

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.180 of 2016

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Arbind Kumar Son of Late Yogeshwar Prasad Singh, resident of Patel Nagar, P.S.
Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary Building Construction Department, Govt. of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer (South Bihar) Building Construction Department of Visheshwariaya, Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Building Construction Department, South Bihar, Circle, Punaichak, Patna.
4. The Executive Engineer, Building Construction Department, Central Division, near High Court, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary, Adv.

For the Respondent/s : Mr. G.P.-X

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-04-2017

Heard learned counsel for the parties.

This revision application has been filed under Section 13 of the Bihar Public Works Arbitration Tribunal Act, 1996 questioning the legal sustainability of the award dated 17.05.2016 passed in Reference Case No. 175 of 2014.

The work contract between the petitioner and the respondents is admitted fact and further the fact that the petitioner had completed the work as agreed is also not in dispute. However, due to non-payment of the amount by the respondents to the petitioner for



the work done, the petitioner filed Reference Case No. 175 of 2014 mainly claiming for an award for payment of admitted due amount against the work done and further for payment of interest @ 16% per annum on awarded amount from the cause of action (date of submission of bill) till the date of award with 18% per annum statutory interest from the date of award till the date of payment. It has however, been accepted on behalf of the petitioner that the dues against the work done as claimed in the reference case was paid on 29.03.2015 during the pendency of the said reference case. The learned tribunal, however, heard the parties and has passed the impugned award holding the petitioner to be entitled to simple interest at the rate of 10% per annum on the principle amount (which was already paid by the respondents to the petitioner during the pendency of the reference case) from the date of filing of reference case i.e. 31.12.2014 till the date of payment i.e. 29.03.2015.

Learned counsel for the petitioner, during the course of submission, has summed up the grievance of the petitioner on three scores. Firstly, that the tribunal has wrongly declined to award the pre-reference interest i.e. from the date of cause of action accruing to the petitioner for payment of the due amount till the filing of the reference case; secondly that the petitioner is entitled to award of 18% interest as envisaged under Section 31 (7) (a) (b) of the Arbitration



and Conciliation Act, 1996 but the tribunal has awarded interest only at the rate of 10% per annum and thirdly that the tribunal has awarded interest only on the principal amount and not on the sum which includes the principal amount and the interest.

Learned counsel for the respondents has supported the impugned award and has submitted that there is no illegality in exercise of its discretion by the learned tribunal in declining the claim of the petitioner for payment of interest as made.

Learned counsel for both the parties have relied upon a number of decisions by the Apex Court in support of their rival submissions and the same shall be considered appropriately hereinafter.

The ikrsome issue pertaining to the competence of the arbitrator to award interest for the three periods namely the period from the date of cause of action till the date when the arbitrator enters upon the reference, the period thereafter till the date of making the award and the period after the award till the payment is made has come up for consideration in several authoritative pronouncements by the Apex Court. The reference in this regard may mainly be made to the decision in **Executive Engineer (irrigation) Vs. Abhaduta Jena, (1988) 1 SCC 418**, the Constitution Bench decision in **Secretary, Irrigation Department Vs. G.C. Roy, (1992) 1 SCC 508** and another Constitution Bench decision in **Executive Engineer,**



Dhenkanal Minor Irrigation Division Vs. N.C. Budharaj, (2001) 2 SCC 721. However, in all these cases, the controversy had arisen before coming into force of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘Arbitration Act, 1996’). There is no dispute between the parties that the issue (s) in the present case between the parties is governed by the provisions of the Arbitration Act, 1996. The competence of the arbitral tribunal to award interest has been expressly recognized in Section 31 (7) of this Act which is reproduced hereinbelow for ease of reference:

“31 (7) (a) Unless otherwise agreed by the parties, where and insofar 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.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

The power of the arbitrator to award interest and the provision of Section 31 (7) in this regard came for consideration by



the Apex Court in **Sayed Ahmed and Company Vs. State of Uttar Pradesh, (2009) 12 SCC 26** and their lordships after taking notice of the earlier decisions on the issue have ruled as follows:-

“13.....The legislature while enacting the Arbitration and Conciliation Act, 1996, incorporated a specific provision in regard to award of interest by arbitrators. Sub-section (7) of Section 31 of the Act deals with the arbitrator’s power to award interest. Clause (a) relates to the period between the date on which the cause of action arose and the date on which the award is made. Clause (b) relates to the period from the date of award to date of payment.....

*.....
Having regard to sub-section (7) of Section 31 of the Act, the difference between pre-reference period and pendente lite period has disappeared insofar as award of interest by the arbitrator. The said section recognises only two periods and makes the following provisions:*

- (a) In regard to the period between the date on which the cause of action arose and the date on which the award is made (pre-reference period plus pendente lite), the Arbitral Tribunal may award interest at such rate as it deems reasonable, for the*



whole or any part of the period, unless otherwise agreed by the parties.

(b) For the period from the date of award to the date of payment the interest shall be 18% per annum if no specific order is made in regard to interest. The arbitrator may however award interest at a different rate for the period between the date of award and date of payment.

14.....The decisions of this Court with reference to the awards under the old Arbitration Act making a distinction between the pre-reference period and pendente lite period and the observation therein that the arbitrator has the discretion to award interest during pendente lite period in spite of any bar against interest contained in the contract between the parties are not applicable to arbitrations governed by the Arbitration and Conciliation Act, 1996.

26.....The arbitrator has awarded interest at three different rates on three different amounts which are all less than 18% per annum. The said award of interest by the arbitrator is not contrary to Section 31 (7) (b) of the Act. Unless the award of interest is found to be unwarranted



for reasons to be recorded, the Court should not alter the rate of interest awarded by the arbitrator.....”

In view of the controversy arising in the present revision application, it would also be fruitful to take into notice the decision of the Apex Court in **Hyder Consulting (UK) Limited Vs. Governor, State of Orissa, (2015) 2 SCC 189** where their lordships have explained the ambit and scope of the word ‘sum’ as used in Section 31 (7) (a) (b). It has been ruled as follows:-

“4.....To put it differently, sub-section (7) (a) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The “sum” awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the “sum” comprises only the principal.....”

28.Therefore, for the purposes of an award, there is no distinction between a “sum” with interest, and a “sum” without interest. Once the interest is “included in the sum” for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an “interest” and takes the colour of “sum” for which the award is made.



29.....There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only “interest”. This award of interest would itself then become the “sum” for which an award is made under Section 31 (7) (a) of the Act. Thus in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it.....”

At this juncture, it is worthwhile to mention that in the present revision application the notes of discord between the parties, as mentioned above, pertain to the refusal by the learned tribunal to pay the interest for the pre-reference period and the award of interest pendente lite at the rate less than 18% per annum and that too only on the principal amount. The entitlement of a person to interest, in case of non-payment of money which is legally due has been recognized by the Constitution Bench in **Secretary Irrigation Department** (supra) as follows:-

“43.....
.....

On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or



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.....

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

(Emphasis supplied)

It is, thus, graphically clear in view of the above dictums by the Apex Court as well as the statutory provision in Arbitration



Act, 1996 that the legal nodus pertaining to the competence of the arbitral tribunal to award interest for all three period viz pre reference, pendente lite and post award now no more survives requiring determination. However, the perusal of the impugned award demonstrates that no valid reason has been assigned by the learned tribunal for refusing the claim of the petitioner for interest from the date when the cause of action arose for payment of money. It has been stated in the award that the learned tribunal has decided to adopt the middle path for payment of interest to the petitioner since the date of filing of the reference case till payment is made. It has also been observed there that there is no provision in the agreement which can force the party to necessarily get interest. There is also no reason assigned for awarding interest at the rate of only 10% on the principal amount from the date of filing of the reference case till the date of payment. It is true that the discretion is there in the arbitral tribunal for the award of interest but that discretion is to be exercised, as observed by the Constitution Bench in **Secretary Irrigation Department** (supra) in the light of all the facts and circumstances of the case, keeping the ends of justice in view. This Court, therefore, comes to the conclusion that the impugned award is not legally sustainable and the matter requires reconsideration in view of the settled principles of law as above mentioned.



Accordingly, this revision application is allowed and the impugned award is quashed. The matter is remanded back to the arbitral tribunal for decision afresh in accordance with law after granting opportunity to the parties for fresh hearing. It is clarified that any observation made in this order shall not prejudice the case of either parties and the same shall be decided on its own merit according to law.

(V. Nath, J)

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