

Before V.M. Jain, J
UNION OF INDIA,—*Petitioner*

versus

M/S HARBANS SINGH TULI & SONS,—*Respondent*

C.R. No. 3944 of 1996

The 11th July, 2000

Code of Civil Procedure, 1908—S. 34—Arbitration Act, 1940—Ss. 14, 17 & 29—Arbitrator awarding amount to the contractor on the various claims—Trial Court making the award a rule of the Court & awarding future interest on the principal sum adjudged—Executing Court calculating the awarded amount including the interest on the amount of pendente lite interest as the principal sum adjudged—Whether future interest on the amount of pendente lite interest can be awarded & included in the principal sum adjudged—Held, yes—Union of India liable to pay interest on the pendente lite interest as damages/compensation of delayed payment, which would become part of the principal sum adjudged—Petition dismissed.

Held that the petitioner-Union of India was liable to pay interest even on the pendente lite interest, which would be taken as damages or compensation of delayed payment and in this manner it would also become part of the principal sum adjudged.

(Para 10)

Further held, that so far as claim No. 21 in the principal sum adjudged is concerned, this amount had to be included in the principal sum adjudged considering that this was the amount which was awarded by the Arbitrator to the contractor being the amount payable under the award besides the items covered by claims 2 to 20 and thus this amount had to be included in the principal sum adjudged. In this view of the matter, the contractor would be entitled to claim future interest not only in respect of claims 2 to 20 but also in respect of claim No. 21. Besides that, the contractor would also be entitled to claim future interest on the pendente lite interest awarded to the contractor, under claim No. 1.

(Para 11)

Code of Civil Procedure, 1908—S. 115—Contract between the Government and the Contractor—Under the contract the Chief Engineer competent to take all actions on behalf of the Government—Whether revision petition filed by any other officer is incompetent or unauthorised—Held, no.

Held that so far as the contract between the parties is concerned, no doubt the Chief Engineer would be competent to take all actions on behalf of the Government in respect of the said contract. However, so far as filing of civil revision is concerned, the terms and conditions laid down in the said contract would not be relevant to determine as to who was competent to file civil revision on behalf of Union of India. If the Ministry of law has issued a notification and has authorised various M.E.S. officers including Chief Engineers and Surveyors of Works etc. being competent to sign and verify plaints and written statements in suits in civil courts by or against the Central Government and to act for government in respect of any judicial proceedings, then it could not be said that the present revision petition filed by the Surveyor of Works was incompetent or unauthorised.

(Para 5)

Deepali Puri, Advocate, *for the petitioner.*

H.S. Tuli, *respondent in person.*

JUDGMENT

(1) This is a revision petition against the order dated 12th September, 1996 passed by the Executing Court, disposing of the objection petition filed by judgment debtor—petitioner—Union of India.

(2) The facts which are relevant for the decision of the present revision petition are that with regard to a dispute between Union of India on the one hand and M/s Harbans Singh Tuli & sons, Contractors (hereinafter referred to as the contractor), the matter was referred to the Sole Arbitrator, who gave his award dated 18th August, 1989 in favour of the contractor. Thereafter the contractor moved an application under Sections 14 and 17 of the Arbitration Act, 1940 for a direction to the Arbitrator to file the original award alongwith the relevant documents in the Court and to make the award as a rule of the Court. Notice of the said application was given to Union of India who filed objection petition dated 21st September, 1989 challenging the award on various grounds. Various issues were framed. Thereafter, the learned trial court,—*vide* judgment dated 17th September, 1990 made the award dated 18th August, 1989 as rule of the Court except claim no. 1 which

granted *pendente lite* interest with effect from 15th June, 1989 to 18th August, 1989 @ 15%. It was further directed that the contractor shall also be entitled to future interest @ 15% per annum on the principal sum adjudged. The appeal filed against this judgment and decree dated 17th September, 1990 was upheld by the District Judge, Chandigarh,—*vide* judgment and decree dated 31st March, 1999. In the meanwhile the matter had gone to their Lordships of the Supreme Court in Civil Appeal No. 13149 of 1995 arising out of Special Leave Petition (Civil) No. 8791 of 1995 *M/s Harbans Singh Tuli & Sons Builders (P) Ltd. vs. Union of India* (arising out of some execution proceedings) and *vide* order dated 4th August, 1995, it was held by their Lordships that the appellant *M/s Harbans Singh Tuli & Sons* would be entitled to recover interest for the period from 5th April, 1973 to 15th June, 1989 in execution of the decree, as grant of interest for this period had nowhere been set aside in the judgment dated 17th April, 1990. During the pendency of the execution petition, for the execution of the judgment and decree dated 17th September, 1990 passed by the trial court, union of India (judgment debtor) filed objection petition with regard to the calculation of the decretal amount. The objection petition was contested by the contractor (decree holder) by filing written reply, giving his own calculation. The learned Executing Court, after hearing both sides, *vide* order dated 12th September, 1996 disposed of the objections of the Union of India by holding that the awarded amount on the various claims in the award of the Arbitrator would become the principal sum adjudged including the interest which became due before the arbitration proceedings, meaning thereby that the interest accrued would also become part of the principal sum adjudged. After giving decision with regard to the manner of calculating the amount due, the learned Executing Court also proceeded to calculate the decretal amount due and further ordered that the execution application be filed as partly satisfied, *vide* order dated 12th September, 1996. Aggrieved against this order of the Executing Court, Union of India (judgment debtor) filed the present revision petition in this Court.

(3) I have heard the learned counsel for the petitioner—Union of India and Shri H.S. Tuli, Managing Director of the respondent company in person and have gone through the record carefully. Even the record of the Executing Court was also summoned and the same was also perused by me.

(4) At the outset Shri H.S. Tuli, respondent in person raised a preliminary objection that the revision petition was unauthorised inasmuch as it has not been filed by a competent person, inasmuch as under the contract, only the Chief Engineer was competent to take all

actions on behalf of the government in respect of said contract, whereas the present revision petition was filed by Surveyor of Works in the Headquarter of C.W.E., Chandi Mandir, who was not competent to file the revision petition on behalf of Union of India. Reliance was placed on the case of *M/s Roshan Lal Sethi vs. The Chief Secretary and others* (1). On the other hand, the learned counsel appearing for the petitioner—Union of India submitted before me that as per the notification of the Ministry of law, as amended from time to time, various M.E.S. officers were competent to sign and verify plaints and written statements in suits in civil courts by or against the Central Government and act for the government in respect of any judicial proceedings. She further submitted that Surveyor of Works besides Chief Engineers and others were amongst those M.E.S. officers who were competent to sign and verify the plaints and written statements etc. It was submitted that in view of the said notification of the Ministry of Law, it could not be said that the present revision petition filed by the Surveyor of Works was not competent or unauthorised.

(5) After hearing both sides, I am of the opinion that preliminary objection raised on behalf of the respondent is mis-conceived. So far as the contract between the parties is concerned, no doubt the Chief Engineer would be competent to take all actions on behalf of the government in respect of the said contract. However, so far as filing of civil revision is concerned, the terms and conditions laid down in the said contract would not be relevant to determine as to who was competent to file civil revision on behalf of Union of India. If the Ministry of Law has issued a notification and has authorised various M.E.S. officers including Chief Engineers and Surveyors of Works etc. being competent to sign and verify plaints and written statements in suits in civil courts by or against the Central Government and to act for government in respect of any judicial proceedings, then it could not be said that the present revision petition filed by the Surveyor of Works was incompetent or unauthorised. The authority AIR 1971 Jammu & Kashmir 91 (supra) relied upon by respondent would have no application to the present case. In the reported case, the lease was terminated by an officer, who was not having any power to do so under the agreement and it was under those circumstances that it was held by the Jammu & Kashmir High Court that said officer had pre-judged the whole matter in issue by expressing opinion thereon and thus he was disqualified to act as an Arbitrator in dispute arising under that lease. Thus, the law laid down by the Jammu & Kashmir High Court in this authority would have no application to the point in issue before me. Thus, the

(1) A.I.R- 1971 Jammu & Kashmir 91

preliminary objection raised by the respondent is without any merit and is rejected as such.

(6) Coming on merits, the learned counsel appearing for the petitioner Union of India submitted before me that as per the award dated 18th August, 1989, the Union of India was liable to pay to the contractor pendente lite simple interest @ 15% per annum on some of the amounts awarded to the contractor from 15th April, 1973 to 15th June, 19789 and that the total amount towards claims no. 2 to 20 as awarded by the Arbitrator would come to Rs. 2, 19, 891.34 while the total amount under claim no. 21 would come to Rs. 4, 74, 437.55 towards escalation. It was submitted that vide judgment and decree dated 17th September, 1990 passed by the trial court (and in the meanwhile upheld by the District Judge in appeal), the contractor (decree holder) is entitled to future interest @ 15% per annum on the principal sum adjudged. It was further submitted that only the amount of Rs. 2,19,891.34 would be the principal sum adjudged as it was awarded in respect of claims no. 2 to 20, whereas claim no. 21 for the sum of Rs. 4,74,437.55 was towards escalation and that being so, future interest would be payable only on Rs. 2,19, 891.34 being the principal sum adjudged. It was further submitted that in any case, the future interest would be payable only on the amount of Rs. 6,94,328.89 (Rs. 2,19,891.34 + Rs. 4,74, 437.55), being the total amount of claims no. 2 to 21 and in no case the further interest would be payable on the amount of pendente lite interest awarded to the contractor under claim No. 1 for the period from 5th April, 1973 to 15th June, 1989, as amount on pendente lite interest awarded to the contractor could not be included in the term "principal sum adjudged". Reliance was placed on *Mehar Chand vs. Tulsi Ram*(2) *M/s Andhra Civil Construction Company, Hyderabad v. State of Orissa and others* (3) and *Executive Engineer, Rural Engineering Division, Dhenkanal vs. Biswanath Agarwalla*(4).

(7) On the other hand, Shri H.S. Tuli, respondent in person, submitted before me that in the first objection petition dated 15th January, 1992, it was admitted by the Union of India itself that the principal amount would come to Rs. 6,96,328.89 including Rs. 2000 towards cost of reference. It was submitted that now the Union of India could not be allowed to urge that escalation amount would not be included towards principal sum adjudged. It was further submitted that earlier when the attachment order was passed in respect of the property of Union of India, no objections were filed by Union of India

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- (2) 1996(2) P.L.R. 398 (P&H)
(3) A.I.R. 1981 Orissa 32
(4) A.I.R. 1982 Orissa 263

and now the Union of India was debarred from challenging the calculation of the decretal amount as calculated by the Executing Court. Reliance was placed on *Genda Lal vs. Hazari Lal* (5) *Mohanlal Goenka v. Benoy Kishna Mukherjee and others*, (6) *Rocky Tyres v. Ajit Jain* (7) *Jagannath Ramanuj Raj Deb vs. Sri Lakshmi Narayan Tripathy and others* (8) and *Baijnath Prasad v. Ramphal* (9) It was further submitted that since the provisions of Interest Act were not applicable to the present case, the decree holder was entitled to claim interest on the pendente lite interest as well, considering that it was damages or compensation for the delayed payment and it would also become part of the principal sum adjudged. Reliance was placed on *Oil & Natural Gas Commission vs. M.C. Clelland Engineers S.A.* (10) *Jugal Kishore Prabhatilal Sharma and others vs. Vijayendra Prabhatilal Sharma and another* (11) *State of Orissa vs. B.K. Routray* (12). It was further submitted that the second objection petition filed by the Union of India would not be maintainable. Reliance was placed on *R.P.A. Valliammal vs. P. Palanichami Nadar and others* (13).

(8) After considering the various submissions raised before me and perusing the entire record, in my opinion, the Union of India (judgment debtor) would be liable to pay further interest to the contractor (decree holder) not only on the amounts under items 2 to 20 and item No. 21 but also on item No. 1 which was the amount awarded to the contractor for the pendente lite interest. In 1999 (4) SCC 327 (supra), it was held by their Lordships of the Supreme Court as under :—

“4. There cannot be any doubt that the arbitrators have powers to grant interest akin to Section 34 of the CPC which is the power of the court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads—one is the balance of amount claimed under invoices and letter dated 10th February, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the

(5) A.I.R. 1936 Allahabad 21 (F.B.)

(6) A.I.R. 1953 S.C. 65

(7) 1998(3) P.L.R. 53

(8) A.I.R. 1960 Orissa 197

(9) A.I.R. 1962 Patna 72 (F.B.)

(10) 1999 (4) SCC 327

(11) 1993(1) SCC 114

(12) (1999) 2 SCC 58

(13) (1997) 10 SCC 209

claim for interest on delayed payment stood crystallized by the time the claim was filed before the arbitrators. Therefore, the power of the arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case....”

(9) In (1993) 1 SCC 114 (supra) it was held by their Lordships of the Supreme Court that there was no reason to modify the award on the question of interest either in regard to the rate of interest or in regard to the addition of interest till the date of award to be principal sum determined as payable to the applicants which is permissible under section 34 CPC. In (1999)2 SCC 58 (supra), it was held by their Lordships of the Supreme Court that the provisions of Interest Act, 1978 would not be applicable to the legal proceedings including arbitration proceedings pending before the commencement of the Act on 19th August, 1981.

(10) In view of the law laid down by their Lordships of the Supreme Court in 1999 (4) SCC 327 (supra), holding that the Arbitrator had power to grant interest on the amount of interest which may be termed as interest on damages or compensation for delayed payments, which would also become part of the principal sum adjudged, in my opinion, the petitioner—Union of India was liable to pay interest even on the pendente lite interest, which would be taken as damages or compensation of delayed payment and in this manner it would also become part of the principal sum adjudged. In this view of the matter, the authorities, 1996(2) PLR 398 (P&H), AIR 1981 Orissa 32 and AIR 1982 Orissa 263 (supra) relied upon by the learned counsel for the petitioner, would be of no help to petitioner—Union of India, nor on the basis of these authorities could it be said that the pendente lite interest could not be included in the principal sum adjudged for the purpose of granting future interest, in view of the law laid down by their Lordships of the Supreme Court, in 1999 (4) SCC 327 (supra).

(11) So far as claim No. 21 in the principal sum adjudged is concerned, in my opinion, this amount had to be included in the principal sum adjudged considering that this was the amount which was awarded by the Arbitrator to the contractor being the amount payable under the award besides the items covered by claims 2 to 20 and thus this amount had to be included in the principal sum adjudged. In this view of the matter, the contractor would be entitled to claim future interest not only in respect of claims 2 to 20 but also in respect of claim No. 21.

Besides that, the contractor would also be entitled to claim future interest on the pendente lite interest awarded to the contractor, under claim No. 1.

(12) For the reasons recorded above, in my opinion, the learned Executing Court was right in holding that the principal sum adjudged would include not only claims 2 to 20 and 21 but also claim No. 1. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed, but with no order as to costs.

S.C.K.

Before Jawahar Lal Gupta, V.K. Bali & V.M. Jain, JJ

PUNJAB COOPERATIVE BANK LTD. & ANOTHER,—*Petitioners*

versus

UNION OF INDIA & OTHERS,—*Respondents*

C.W.P. No. 8437 of 1997

13th July, 2000

Constitution of India, 1950—Arts. 226—Banking Regulation Act, 1949—S. 45—Bari Doab Bank Ltd. & The Punjab Cooperative Bank Ltd. challenging the order of imposition of moratorium—Delhi High Court dismissing the petition while granting an opportunity to the Banks to represent their case at the time of preparation of a scheme of amalgamation by the RBI—RBI inviting the suggestions/objections from the Banks on the scheme of amalgamation prepared u/s 45(4)—Delhi High Court dismissing the appeal of the Banks—Banks filing objections against the scheme of merger—Supreme Court directing the grant of post decisional hearing to the Banks—Banks failed to file any further objections after passing of the order by the Supreme Court—No oral/personal hearing or any other opportunity whatsoever sought by the Banks—Government sanctioning the scheme of merger after considering the objections already submitted by the Banks in the light of the comments made by the RBI—High Court rejecting the plea of the Bari Doab Bank regarding ‘post decisional hearing’—Supreme Court affirming the order of the High Court—“Post decisional hearing”—Meaning of —Whether the Government was bound to afford an opportunity of oral/personal hearing to the Banks and not calling upon the Banks to appear before it & make submissions amounts to violation of the principles of natural justice—Held, no—Post decisional hearing does not mean personal hearing—Right of oral hearing is not an essential ingredient of natural justice—Supreme Court order did