

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF JULY 2000

PRESENT :

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

AND :

THE HON'BLE MR.JUSTICE T.N.VALLINAYAGAM

M.F.A.No.612/1995

Between :

The Executive Engineer,
Spl.Minor Irrigation Dvn.,
Dharwad.

.. APPELLANT

(By Sri.H.J.Sundar Kumar, GA)

And :

Sri.R.N.Nayak,
major,
Class-I Contractor,
No.II Bailappanavar Nagar,
Hubli-580 029.

.. RESPONDENT

(By M/s.Tarakaram Associates, Adv.)

-.-.-

This M.F.A. is filed under Section 39(1) of the Arbitration Act, against the order dt.6-8-94, passed in Arbitration Case No.1/90, on the file of the Civil Judge, Gadag, while allowing the application filed u/s.14(2) of the Arbitration Act ordered that the award of the arbitrator be made as rule of this Court.

This M.F.A. coming on for final hearing this day, Hon'ble VALLINAYAGAM, J., delivered the following:-

J U D G M E N T

This appeal is directed against the Arbitration Case No.1/90 on the file of the Civil Judge, Gadag, at Gadag. The learned Civil Judge has passed a decree in terms of the award rejecting the objections made by the appellant/respondent before the trial Court.

2. The short facts are that to resolve the disputes and differences between the class I contractor Sri.R.N.Naik who is respondent herein and the appellant/Executive Engineer, Special Minor Irrigation Division, Dharwad, in respect of the work relating to construction of Mundwas Tank Irrigation Project in Mundargi Taluka, Dharwad District, which was an aided programme under the World Bank, the sole Arbitrator was appointed. During the execution of work, the contractor/respondent No.1 had put-forth several claims. As the appellant and the respondent could not mutually resolve the claims made by the Contractor/respondent No.1, the sole Arbitrator named in the agreement was appointed. The Arbitrator entered upon the

reference on 9-12-1988 and ultimately passed an award on 6-9-1990. The Arbitrator himself filed Arbitration Case No.1/90 and on filing of such award, notice was given to both the appellant and respondent. The contractor did not file any objections to the award to make the award rule of the Court as per law. On the other hand, the appellant who was 2nd respondent before the trial Court, presented a detailed statement of objections. The objections, inter alia, related to claim No.7 regarding grant of compensatory rates and higher rates related to claim No.1, 3 to 5 and claim No.6 regarding fixing the rate for excavation of top bank. It was further objected that the contractor could not conclude his work within the stipulated period and the breach was committed by the respondent/contractor. Drawing points for determination to decide whether the Arbitrator has misconducted himself and whether the award has been improperly procured or is otherwise invalid and whether the respondent No.1/contractor is entitled to interest, the Court below taking into consideration the objections,

held that there is no misconduct proved of the Arbitrator and the award has been properly presented and there is nothing to show that it was improperly procured or otherwise invalid. On the question of interest, the Court below has granted interest at the rate of 15%.

3. Feeling aggrieved, the Executive Engineer representing the Government has come up before this Court with the above appeal.

4. In the grounds of appeal, we find that except the question, questioning the rate of interest, other grounds relate to only merits of the claim.

5. Mr.H.J.Sundar Kumar, learned Government Advocate appearing for the appellants, contended that the Arbitrator had misconducted himself by awarding higher rates especially in respect of claim No.3. It is also his contention that the Arbitrator blindly passed the award to some quantities, not as per measurements as already recorded by the Department. He further contended that the

Arbitrator ^{mmir} ~~conducted~~ misconduct in not elucidating the dates with respect to items executed after 30-9-1988. According to him, as per the tender agreement, the new rules are not applicable to tender rates + excavation charges as per clause 53 alone which is admissible. It is further contended that the Arbitrator had no jurisdiction to pass an ~~awarded~~ award for compensatory rates on the items executed subsequent on 30-9-1998 which is the scheduled date of completion, as per contract. It is further submitted that higher rates ought not to have been awarded by the Arbitrator in respect of claim Nos.1, 3, 4 and 5. Even there was a mistake in granting extra lead charges in respect of claim No.1 and the same was not approved by the Engineer incharge. The grant of Rs.50-00 per cubic meter in respect of claim No.3 is on higher side and contrary to Ex.R-1 where the appellant has given a calculation and shown the rate as only Rs.12-00 per cubic meter.

6. On the other hand, Mr. Tarakaram, learned Senior Counsel appearing for the respondents, submitted that there was absolutely ~~any~~^{no} misconduct proved either before the trial Court or before this Court and the Arbitrator has come to the conclusion in applying the proper rates on the documents available and on ^{basis of} the submissions made before him by the respective parties. No bias is even alleged against the Arbitrator and there is nothing on record to show that the award was improperly procured or otherwise invalid.

7. We have considered the respective submissions made by the parties.

8. The submissions made by the learned Government Advocate is mainly on the merits of the case which has been taken note of by the trial Court. While sitting in appeal against an order making the award rule of the Court under the Arbitration Act, this Court is not acting as a first appellate Court from the award itself nor could the trial Court ~~act~~

act as a Court of appeal from the award. On a

detailed analysis and discussion of the case, the trial Court considered and found that there has been no misconduct proved nor any error apparent available on record. Each and every objection has been properly considered by the Arbitrator and the trial Court also confirmed the conduct of the Arbitrator as proper and justifiable. Even before us ^m the main contention regarding claim No.2 made by the learned Government Advocate, we find that the claim has been rejected by the Arbitrator itself. So far as claim No.3 is concerned, the question is relating to rate applied by the Arbitrator. The Government publishes circulars on every year showing the P.W.D. rate in every type of work and class of work to be done for the Government by the Contractors. Such a circular was not placed before the Arbitrator by the Government to rely on any such circular. On the other hand, a mere calculation-sheet was produced under Ex.R-1 and the same ^{has} rightly been rejected by the Arbitrator as having no legal value.

9. The contentions of the learned Government Advocate touching the merits of the case cannot be entertained at all. Even otherwise on a general perusal of the award as well as order passed by the trial Court, we are satisfied that there has been no misconduct on the part of the Arbitrator and the award has not been procured improperly ~~or~~ ^{and} it cannot be said otherwise invalid in the eyes of law.

10. On the question of interest, the Arbitrator has awarded interest at the rate of 15% p.a. from the date of award till the date of payment. The question was considered in the case of SECRETARY, IRRIGATION DEPARTMENT, GOVERNMENT OF INDIA -vs.- G.C.ROY (A.I.R. 1992 Supreme Court 732 and the Apex Court has observed as under:-

"Section 29 confers power on the court to award interest on the amount awarded by the Arbitrator from the date of the decree. Section 41 makes provisions of the Code of Civil Procedure applicable to all arbitration proceedings. Section 34 of the Code of Civil Procedure confers power on the Court to award interest

7/
..

but the Arbitration Act does not confer any express power on the Arbitrator to award interest pendente lite. However, under Sections 3 and 4 of the Interest Act, 1978, the 'court' which includes a Tribunal or an 'Arbitrator' within the meaning of Sec.2(a) of that Act is empowered to award interest. In the context of these provisions the question arises whether an Arbitrator to whom reference is made by the parties has jurisdiction or authority to award interest pendente lite. If the arbitration agreement or the contract itself provides for award of interest on the amount found due from one party to the other, no question regarding the absence of arbitrator's jurisdiction to award the interest could arise as in that case the Arbitrator has power to award interest pendente lite as well. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the Arbitrator has no power to award pendente lite interest. But where the agreement does not provide either for grant or denial of interest on the amount found due, the question arises whether in such an event the Arbitrator has power and authority to grant pendente lite interest."

In view of Section 2(a) of the Interest Act, the definition of "Court" in itself includes
1 Arbitrator and Tribunal and therefore, Interest

Act has been held in the case of STATE OF ORISSA v. B.K.ROUTRAY (A.I.R. 1999 Supreme Court 1101) will apply to the proceedings before the Arbitrator. On the question of rate, a Division Bench of this Court in the case of B.S.RAJPUT v. M/s. THE CELLAR & Another (A.I.R. 1993 Karnataka 9) has held as under:-

"Under the Interest Act, the party is entitled to Interest at the 'current rate of interest' which expression is defined in clause (b) of section 2 of the Interest Act, as meaning, the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of schedule banks in accordance with the direction given or issued to the banking companies generally by the Reserve Bank of India under the Banking Resolution Act, 1949. Therefore, taking into consideration the definition of the expression 'current rate of interest' as contained in clause (b) of Section 2 of the Interest Act, we are of the view that the interest at the rate of 15% p.a. would be just and appropriate as that was the maximum rate of interest that was being paid on different classes of deposits during the period from 28-10-1984 to 8-10-1985."

7/

In the light of the above, grant of 15% ρ interest by the Arbitrator which is affirmed by the trial Court cannot be said to be illegal or against any provisions of law. In this view of the matter, holding no merits, the appeal is dismissed.

In the circumstances of the case, there shall be no order as to costs.

Sd/- JUDGE

Sd/- JUDGE

bss.27700