

## Chahal and Company Vs State of Madhya Pradesh and Others

**Court:** Madhya Pradesh High Court

**Date of Decision:** July 27, 2004

**Acts Referred:** Arbitration Act, 1940 " Section 13, 14(2), 29, 30, 33  
Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 " Section 20

**Citation:** (2004) 3 ARBLR 557 : (2004) 4 MPHT 119 : (2004) 2 MPJR 348 : (2004) 4 MPLJ 301

**Hon'ble Judges:** S.P. Khare, J; A.K. Shrivastava, J

**Bench:** Division Bench

**Advocate:** H.S. Ruprah and C.V. Rao, in M.A. No. 1489/97 and P.N. Dubey, Dy. A.G. in M.A. No. 4/98, for the Appellant; P.N. Dubey, Dy. A.G. in M.A. No. 1489/97, H.S. Ruprah and C.V. Rao in M.A. No. 4/98, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.

These two appeals u/s 39 of the Arbitration Act, 1940 (in short "the Act") have been preferred against the award dated 26-9-1997 passed by

Second Additional District Judge, Hoshangabad in Civil Suit No. 11-B/86. The contractor has filed a separate appeal (M.A. No. 1489/97)

against that part of the award by which the Court had declined and did not pass any order regarding the interest. The State of Madhya Pradesh

has filed appeal (M.A. No. 4/98) against that part of the award by which the Court below had made rule of Court of the award passed by the

arbitrator. Since the aforesaid two appeals have arisen from a common order passed by the Court below, they are being decided by this common

order.

A civil suit was filed by the contractor for the realization of non-payment of the amount due to him in the Court below and in that suit application by

contractor, who was plaintiff, was submitted to refer the matter for redressal, to the arbitrator. That application was allowed and the matter was

referred to the arbitrator. The Court below vide its order dated 20-7-1990 appointed Shri S.P. Caprihan, Retired Engineer-in-Chief as the sole

arbitrator to adjudicate upon the dispute and differences arising out of the agreement between the contractor and the State.

The admitted fact is that the parties entered into an agreement and thereby the work order was given to the contractor for the construction of Right

Bank Canal Tunnel including approach channel and intake structure. Since some amount was due to the contractor and was not paid by the State

Government to him, he filed the suit in which, on the application of the contractor, the matter was referred to the above said sole arbitrator.

The sole arbitrator passed an award on 17-10-1996 allowing the claim of the contractor to the tune of Rs. 4,55,733/- referred under the different

heads in the award with simple interest @ 18% per annum from the date when final payment was made, i.e., 1-6-1979 to the date of the decree

by the Court.

An application was submitted" before the Court below for making the award as rule of the Court. Before the Court below the State of Madhya

Pradesh submitted objections under Sections 30 and 33 of the Act on the ground that the award has not been submitted well in time and the

arbitrator erred in law in holding that claim is within limitation. By filing these objections it was prayed that award be set aside.

The learned Court below after dealing with the objections of the State of Madhya Pradesh vide impugned order made the award passed by the

arbitrator as rule of the Court to the tune of Rs. 4,55,733/-, however, the Court below did not pass any order regarding the payment of interest

which was allowed by the arbitrator. Hence these two appeals have been preferred by the parties.

Appeal No. 1489/97 has been preferred by the contractor for not making the interest part, awarded by the arbitrator, as rule of Court and Appeal

No. 4/98 has been filed by the State against the order making the award rule of the Court.

We have heard Shri H.S. Ruprah, learned Senior Counsel for the contractor and Shri P.N. Dubey, learned Deputy Advocate General for the

State. After having heard learned Counsel for the parties, we are of the considered view that the appeal preferred by State of Madhya Pradesh

(M.A. No. 4/98) deserves to be dismissed and appeal filed by contractor (M.A. No. 1489/97) deserves to be allowed in part.

The first objection which has been raised by Shri Dubey, learned Dy. Advocate General is that the Court below was not having jurisdiction to

make award passed by the arbitrator as rule of Court in view of the provisions of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983.

According to learned Deputy Advocate General, the matter ought to have been referred to the Tribunal constituted u/s 3 of the said Adhiniyam. As

there is a clear bar of jurisdiction of Civil Court u/s 20 of the said Adhiniyam therefore, the impugned order passed by the Court below making the

award passed by the arbitrator as a rule of Court is without jurisdiction. On considering the said argument at the first blush it appears to be quite

attractive but on deeper scrutiny found to be devoid of any substance. Vide Notification No. 16-1-84-XXI-B, dated 12-2-1985 State

Government constituted an Arbitration Tribunal w.e.f. 1st March, 1985, but, the present civil suit was filed on 22-11-1983, thus the date when the

suit was filed the Tribunal under the said Adhinyam was not established and constituted and, therefore, in our opinion, the suit was rightly filed

before the Civil Court and the Civil Court was having jurisdiction in that regard. The Full Bench decision of this Court in the case of State of

Madhya Pradesh and Ors. v. Chahal and Company, New Delhi 1995 A.T.L.R. 537 (MP): 1995 MPLJ 885 is quite relevant on the point. Thus

the objection raised by learned Deputy Advocate General in that regard is without any substance and the same is hereby rejected.

On merit it has been contended by learned Deputy Advocate General that objections were raised by filing application u/s 33 of the Act to set aside

the award. The contention of learned Counsel is that the arbitrator has misconducted himself in the proceedings in holding that the claim is within

time. We are afraid of such submission made by learned Counsel for the State. Merely because the arbitrator held the claim to be within time, it

can not be said it had misconducted. Indeed this objection was raised before arbitrator that the claim of the contractor is not within time which was

dealt by the arbitrator in proper perspective holding that the final bill was paid on 1-6-1979 and the contractor filed his claim on 25-6-1979, i.e.,

within 28 days as provided in Clause 3.3.29 of the agreement. According to us, since final payment was made on 1-6-1979, limitation would start

from this date and thus we accordingly hold that the claim was within limitation. There is no merit in the contention of learned Dy. Advocate

General that since the payment of final bill was accepted without any protest, the contractor is estopped from raising the dispute. On going through

the record, it is revealed that the final bill was accepted under the protest by the contractor which is quite clear from the letter dated 25-6-1979

which was exhibited C-8 before the arbitrator.

Shri Dubey further submitted that the award was filed on 16-1-1997 to make it a rule of Court while the award was passed on 17-10-1996. No

provision has been shown by learned Counsel in that regard, in order to show that under the Act, the arbitrator was bound to file the award within

the stipulated period. Thus, this argument is also rejected being without any substance.

It be seen that Section 3 of the Act speaks about the provisions implied in arbitration agreement. According to which an arbitration agreement,

unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are

applicable to the reference. Item No. 3 of the First Schedule contemplates that the arbitrator shall make his award within four months after entering

on the reference or after having called upon to act by notice in writing from any party to the agreement or within such extended time as the Court

may allow. On going through the record as well as the award, passed by the arbitrator, it is revealed that the time to pass the award was extended

from time-to time and finally it was extended up to 24th October, 1996 by the Court vide, its order dated 1st July, 1996. It be seen that the award

was passed earlier to it and was passed on 17-10-1996. The learned Counsel for the State could not point out any law that after having passed

the award in terms of First Schedule of the said Act, the arbitrator was bound to submit the award within a stipulated period, in the Court. The

Court below has considered this point in the impugned order. On going through the reasonings assigned in Para 6, we think it proper that the

reasons so assigned are quite cogent. The award was passed by the arbitrator on 17-10-1996 and the same was filed in the Court in order to

make it rule of the Court on 23-5-1997. Since the learned Counsel for the appellant failed to point out any particular provision of law on the basis

of which it can be said that the arbitrator is required to submit the award within a particular period in the Court, therefore, according to us the

impugned order which has been made as a rule of the Court by the Court below can not be set aside on this ground.

We have also considered the objection raised by appellant that the arbitrator misconducted itself in terms of Section 30(a) of the Act as it had not

assigned any reason. In this regard the Constitution Bench of the Apex Court will throw sufficient light. In the case of Raipur Development

Authority etc. etc. v. Chokhamal Contractors etc. etc. AIR 1990 SC 1426, the Constitution Bench of the Apex Court held that the award is not

liable to be set aside merely on the ground of absence of reasons unless the condition itself is stipulated in the arbitration agreement in that regard.

The learned Deputy Advocate General could not point out any such condition in the agreement wherein it has been stipulated that the arbitrator

was required to assign reasons. The another decisions on the point are Secretary, Irrigation Department, Government of Orissa and others Vs.

G.C. Roy, and M/s. Subhash Aggarwal Agencies Vs. M/s. Bhilwara Synthetics Ltd. and others, . The objections which were raised by filing

application u/s 33 can not be said to be the objections in order to include them under the ambit of Clause (a) of Section 30 of the said Act. The

objection that by holding the dispute to be within time by the arbitrator as well as reasons are not assigned by him, can not be said in any manner

that the arbitrator misconducted himself. These objections would not come under the ambit of Section 30(a) of the Act. According to us the Court

below rightly passed impugned order making the rule of Court to the award passed by arbitrator. Hence, the appeal filed by the State of M.P. is

hereby dismissed.

We shall now consider the appeal filed by the contractor. It be seen that the arbitrator awarded a simple interest @ 18% per annum on the amount

of award from the date of payment of final bill, i. e., 1-6-1979 to the date of the decree by the Court. Though reasons are not required to be

assigned in that regard by the arbitrator, but, by placing two decisions of the Supreme Court, the arbitrator assigned the reasons. u/s 13 read with

Section 29 the arbitrator has power to award interest, in that regard the decision of Apex Court in the case of Himachal Pradesh State Electricity

Board Vs. R.J. Shah and Company, may be seen. Shri H.S. Ruprah, learned Senior Counsel has placed reliance on the decision in the case of

Renusagar Power Co. Ltd. Vs. General Electric Co., and has invited our attention to Paras 135 and 136 of the said decision. The learned Counsel

has further placed reliance on another decision of the Supreme Court in the case of G.C Roy (supra), wherein it has been held that where the

agreement is silent as to grant of interest, it would be presumed that the term is implied in the agreement and the arbitrator has power to award

pendente lite interest. The Apex Court in the case of G.C Roy (supra) has further held that a person deprived of the use of money to which he is

damages. This basic consideration 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. There is no reason or principle to hold otherwise in the case of arbitrator. An arbitrator is an alternative form for

resolution of disputes arising between the parties. If so he must have the power to decide all the disputes or differences arising between the parties.

If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the Court for that purpose, even though

he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings. An arbitrator is the

creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit,

so long as they are not opposed to law. All the same the agreement must be in conformity with law. The arbitrator must also act and make his

award in accordance with the general law of the land and the agreement.

The view of Division Bench of this Court in the case of Indian Railway Construction Co.. Ltd. v. Singh Construction Company, Bilaspur 2000(2)

MPLJ 473 is that the arbitrator has power to award interest from the date of award looking to the prevalent rate of interest in commercial parlance

granting further interest at 15% per annum. The Supreme Court yet in another case M.K. Shah Engineers and Contractors v. State of M.P. 1999

Arb.W.LJ. 170 (SC): 1999 (2) MPLJ 57 has held that arbitrator can award interest during pendency of the reference.

The learned Court below while passing the impugned order making a rule of Court of the award passed by the arbitrator did not pass any specific

order rejecting the claim of the contractor in regard to the interest. According to us, the interest which has been awarded by the arbitrator is

correct and in accordance with law and thus appeal (M.A. No, 1485 of 1997) of the contractor is, therefore, allowed. The contractor shall be

entitled to the interest as awarded by the arbitrator till the date of the passing of the decree of the Court below. However, for the period which has

been spent in the appeal, the contractor shall be entitled to the interest @ 6% per annum till the payment is actually made. The appeal of contractor

(M.A. No. 1489/1997) is accordingly allowed to the extent indicated hereinabove and the appeal of State (M.A. No. 4/98) is hereby dismissed.

The parties are directed to bear their own costs.