. 18, 2012

Acts Referred:

- Arbitration Act, 1940 - Section 29
- Arbitration and Conciliation Act, 1996 - Section 31(7), 34

Citation: (2013) 1 RCR(Civil) 648

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Durgesh Aggarwal, for the Appellant; Vijay Sangwan, Advocate for Mr. Bijender Dhankar, Advocate, for the Respondent

Judgement

A.N. Jindal, J.

The judgment dated 27.02.2010 passed by the Additional District Judge, Sonepat, dismissing the petition filed by the petitioner-appellant (hereinafter referred as "the appellant") u/s 34 of the Arbitration and Conciliation Act, 1996 for setting aside the Award dated 20.09.2006 (later on corrected on 14.11.2006) passed by respondent No. 2, is under challenge. The main dispute raised in the case is, "whether the respondents are entitled to interest on the awarded amount?". The Arbitrator had awarded interest on delayed payment and not on the items of contract as per agreement between the parties. The counsel for the Board has urged that as per clause 25-A of the agreement, the respondent was not entitled to any interest.

2. Heard, admittedly, there is Clause No. 25-A in the agreement with regard to the fact that the Arbitrator would not award any interest to the parties on any of the items of the agreement. The relevant extract from Clause 25-A of the agreement is

reproduced as under:-

25-A.It shall also be term of the contract agreement that the arbitrator shall give speaking award, otherwise the award shall be null and void. It will not be binding on the parties. It shall also be a term of this contract that in any dispute/difference referred to the arbitrator, the arbitrator shall not award interest to the parties on any of the items of contract agreement executed between the parties. If the arbitrator awards interest, the same shall not be binding on the parties.

3. Now while passing the Award dated 20.09.2006, which was later on corrected on 14.11.2006, the Arbitrator has not awarded interest on the items of the contract, but on the delayed payment. The relevant observations made by the Arbitrator are as under:-

I observe that the Division Office did not release the final dues of the agency i.e. amount of the final bill entered by the field officer and checked and as awarded in para No. 1 for Rs. 2,48,320/-. So I consider that the claimant deserves compensation in the shape of interest. Accordingly, I consider that simple interest @ 9% per annum should be given to the agency for the justified payments not released by the Division Office/respondent till today. Accordingly, I give an award on account of interest for Rs. 3,65,429/- (Rs. 2,48,320/- on account of final bill + Rs. 19,109/- on account of 25% security lying pending + Rs. 92,000/- awarded under claim No. 2 + Rs. 6000/- awarded under claim No. 5) i.e. simple interest @ 9% per annum for a period of 12 years, 10 months, 22 days which works out to Rs. 4,24,131/-.

CLAIM No. 9.

Since 75% security had not been released by the respondent even after 3 months of acceptance of completion work i.e. upto 28.07.1993, but the payment was released only on 29.10.1993, thus, the respondent kept Rs. 51,327/-. In the ends of natural justice, the claimant should be awarded compensation on this amount as well, hence, I give an award of Rs. 16,678/- as an interest @ 8% per p.a.

4. Ultimately, while adding interest in the sum of Rs. 4,24,131/-, the total award was passed to the tune of Rs. 7,84,723/-.

5. As regards awarding of interest, Section 31 (7) of the Act reads as under:-

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.

6. Having examined the issue, I do not agree with the contention raised by learned counsel for the appellant that the Additional District Judge, Sonepat, has misinterpreted the provisions of arbitration agreement and Section 31 (7) of the Act,

while observing that even in the absence of any contract, the Arbitrator had the power to award interest at such rate which he deems reasonable between the date of cause of action arose and the date on which the Award was made. As a matter of fact, it is a settled law that even in the absence of any such contract, the Arbitrator had the power to grant reasonable interest for the period when the cause of action arose and when the award is made.

7. Learned counsel for the appellant has referred to a judgment delivered by the Hon'ble Supreme Court in case Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc., wherein the majority Bench observed as under:-

29. The decision, which equally needs a detailed reference, is that of constitution Bench reported in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, (hereinafter referred to as "Roy's case"). Of the two issues raised in the appeal therein, the one which related to the jurisdiction of the Arbitrator to award pendente lite interest when taken up for hearing before a Bench, the correctness of Jena's case (supra) insofar as it held that the Arbitrator had no power to award interest pendente lite was contested and on the view taken by that Bench that the said question required further consideration by a larger Bench, the matter was placed before the Constitution Bench. Ultimately, the Constitution Bench held that the decision in Jena's case (supra) does not lay down good law and 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 will have the power to award interest pendente lite, for the reasons that in such a case it must be presumed that interest was an implied term of the agreement between parties and therefore, the parties refer all their disputes - or refer the dispute as to interest as such to the Arbitrator - which he shall have power to decide. It was also emphasised therein that the matter being one within the discretion of the Arbitrator - the same requires to be exercised in the light of all facts and circumstances of the case, keeping the ends of justice in view.

44. There can be no controversy over the position that the Constitution bench of this Court in G.C. Roy's case while declaring that the decision in Jena's case does not lay down good law upheld, as a consequence the jurisdiction of the Arbitrator to award only pendente lite interest, as explained and highlighted in the subsequent decisions of this Court. When the claim involved for consideration G.C. Roy's case was only with reference to pendente lite interest it cannot be expected of the Court to travel outside, except for analysing the general principles, to academically adjudicate the other aspects of the matter also decided by the Bench in Jena's case and overrule the same on such other points, too. Be that as it may, the ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case. While laying down

Principle No. (i) in para 43, it has been in unmistakable terms declared that the basic proposition that a person deprived of the use of money to which he is legitimately entitled to, has a right to be compensated for the deprivation, by whatever name it may be called viz., interest, compensation or damages, "is as valid for the period the dispute is pending before the Arbitrator as it is for the period prior to the Arbitrator entering upon the reference." The efficacy and binding nature of this declaration of law cannot be either diminished or whittled down even on any known principle underlying the doctrine of "Star decisus". The same is the opposition with reference to the Principle Nos. (ii) and (iii). It cannot be legitimately contended that these principles would either vary or could be different in a case relating to the award of interest for the pre-reference period and to assume such a contraposition in juxtaposition would not only be destructive in nature but also illogical and self contradictory resulting in grave miscarriage of justice. Some of the very reasons and principles which weighed with the Constitution Bench in G.C. Roy's case to sustain the jurisdiction of the Arbitrator to award *pendente lite* interest in a claim arising out of an agreement which does not also prohibit the grant of interest, in our view would equally suffice and provide sound basis of reasoning for upholding the power of the Arbitrator to award interest in respect of the pre-reference period, too. The further fact that the decisions of this Court, including the Jena's case, envisaged four circumstances or contingencies wherein such interest for pre-reference period can be countenanced by the Arbitrator, is by itself sufficient to confer jurisdiction upon the Arbitrator to entertain and consider the said claim also, and consequently, there is no justification to thwart the same even at the threshold denying the Arbitrator power even to entertain the claim as such.

47. If that be the position, Courts which of late encourage litigants to opt for and avail of the alternative method of resolution of disputes, would be penalising or placing those who avail of the same in a serious disadvantage. Both logic and reasons should counsel Courts to lean more in favour of the Arbitrator holding to possess all the powers as are necessary to do complete and full justice between the parties in the same manner in which the Civil Court seized of the same dispute could have done. By agreeing to settle all the disputes and claims arising out of or relating to the contract between the parties through arbitration instead of having recourse to Civil Court to vindicate their rights the party concerned cannot be considered to have frittered away and given up any claim which otherwise he could have successfully asserted before Courts and obtained relief. By agreeing to have settlement of disputes through arbitration, the party concerned must be understood to have only opted for a different forum of adjudication with less cumbersome procedure, delay and expense and not to abandon all or any of his substantive rights under the various laws in force, according to which only even the Arbitrator is obliged to adjudicate the claims referred to him. As long as there is nothing in the arbitration agreement to exclude the jurisdiction of the Arbitrator to entertain a claim for interest on the amounts due under the contract, or any

prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of the Arbitrator to consider and award interest in respect of all period subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the Court thereunder, has to be upheld. The submission that the Arbitrator cannot have jurisdiction to award interest for the period prior to the date of his appointment or entering into reference which alone confers him power is too stale and technical to be countenanced in our hands, for the simple reason that in every case the appointment of an Arbitrator or even resort to Court to vindicate rights could be only after disputes have cropped up between the parties and continue to subsist unresolved and that if the Arbitrator has the power to deal with and decide disputes which cropped up at a point of time and for the period prior to the appointment of an Arbitrator, it is beyond comprehension as to why and for what reason and with what justification the Arbitrator should be denied only the power to award interest for the pre-reference period when such interest becomes payable and has to be awarded as an accessory or incidental to the sum awarded as due and payable, taking into account the deprivation of the use of such sum to the person lawfully entitled to the same. For all the reasons stated above, we answer the reference by holding that the Arbitrator appointed with or without the intervention of the Court, has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. The decision in *Jenas*'s case taking a contra view does not lay down the correct position and stands overruled, prospectively, which means that this decision shall not entitle any party nor shall it empower any Court to reopen proceedings which have already become final, and apply only to any pending proceedings. No costs.

8. In the aforesaid judgment, it has been further clarified as under:-

An Arbitrator has no competence to award interest for the pre-reference period unless any of the conditions namely; (1) if the agreement between the parties entitles the Arbitrator to award interest; (2) if there is a usage of trade having the force of law for award of interest, and (3) if there are other provisions of the substantive law enabling the award of interest, are satisfied. Therefore, the question formulated in the reference order is answered in the negative. Accordingly, the appeals are allowed insofar as the award of interest for the pre-reference period is concerned.

9. Having scrutinized the impugned judgment, it transpires that in the absence of any such clause in the agreement with regard to payment of interest, the Arbitrator was within his jurisdiction to award interest for the period when cause of action arose till the Award is made. However, the party could claim pre-reference and post-reference interest and only the Court has the power to grant interest from the date of passing of the Award till realization. Resultantly, the present appeal is partly allowed and the respondents would be entitled to the interest on the delayed

payment from the date, cause of action arose till the award is made.