

M/S Larsen Air Conditioning And ... vs Union Of India on 11 August, 2023

Author: S. Ravindra Bhat

Bench: Dipankar Datta, S. Ravindra Bhat

2023 INSC 708

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3798 OF 2023

M/S LARSEN AIR CONDITIONING AND
REFRIGRATION COMPANY

VERSUS

UNION OF INDIA & ORS.

JUDGMENT

S. RAVINDRA BHAT, J.

1. Aggrieved by the impugned judgment¹ of the Allahabad High Court, the appellant has approached this court with a simple question of law, as to whether the High Court erred in modifying the arbitral award to the extent of reducing the interest, from compound interest of 18% to 9% simple interest per annum. Facts

2. The dispute between the appellant and Union of India (hereafter ‘respondent-state’) arose from a contract entered into pursuant to being awarded the tender. In the course of work, certain disputes arose. On 22.04.1997, the Judgment dated 17.07.2019 passed by Allahabad High Court in First Appeal from Order No. 1227/2003. respondent-state referred the dispute to arbitration, and the proceedings closed on 24.10.1998. The tribunal published its award on 21.01.1999 and directing the first four respondents to pay 18% pendente lite and future compound interest on the award in respect of Claim Nos. 1-8.

3. The respondent-state challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter ‘the Act’). The district court², dismissed the challenge on the ground that it could not sit in appeal over the award and since the respondent-state had failed to file any proof of the grounds alleged. Aggrieved, the respondent-state, preferred an appeal before the High Court in 2003. In the interim, the respondent-state deposited 10,00,000 in the District Court, Kanpur on

06.06.2003 against 1,82,878.11 due at the time.

4. Partly allowing the appeal, the High Court disapproved the reasoning in the award on Claim No. 6; it held that the sum of 3 lakhs awarded towards compensation for loss caused due to non-issue of tender document and paralysing business could not have been granted. The High Court held that it could not be said that the proceedings (in the present case) were under the Arbitration Act, 1940, and therefore, the rate of interest granted should not be 18%. The High Court referred to this court's judgments in *K. Marappan v. Superintending Engineer TBPHLC Circle Anantapur*³, *M/s Raveechee & Co. v. Union of India*⁴ Judgment dated 06.03.2003 passed by the District Judge, Kanpur Nagar in Misc. Case No. 64/70 of 1999. [2019] 5 SCR 152 [2018] 5 SCR 138 and *Ambica Construction v. Union of India*⁵ while deciding this question of pendente lite interest; it was held that the bar to award interest on the amounts payable under the contract would not be sufficient to deny the payment of interest pendente lite. The High Court proceeded to reduce the rate of interest from 18% (as ordered by the arbitrator), to 9% per annum. The remaining amount was directed to be deposited by the appellants as expeditiously as possible, with the interest accrued, not later than 12 weeks from the date of the judgment. On other grounds, it was held that there was no scope for interference in the arbitral award. Contentions of parties

5. The ground pressed by the appellant in the present proceedings, relates to the modification of the rate of interest (relating to award in Claim No. 9), and the scope of this appeal is limited to this question.

6. Mrs. Neeraj Singh, counsel appearing on behalf of the appellant, submitted that their claim was in fact for 24% pendente lite interest, and the arbitrator had already reduced it to the 18% granted. Pointing to pre-amended Section 31(7)(b) of the 1996 Act, it was contended that the High Court erred in reducing the 'statutory interest rate'; this provision prescribed that in the event the Arbitrator did not give any specific directions as regards rate of interest on amount awarded, such amount 'shall' carry interest of 18% per annum. The Arbitrator had properly considered the matter and accordingly granted 18% past pendente lite and future (2017) 14 SCC 323 compound interest on 8 claims, which was affirmed by the district court. Counsel also pointed out Clause 70 of the General Conditions of Contract (GCC), which stipulates that the award of the arbitrator shall be final and binding on both parties. It was urged, therefore, that there was no justification for judicial interference so as to reduce the statutory interest rate from 18% to 9% per annum. Counsel drew attention to *Shahi v. State of UP & Ors.*⁶ wherein this court, in light of Section 31(7), upheld 18% per annum as rate of interest, as justifiable.

7. Further, reliance was placed on this court's judgment in *Secretary, Irrigation Department, State of Orissa v. G.C. Roy*⁷ to argue that when the agreement between the parties does not prohibit grant of interest and where the party claims interest in the dispute referred to an arbitrator, then the arbitrator does have the power to award interest pendente lite.

8. Mr. Vikramjit Banerjee, Additional Solicitor General (ASG), appearing on behalf of the Respondent-state, argued that the impugned judgment had taken a holistic view of the matter, and rightfully reduced the interest from 18% compound interest to 9% simple interest, in addition to

disallowing Claim No. 6 of 3,00,000 awarded by the arbitrator for non-issuance of tender. The High Court, it was urged, had considered all the aspects of the Indian Contract Act, [2019] 11 SCR 640 [1991] Supp. 3 SCR 417 1872 and the Arbitration and Conciliation Act, 1996 before deciding to reduce the interest to a more reasonable rate.

9. It was asserted that even the counsel for the appellants at the time, before the High Court, had agreed that the statutory rate of interest should be 1 or 2% higher or lower than the bank rate, which in the last decade has been about 7-8%. As a result, 18% compound rate of interest was completely unjustified, and warranted revision.

10. The ASG relied on several judgments of this court: Municipal Corporation of Greater Mumbai and Anr v. Pratibha Industries Ltd. & Ors.⁸ to stress on the scope of the inherent powers of the High Court as a constitutional court; Oriental Structural Engineers Pvt. Ltd. v. State of Kerala⁹ wherein the contract did not stipulate a rate of interest, and 18% awarded by the tribunal was held to be excessive and therefore, reduced to 8% simple interest by this court; and similarly Post Graduate Institute of Medical Education and Research, Chandigarh v. Kalsi Construction Company¹⁰ wherein this court reduced the rate of interest from 18% awarded by the tribunal, to 9% simple interest, despite 18% having been the agreed upon rate of interest, given that the award was passed roughly 20 years prior.

[2018] 14 SCR 1143 [2021] 4 SCR 137 (2019) 8 SCC 726 Analysis and conclusion

11. Section 31(7)(b) of the 1996 Act, was amended by Act 3 of 2016, w.e.f. 23.10.2015. The pre-amended provision, empowers the arbitrator to award both pre-award and post-award interest, and specifies that the awarded sum would carry an interest of 18% per annum, unless provided otherwise, from the date of award till the date of payment. The pre-amended section, as it stood on the date of award by the arbitrator (21.01.1999), read as follows:

“31. Form and contents of arbitral award [...] (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.

(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.” (emphasis provided)

12. This court in Shahi & Associates (supra), which was relied upon by the appellants, dealt with a similar situation as the present factual matrix, and is squarely applicable:

“11. Section 31(7)(b) of the 1996 Act clearly mandates that, in the event the arbitrator does not give any specific directions as regards the rate of interest on the amount

awarded, such amount “shall” carry interest @ 18% p.a. from the date of award till the date of payment. Since the Arbitration Act, 1940 has been repealed by way of Section 85 of the 1996 Act, the Schedule to the Arbitration Act, including the State amendment, also stands repealed. The only exception is provided in sub-section (2)(a) of Section 85 where a proceeding which had commenced when the Arbitration Act of 1940 was in force and continued even after coming into force of the 1996 Act, and all parties thereto agreed for application of the old Act of 1940. Therefore, the provisions of Arbitration Act, 1940 including the State amendment, namely, para 7-A inserted by Section 24 of the U.P. Amendment Act will have no application to the proceedings commenced after coming into force of the 1996 Act.

12. In the instant case, though the agreement was earlier to the date of coming into force of the 1996 Act, the proceedings admittedly commenced on 27-10-

1999 and were conducted in accordance with the 1996 Act. If that be so, para 7-A inserted by Section 24 of the U.P. Amendment Act has no application to the case at hand. Since the rate of interest granted by the arbitrator is in accordance with Section 31(7)(b) of the 1996 Act, the High Court and the District Judge were not justified in reducing the rate of interest by following the U.P. Amendment Act.”

13. In the present case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on 22.08.1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment, i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% per annum. Of course, this is in the event the award does not contain any direction towards the rate of interest. Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator’s finding on interest accrued and payable. Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The scope of interference by the court, is well defined and delineated [refer to Associate Builders v. Delhi Development Authority¹¹, Ssangyong Engineering Construction Co. Ltd v. National Highways Authority of India (NHAI) ¹² and Delhi Airport Metro Express Pvt. Ltd. v Delhi Metro Rail Corporation Ltd¹³].

[2014] 13 SCR 895 [2019] 7 SCR 522 [2021] 5 SCR 984

14. The reliance on Kalsi Construction Company (supra) by the respondent- state, is inapt, given that this court had exercised its Article 142 jurisdiction in light of three pertinent factors – the award had been passed 20 years prior, related to construction of a Paediatrics Centre in a medical institute, and that the parties in that case had left the matter to the discretion of the court. Similarly, in Oriental Structural Engineers (supra) this court held that since the contract stipulated interest entitlement on delayed payments, but contained no mention of the rate of interest applicable – the Tribunal ought to have applied the principles laid down in G.C. Roy (supra), and therefore, in exercise of Article 142, this court reduced the rate of interest awarded by the tribunal on the sum left unpaid. The judgment in Municipal Corporation of Greater Mumbai (supra) no doubt discusses the

inherent powers of the High Court as a superior court of record, but relates specifically to the jurisdiction to recall its own orders, and offers little assistance in the present dispute.

15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that “illegality must go to the root of the matter and cannot be of a trivial nature”; and that the tribunal “must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground” [ref: Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision¹⁴ which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in *Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem*¹⁵:

“42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.” “15. Power of court to modify award.—The court may by order modify or correct an award—

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.” [2021] 5 SCR 368

16. In view of the foregoing discussion, the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest. The 18% per annum rate of interest, as awarded by the arbitrator on 21.01.1999 (in Claim No. 9) is reinstated. The respondent-state is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment.

17. The present appeal, and pending application(s) if any, stand disposed of in the above terms, with no order as to costs.

.....J. [S. RAVINDRA BHAT]J. [DIPANKAR
DATTA] NEW DELHI AUGUST 11, 2023.