Supreme Court of India
Hind Builders Etc vs Union Of India And Vice-Versa on 24 April, 1990
Equivalent citations: 1990 AIR 1340, 1990 SCR (2) 638
Author: S Rangnathan
Bench: Rangnathan, S.

PETITIONER:
HIND BUILDERS ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND VICE-VERSA

DATE OF JUDGMENT24/04/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
AHMADI, A.M. (J)

CITATION:
1990 AIR 1340 1990 SCR (2) 638
1990 SCC (3) 338 JT 1990 (2) 186
1990 SCALE (1)788

ACT:
Arbitration: Award--Error on the face of the award--Clause in the contract open to two equally plausible interpretations--Legitimate for Arbitrators to accept one or the other of the available interpretations and even if the court may think that the other view is preferable, the court will not and should not interfere.

Award--Error on the face of award Annexure setting out the award as against various items of claim--Mere fact that statement of claim refers to various items in the schedule to the contract does not result in the contract itself being incorporated in the award--No error can be found in the award.

Pendente Lite Interest: Power of Arbitrator--Not entitled to grant pendente lite interest unless reference is made in the course of a suit--Same powers to grant interest pendente lite as the courts when matter is referred by the Court.

HEADNOTE:
Certain disputes having arisen between the Union of India and the Contractors in respect of the Contract awarded to the letter for the execution of certain civil works

pertaining to the Metro Railway Project in Calcutta, the same were referred for decision to two Arbitrators appointed by the High Court of Calcutta. The Contractors filed their itemised claim before the Arbitrators for a total sum of Rs.2,05,67,554. The Arbitrators awarded a sum of Rs.57.47,198 to the contractors in full and final settlement of all their claims which included a sum of Rs.6.76,540 as interest vide item (1). They directed that the award shall be complied with within sixty days of its publication fail-ing which simple interest @ 11 percent per annum shall accrue thereon (excluding interest amount of Rs.6.76,540) till the date of payment or decree upon award which ever is earlier. On an application being made to the High Court for making the Award a rule of the Court. the learned single judge confirmed the award except that the principal sum awarded was reduced by Rs.5,20,000 with the direction that the amount so awarded will carry interest @ 11% per annum from the date of reference till the date of the award.
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The Union of India preferred an appeal to the Division Bench, which reduced the amount awarded under item (c)(xii) from Rs.23.96.000 to Rs.2.39,000. Thus the principal amount to be awarded to the contractors was finally put at Rs.30.70,798 and this amount was directed to carry interest @ 11% per annum from the date of the reference till the date of the award.

Aggrieved by the order of the Division Bench reducing the amount awarded under item (c)(xii) from Rs.23,96,000 to 239,600 the contractors preferred an appeal to this Court. The Union of Indian on the other hand preferred a cross-appeal praying (i) that interest should not be payable on the amount of Rs.30,70,798 fixed by the High Court but only on Rs.23,94,258 left after deducting therefrom the amount of Rs.6,76,540 awarded by the Arbitrators in respect of item No. (L) and (ii) that. though the arbitrators had also awarded interest on the principal sum till the date of payment or decree on award in case payment was not done within sixty days of the publication of the award. the contractors should be held entitled to interest upto the date of the award only and not beyond it because both the learned single judge and the Division Bench have held so and the contractors have preferred no appeal therefrom.

Taking up the contractor's appeal first, this Court came to the conclusion that the Division Bench had exceeded its jurisdiction in interfering with this part of the award and restored the amount awarded by the arbitrators under item (c)(xii).

Dealing with the appeal of the Union of India this Court ruled that there was really no dispute left about Union of India's first contention as to what was the correct amount on which interest was payable to the contractors after its findings in the contractor's appeal and placed the figure at Rs.45,50,658.

Dealing with the second contention as to what was the period with reference to which interest would be payable to the contractors on the above amount it was noticed that the arbitrators had allowed interest from 5.10.82 (date of termination of contract) to 26.3.84 (date of award) under item (L) and had also allowed interest from the date of the award till the date of payment or decree whichever is earlier.The learned single judge had deleted the interest for the period 5.10.82 to 6.5.83 (date of reference) but held that the arbitrators had jurisdiction to award interest from the date of the reference till the date of award and also post-award interest. As the objection of the Union of India
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before the Division Bench in the LPA on the question of interest was only that the arbitrators had erred in awarding interest from 6.5.1983 to 26.3.1984 the High Court had not decided that the contractors were not entitled to interest beyond the date of award and therefore this contention of the Union of India failed and was rejected. The Court.

HELD: The grant of pendente lite interest would be justified only when reference to arbitration is made in the course of a suit. The principle indicated is that since a court has. under S. 34 of
power to grant pendente lite interest in a suit. an arbitrator to Whom a reference to arbitration is made in the course of the suit would be clothed with all the powers of the court including one to grant such interest. Generally speaking. it would only seem reasonable that the power to grant interest pendente lite should be treated as ancillary to the award of damages or compensation which. but for the delay in the litigation (Whether in court or by way of arbitration). the claimant should have received much earlier. However. though pendente
interest has been made available in court proceedings. its extension to arbitration law appears to have acquired some technical limitations resulting in denial of pendente lite interest in most arbitration cases. Pendent lite interest cannot still be awarded by an Arbitrator appointed by the parties under a private agreement for which there may be no justification in equity. Anomalies have arisen because formerly an Arbitrator could not be treated as a court to which the code of civil procedure applied and because now the Interest act, 1978, while including arbitration proceedings within its ambit, has, apart from a reference to S. 34 omitted to provide specifically for pendente lite interest. This has been clearly brought out by Chinnappa Reddy, J., in Abhaduta Jena which outline the principle the learned judge had in mind for permitting pendente lite interest by arbitrator. Abhaduta Jena has been followed in later cases also and its scope has been recently explained in Sharma's Case (1988-4 SCC 353), and the Gujarat Water Supply case (1989-1 SCC 532) where pendente lite interest was denied. [655H; 656A-F]

Gujarat Water Supply & Sewage Board v. Unique Erectors, [1989] 1 S.C.C. 532; Firm Madan Lal Roshan Lal Mahajan v. Hukumchand Mills Ltd., lndore, [1967] 1 S.C.R. 105; Allen Berry & Co. Pvt. Ltd v. Union of India, [1971] 3 S.C.R. 287; N. Chellappan v. Secretary, Kerala State Electricity Board & Anr., [1975] 1 S.C.C. 289; Hindustan Tea Co. v.K. Shashi Kant Co. & Anr., [1986] Suppl. S.C.C. 506; Hindustan Steel Works Construction Ltd. v. C. Rajasekhar Rao, [1987] 4 S.C.C. 93; Sudarsan Trading Co. v. Government off Kerala & Anr.. [1989] 2 S.C.C. 38: M/s. Alppi Prashad & Sons, Ltd. v. 641
Union of India, [1960] 2 S.C.R. 793; Bhagat Trading Co. v. Union of India, AIR 1984 Delhi 358; Union of India v. Bakshi Ram, [1957] LIX P.L.R. 572; Executive Engineer v. Abhaduta Jena, [1988] 1 S.C.C. 418; Nachiappa v. Subramaniam, [1960] 2 S.C.R. 290; Satinder v. Amrao, [1961] 3 S.C.R. 676; Union v. Bungo Steel Furniture P. Ltd., [1967] 1 S.C.R. 324; Ashok Construction Co. Ltd. v. Union, [1971] 3 S.C.C. 66; State v. Saith & Skelton P. Ltd., [1972] 3 S.C.R. 233; Food Corporation of India v. Surendra, Devendra & Mohendra Tansport Co., [1988] 1 S.C.C. 547 and State of Rajasthan v. Sharma & Co., [1988] 4 S.C.C. 353, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1280 & 1281 of 1988.

From the Judgment and Order dated 21.4.1987 of the Calcutta High Court in Appeal from Original Order No. 128 of 1985, Award Case No. 151 of 1987.

A.K. Sen, Dr. Shankar Ghosh, Ajay K. Jain, Praveen Kumar and Pramod Dayal for the Appellant.

M.K. Banerjee and G.S. Chatterjee for the Respondent. The Judgment of the Court was delivered by RANGANATHAN, J. These are cross appeals by M/s. Hind Builders (hereinafter referred to as 'the contractors') and the Union of India. from an order of Division Bench of the Calcutta High Court in an arbitration matter. The contractors had been awarded a contract for the execution of certain civil works in connection with the Metro Railway Project in Calcutta. Certain disputes arose between the Union and the contractors. These disputes were referred for decision to two arbitrators appointed by the High Court of Calcutta. The arbitrators entered upon the reference on 27th June. 1983. The contractors had filed a claim before the arbitrators for a sum of Rs.2,05,67,554. On 26.3.1984 the arbitrators awarded a sum of Rs.57,47,198 to the contractors.

The claim of the contractors filed before the arbitra- tors was an itemised claim in respect of various items of works executed by them. The body of the award made by the arbitrators reads as follows:

"We ..... make and publish our Award, as below:

(i) That the Respondent ..... shall pay ..... the Contractors a sum of Rs.57,47,198 ..... only in full and final settlement of all their claims and dues under the above mentioned contract agreement. In addi- tion, the three Bank Guarantees ..... issued by Vijaya Bank, Cuttack, on behalf of the contractors, in favour of Metro Railway, Cuttack, shall be released by the Respondent Railway, as detailed in the Annexure to this Award.

XXX XXX
XXX

The Award shall be complied with within 60 (Sixty) days from the date of publication of this Award, failing which simple interest @ 11 per cent per annum on the amount of the Award (excluding interest vide item (1) of the Annexure i.e. Rs.6,76,540) shall accrue till the date of payment or decree upon Award whichever is earlier."

In the annexure to the award, the arbitrators tabulated the various items of the claim before them, the amount claimed against each item and the amount awarded against each item. Under item (1) in the annexure, the arbitrators had awarded an interest of Rs.6,76,540 and that is why the direction regarding interest by the arbitrators excluded this amount from the principal amount which was to bear interest. As stated earlier, the total amount awarded was Rs.57,47,198 in respect of items (a) to (q) of the award as against the claim of Rs.2,05,67,554 made by the contractors. On an application being made to the High Court of Cal- cutta on the Original Side for making the award a rule of court, the learned single Judge sitting on the Original Side confirmed the award except to the extent of Rs.5,20,000. This is no longer in issue. The learned Judge. however, concluded his judgment with the following words: "The principal sum awarded stands reduced by Rs.5,20,000 as mentioned above. The respondent will be entitled to interest at the rate of 11 per cent per annum from the date of refer- ence till the date of the award."

The Union of India preferred an appeal from the order of the learned single Judge. The Division Bench was of the opinion that the arbitrators were not justified in awarding a sum of Rs.23,96,000 to the contractors (as against a claim of Rs.42,65,957 made by them) in respect of item (c)(xii) viz. "cost towards consolidation of earth by ramming and rolling" and that they could have awarded under the contract only a sum of Rs.2,39,600 in respect of this item. The amount awarded to the contractors was thus further reduced by the Division Bench by a sum of Rs.21,56,400 (Rs.23,96,000--Rs.2.39,600). The Bench then observed that the principal sum to be awarded to the contractors would now stand at Rs.30,70,798 and directed that the respondent contractor should be entitled to interest at the rate of 11 per cent per annum on the said amount from the date of the reference till the date of the award.

The contractors have appealed from the order of the Division Bench being aggrieved by the reduction of the amount awarded under item (c)(xii) to Rs.2,39,600 from Rs.23,96,000. The Union of India has preferred an appeal contending principally that, since the principal amount on which the arbitrator awarded interest was not Rs.57,47,198 but only Rs.50,70,658 (i.e. Rs.57,47,198--Rs.6,76,540), the contractors would be entitled to interest, after the judg- ment of the Division Bench, not on Rs.30,70,798 as held by the Division Bench but only on Rs.23,94,258. In addition, at the tune of the hearing before us, counsel for the Union of India raised two further

points:

(1) that the Division Bench erred in awarding inter- est to the contractors from the date of the reference till the date of the award.

(2) That though the arbitrators had also awarded interest on the principal sum till the date of payment, the contractors should now be held entitled to interest only upto the date of the award because the learned single Judge and the Division Bench have held so and the contractors have preferred no appeal therefrom.

Taking up the contractor's appeal first, the point raised falls within a very narrow compass and turns on the interpretation of item No. -.09 of the annexure to the contract containing the schedule of rates. This item reads as follows.

Item No.	Brief description of work	Approx-imate Qty.	Unit of payment	Rate of payment in "words" & "figures" Rs. P.
1	2	3	4	5
4.09	(a)Earthwork in open excavation for forming garbage tanks in all kinds and conditions of soils upto depth varying from 0 to 3 3 metres from the existing ground level and disposing of the spoils so as to raise land required for piling work, to fill up the existing low lying areas and ponds, to form embank-ments for roads, etc of the Car Depot complex includ-ing spreading in layers, breaking clods, levelling, dressing, all lifts/descents and all leads etc. complete Note: No extra payments will be made if wet excavation is met with or for baling/ pumping out of water of all sorts including rain water.	235000 cubic metres	10 cubic metres	Rs.180 (Rupees one hundred eighty only)

(b) Extra over item (a) above, 135000 10 Rs.20 for consolidation of the Cubic Cubic (Rupees filled up areas or some of metres metres Twenty the top layers of the filled only).

up areas or road embank-

ment portions by watering and ramming/rolling as directed.

In respect of these items the statement of claim filed on behalf of the contractor was in the following terms:

(b) Earthwork in excavation measured but not paid in full: That under agreement item No. 4.09 (a) the claimants as per instructions, specifications and agreement excavated earthwork in open excavation for forming garbage tanks in all kinds of soil for a quantity of 2, 15,000 Cum and thereafter the contract was rescinded against which reduced quantity has been measured provisionally upto 17th CC bill for 2,09,523 Cum measured on 24.5.82 and as per the said measurements the claimants are yet to be paid for a quantity of 5,477 Cum over and above the payments already made upto 17th CC. The claimants claim payment for 5,477 Cum of exca- vation @ Rs. 18 per each Cum. amounting to Rs.98,586.00.

CLAIM AMOUNT... Rs. 98,586.00

(c)(xii) Cost towards consolidation of earth by ramming and rolling:

That as per agreement item No. 4.09(b) the claimants are required to fill up the low lying areas etc., as specified under General Conditions of the Contract at para 3.05 with the excavated spoils obtained out of earthwork in excavation under agreement item No. 4.09(a). The payment for earthwork in open excavation for work executed under agreement item No. 4.09(a) is to be made on sectional measurements calcu- lated by level sections. The excavated earth obtained from garbage excavation, a quantity of 2, 15,000 Cum as per provisions made in agreement item No. 4.09(b) was consoli- dated in different areas as per instructions and approved plan. The claimants claim payment for this quantity of consolidation at Rs.20 per Cum i.e. Rs.2 extra over Rs. 18 per Cum as specified in agreement item No. 4.09(a) & (b), amounting to Rs.43,00,000.00 against which payment has been made in CC bills for reduced quantity and amount of Rs.34,043.00. The claimants claim payment for the balance amount of Rs.42,65,957.00 not paid for.

CLAIM AMOUNT Rs.42,65,957.00 In other words, the contractors claimed payment at the rate of Rs.18 per cubic metre in respect of the excavation work done by them under item No. 409(a). Again, in respect of the same quantity. of 2,15,000 cubic metres, the contractors made a claim at Rs.20 per cubic metre as the amount payable to them in respect of the consolidation of excavated earth by ramming and rolling. The Division Bench was of the view that under item No. 4.09(b), the contractors were entitled to an additional payment of Rs.2 only, since the contractors had already been paid at the rate of Rs.18 per cubic metre in respect of the excavation done by them. The extra charges for ramming and rolling were payable only at the rate of Rs.2 per cubic metre instead of Rs.20 per cubic metre. The Division Bench accordingly scaled down the amount awarded by the arbitrator in this regard to 1/10th of the amount awarded by him.

It is submitted on behalf of the contractors that the rate payable for the work under item 4.09(b) of the contract was not at all in dispute between the parties at any stage. The Union had not raised any plea in this regard in its reply to the contractors' claim, in the objections to the award filed in the High Court or in the arguments before the learned Single Judge. Clearly, the Division Bench travelled beyond the limits permissible for the interference with an award by a court of law in reducing the amount awarded on this account. It is pointed out that the award itself is a non-speaking award. The award does not refer to the terms of the contract or incorporate the details of the claims made by the contractors. Though it is true that the arbitrators awarded a sum of Rs.23,96,000 against item (c)(xii), they have not given reasons therefore. The award neither shows that the amount has been worked out at the rate of Rs.20 per cubic metre nor does it show the quantity in respect of which the amount has been worked out. There is no reference to the terms of the contract or to item No. 4.09, clause (a) or (b). No reasons have been given by the arbitrators for determining that a sum of Rs.23,96,000 has to be paid to the contractors under item (c)(xii). It is therefore submitted that there was no error apparent on the face of the record. Learned counsel vehemently contended that it is now settled law that an award cannot be said to suffer from a manifest error unless the error appears on the face of the award or of some document incorporated in the award. Reference is made to the decisions of this Court in the following cases: Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, [1967] 1 SCR 105; Allen Berry & Co. Pvt. Ltd. v. Union oflndia, [1971] 3 SCR287;N. Chellappan v. Secretary, Kerala State Electricity Board & Anr., [1975] 1 SCC 289; Hindustan Tea Co. v. K. Shashi Kant Co. & Ant., [1986] Suppl. SCC 506; Hindustan Steel Works Construction Ltd. v.C. Rajasekhar Rao, [1987] 4 SCC 93 and Sudarsan Trading Co. v. Government of Kerala & Anr., [1989] 2 SCC 38. According to the contractors, what the Division Bench has done is to give its own interpretation to item Nos. 4.09(a) & (b) of the contract, to read an erroneous interpretation of the said item into the award made by the arbitrators and to substitute its opinion in the place of that given by the arbitrators. Thus, it is submitted, runs quite contrary to the principles enunciated in the above decisions and should, therefore, be set aside.

On the other hand, Shri Milon Banerjee, learned counsel for the Union of India submitted that the award is really a speaking award in so far as it does specify the amount granted in respect of each item of claim. He submitted that the present case falls within the principle enunciated in M/s Alopi Prashad & Sons, Ltd. v. Union of India, [1960] 2 S.C.R. 793, which has been taken note of in the case of M/S Sudarsan Trading Co. v. Government of Kerala & Anr., [1989] 2 SCC 38 at p. 54 that an award which overlooks or ignores the terms of the contract is bad. He also made a reference to the decision of the Delhi High Court in Bhagat Trading Co. v. Union, AIR 1984 Delhi 358 in this context. He also referred to a decision of the Punjab High Court in Union of India v. Bakshi Ram, [1957] LIX P.L.R. 572, holding that "when there are pleadings in an arbitration and they are specifically referred to in the award so that it cannot be understood without reference to them, then those pleadings are incorporated in the award and they must be included in the consideration whether there is any error apparent on the face of the award" and that "if a lump sum is awarded by an arbitrator and it appears on the face of the award or is proved by extrinsic evidence that in arriving at the lump sum matters were taken into account which the arbitrator had no jurisdiction to consider, the award is bad." The conten- tion of Shri Banerjee is that the annexure to the award clearly incorporates the statement of claim made by the contractors. Since in turn the statement of claim refers to the clauses of the contract, the contract should also have been treated as incorporated

in the award. It is also appar- ent on the face of the award, insofar as it relates to item

(c)(xii), that the arbitrators have awarded payment at Rs.20 per cubic metres under item 4.09(b) whereas it must obvious- ly be at Rs.2 per cubic metre. According to the learned counsel, the decisions relied upon by him clearly show that an award which ignores or overlooks the express terms of a contract suffers from an error apparent on the face of the record and can be set aside by this Court. He submitted that the award, read with the annexure, brings out the reasoning of the arbitrators and that an error therein can be recti- fied by the court. The arbitrators had no power to travel beyond the authority of the contract and, in order to deter- mine whether they had exceeded their authority, the contract can be looked into by the court. In support of this conten- tion, the learned counsel also referred to a passage at p. 42 1 in the Law of Arbitration by Bachawat (Second Edition).

We have considered the respective contentions of the parties and we are of the opinion that the Division Bench erred in setting aside the award insofar as it relate to the sum of Rs.25,96,000. Though the annexure sets out the award of the arbitrators as against various items of claims, the mere enumeration of the heads of claims cannot be equated to an incorporation of the statement of claim by the contrac- tors into the award. At any rate, the award does not relate the claims to the various clauses of the contract and the mere fact that the statement of claim refers to various items in the schedule to the contract does not result in the contract itself being incorporated as part of the award. No error can be found in the award unless one reads into it first the statement of claim and then the relevant clauses of the contract. But this cannot be done unless these docu- ments are treated as incorporated in the award. This cannot be done. That apart even if the contract can be read into the award, we doubt whether this case can be treated as one of an error on the face of the award. All that the award has stated is that for the extra work involved in ramming and rolling, the contractors were to be paid a sum of Rs.23,96,000. The award does not mention how this amount is arrived at. There is no mention of the quantity in respect of which this is awarded nor the rate at which the payment has been calculated. It is, however, pointed out that con- tractors had claimed payment at the rate of Rs.20 per cubic metres in respect of 2,15,000 cubic metres and that, even if it is assumed that the ramming and rolling had been done in respect of the entire volume of 2,15,000 cubic metres, the contractors could have, on a proper construction of the contract, been awarded only a sum of Rs.4,30,000 and nothing more. Obviously, the award is calculated at Rs.20 per cubic metres in respect of 1,19,800 cubic metre. It is clear, says counsel for the Union, that the volume of the item for which payment has to be made has been cut down but the amount has been calculated at Rs.20 per cubic metre which exceeds the amount of Rs.2 stipulated in the contract and this is erro- neous on the face of it.

We are afraid that, in putting forward this contention, the respondents are really trying to analyse the reasons of the arbitrator for making the award under this head when no such reasons have been stated in this award. In fact, it does not necessarily follow that the payment has been di- rected at the rate of Rs.20 per cubic metre in respect of 1, 19,800 cubic metre. Theoretically, it could have been award- ed, in respect of the entire volume of 2, 15,000 cubic metre, at the rate of Rs.11 and odd per cubic metre. It is, however, clear that the payment has been granted at a rate in excess of Rs.2 per cubic metre. We shall, however, take it that the arbitrators have awarded at the rate of Rs.20 per

cubic metre in respect of this item of work for, as pointed out by Dr. Ghosh, the Union of India had never put forward the case either before the arbitrator or before the learned single Judge that the contractors were not entitled to payment at the rate of Rs.20 per cubic metre as claimed and it was before the Division Bench for the first time that a question arose that the payment for the item should be at Rs.2 and not Rs.20 per cubic metre. Wheth- er the payment should be made at the rate of Rs.20 per cubic metre or at Rs.2 per cubic metre will depend upon a proper interpretation of the contract. It is argued that the main item of work viz. excavation and distribution of the exca- vated work has been paid for under item No. 4.09(a) and that item 4.09(b) envisages an additional payment of Rs.2 per cubic metre if the excavated soil, instead of being loosely distributed, is rammed and rolled by applying some pressure. This seems, prima facie, a plausible interpretation of clause 4.09(b). But we cannot assume, in the absence of any evidence or expert knowledge, that the ramming and rolling was not an independent, heavy or cumbersome piece of work and merely involved a minor addition to the work under item 4.09(a). On the other hand, in the grounds of appeal filed by the contractors it is contended:

"The High Court failed to appreciate that the process of ramming and rolling is a very expensive specialised process as it has to be done layer by layer not exceeding six inches at a time and requires watering, breaking of clods and use of specialised road rollers, bulldozers and other equipment. The work of ramming and rolling is much more expensive than that of earth excavation provided for in item 4.09 (a). The High Court further failed to appreciate that in its reply to the statement of claim of the petitioner, the respondent No. 1 had not disputed that the rate applicable for ramming and rolling was Rs.20 per cubic metre. The respondent No. 1 had only raised a dispute with regard to the quantity of the ramming and rolling done by the petitioner. The High Court misinterpreted the contract and erred in reducing the award for ramming and rolling by erroneously applying the rate of Rs.2 per cubic metre."

This may be fight or wrong but this is also a plausible view. Unfortunately, this was an aspect not urged before, or considered by, the arbitrators. There was no evidence before the arbitrators or material adduced before the Court as to the nature of these operations. It is difficult to say, by merely reading the terms of contract that the arbitrators have erroneously interpreted the terms of the contract. It is not without significance that the departmen- tal officers did not dispute the rate of the claim. Equally, the arbitrators were experienced engineers and would not have passed, what is now said to be, an astounding claim without thought. It is difficult to assume that all these persons have overlooked that the contractor had already been paid at Rs.18 under item 4.09(a) especially when it is so stated on the face of the claim. This, therefore. is not a case where tile arbitrators can be said to have ignored or overlooked a term of the contract; on the contrary, they have acted upon a particular interpretation of certain clauses of the contract on which two views are possible. This case certainly cannot be brought under the principle that the arbitrators have ex facie exceeded the authority or jurisdiction conferred on them by the Contract. At worst, what can be said is that they may have committed an error in deciding the issue referred to them but the error is not apparent on the face of the award even if the contract is read as part of it both because the arbitrators have not given their reasoning and because the view taken by them of the relevant terms of the contract cannot be said to be clearly erroneous. In a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrators to accept' one or the other of the

available interpretations and, even if the Court may think that the other view is preferable, the Court will not and should not interfere. This view is too well settled to need any reference to any precedent other than Sudershan Trading Co's case referred to earlier. That is why we think that this case does not fall within the principle referred to by Shri Banerjee and that Dr. Ghosh is right in his submission that the Division Bench exceeded its jurisdiction in inter- fering with this part of the award.

Turning now to the appeal of the Union of India, there is really no dispute about the first contention regarding the amount on which interest is payable to the contractors. The correct computation should stand as follows in the light of our findings in the contractors' appeal:

> Compensation awarded 57,47,198 by arbitrator Less: Interest element therein [item (1)] 6,76,540 Net principal amount awarded 50,70,658 Less:Amount deleted by learned Single Judge 5,20,000
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> ---------- 45,50,650
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The contractors will be entitled to interest on this amount. What is the period with reference to which interest would be payable on the above amount? The arbitrators had allowed interest on the amount awarded by them from 5.10.82 to 26.3.84 under item (1) and had also allowed interest from the date of the award till the date of payment or decree, whichever is earlier. Of this, the learned Single Judge had deleted the interest for the period 5.10.82 to 6.5.83 and what remains is the award of interest from 6.5.83 till the date of payment. There are two disputes as to this. The first objection raised on behalf of the Union is that the contractors will not be entitled to any interest for the period from the date of reference to arbitration (6.5.1983) till the date of the award (26.3.1984). On behalf of the contractors, Dr Ghosh refutes this contention. He relies upon the decision of this Court in Executive Engineer v. Abhaduta Jena. [1988] 1 SCC 418 and contends that, in all cases where, as in this case, arbitrators are appointed by Court and disputes referred to them for arbitration, pen- dente lite interest can and should be awarded by the arbi- trator. He points out that, though initially in Seth Thawar- das' case [1955] 2 SCR 48 some doubts were raised about the competence of the arbitrator to award interest, this Court has subsequently consistently held that an arbitrator can do this: vide, Nachiappa v. Subramaniam, [1960] 2 SCR 209; Satinder v. Arnrao, [1961] 3 SCR 676; Firm Madanlal v. Hukamchand Mills Ltd., [1967] 1 SCR 105; Union v. Bungo Steel Furniture P. Ltd., [1967] 1 SCR 324; Ashok Construc- tion Co. Ltd. v. Union, [1971] 3 SCC 66 and State v. Saith & Skelton P. Ltd., [1972] 3 SCR 233. After referring to these and other cases, Chinnappa Reddy, J. in Abhaduta Jena, (supra) summed up the position thus:

"15. As a result of the discussion of the various cases, we see that Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ranjit, 65 IA 66; Union of India v. West Punjab Factories, [1966] 1 SCR 580 and Union of India v. Watkins & Co., AIR 1966 SC 275 were cases of award of interest not by an arbitrator, but by

the court. It was laid down in those three cases that interest could not be awarded for the period prior to the suit in the absence of an agreement for the payment of interest or any usage of trade having the force of law or any provision of the substantive law entitling the plaintiff to recover interest. Interest could-also be awarded by the court under the Interest Act if the amount claimed was a sum certain payable at a certain time by virtue of a written instrument. In regard to pendente lite interest, the provi- sions of the Civil Procedure Code governed the same.

16. The question of award of interest by an arbitrator was considered in the remaining cases to which we have referred earlier. Nachiappa Chettiar v. Subramaniam Chettiar, [1960] 2 SCR 209; Satinder Singh v. Amrao Singh, [1961] 3 SCR 676; Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., [1967] 1 SCR 105; Union of India v. Bungo Steel Furniture Pvt. Ltd., [1967] I SCR 324; Ashok Construction Co. v. Union of India, [1971] 3 S.C.C. 66 and State of Madhya Pradesh v. M/s. Saith & Skelton Pvt. Ltd., [1972] 3 SCR 233 were all cases in which the reference to arbitration was made by the court, of all the disputes in the suit. It was held that the arbitrator must be assumed in those circumstances to have the same power to award interest as the court. It was on that basis that the award of pendente lite interest was made on the principle of Section 34 Civil Procedure Code in Nachiappa Chettiar v. Subramaniam Mills Ltd., (supra); Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., (supra); Union of India v. Bungo Furniture Pvt. Ltd., (supra) and State of Madhya Pradesh v. M/s Saith & Skelton Pvt. Ltd., (supra). In regard to interest prior to the suit, it was held in these cases that since the Interest Act, 1839, was not applicable, interest could be awarded if there was an agreement to pay interest or a usage of trade having the force of law or any other provision of substantive law entitling the claimant to recover interest. Illustrations of the provisions of substantive law under which the arbitrator could award interest were also given in some of the cases. It was said, for instance, where an owner was deprived of his property, the right to receive interest took the place of the right to retain possession, and the owner of immova- ble property who lost possession of it was, therefore, entitled to claim interest in the place of right to retain possession. It was further said that it would be so whether possession of immovable property was taken away by private treaty or by compulsory acquisi- tion. Another instance where interest could be awarded was under Section 61(2) of the Sale of Goods Act which provided for the award of interest to the seller or the buyer, as the case may be, under the circumstances specified in that section.

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18. While this is the position in cases which arose prior to the coming into force of the Interest Act, 1978, in cases arising after the coming into force of the Act, the position now is that though the award of pendente lite interest is still governed by the same principles, the award of interest prior to the suit is now governed by the Interest Act, 1978. Under the Interest Act, 1978, an arbitrator is by defini- tion, a court and may now award interest. in all the cases to which the Interest Act applies."

Sri Milon Banerjee, appearing for the Union of India, however, contends that the above principle is applicable only in cases where an arbitrator is appointed on interven- tion of count as contemplated in Chapter IV of the Arbitra- tion Act. It is only in these cases that the arbitration proceedings can be considered to be a continuation of the court proceedings, empowering the arbitrator to do all that

the court could do. For, even in cases arising after the Interest Act, 1978, the award of pendente lite interest can only be in terms of the provisions of s. 34 of the Code of Civil Procedure and this cannot be invoked in cases of arbitration except in cases falling under Chapter IV merely on the ground that the appointment of the arbitrator is made under S. 8, 12 or 20 of the said Act. Counsel submits that Chinnappa Reddy, J. has pointed out in Abhadhuta Jena's case [[1988] 1 SCC at pp. 434-5] that in all cases whether arising before or after the Interest Act, the claimants would not be entitled to interest from the date of reference to the date of the award for the simple reason that "the arbitrator is not a court nor were the references to arbi- tration made in the course of suits". It is this principle that has been reiterated in Food Corporation of India v. Surendra, Devendra & Mohendra Transport Co., [1988] 1 SCC 547 (at pp. 554 et seq) and Gujarat Water Supply & Sewage Board v. Unique Erectors, [1989] 1 SCC 532.

There is force in the contention urged by Sri Banerjee. There are passages in Abhaduta Jena which indicate that the grant of pendente lite interest would be justified only when the reference to arbitration is made in the course of a suit: vide, the last sentence on p. 428, the first sentence on p. 429, the emphasis added in the extracts from earlier judg- ments on pp. 430-1, and the summings up at p. 433 and 435. The principle indicated in these passages apparently is that since a Court has, under s. 34, of the C.P.C., power to grant pendente lite interest in a suit, an arbitrator to whom a reference to arbitration is made in the course of the suit would be clothed with all the powers of the Court including the one to grant such interest. This is how this Court has also looked at the matter in a subsequent case. In State of Rajasthan v. Sharrna & Co., [1988] 4 SCC 353, the parties had entered into a compromise in certain proceedings in Court agreeing that their disputes would be settled by arbitration but the arbitrators were appointed subsequently by the parties themselves and a reference made to them. A Bench of this Court (of which one of us was a member) re- viewed the earlier cases and explained the decision in Abhaduta Jena thus:

"12. This was awarding interest pendente lite. This is in violation of the principles enunciated by this Court in Executive Engineer (Irrigation), Balimela v. Abhaduta Jena. Our attention was drawn by Shri Soli J. Sorabjee, counsel for the respondent, to the decision of this Court in Food Corporation of India v. M/s Surendra, Devendra & Mohendra Transport Co., where at pages 555-556 of the report, the Court referred to certain decisions cited by Chinnappa Reddy, J. in Executive Engineer (Irrigation) in which he had expressed the view that those were cases in which the refer- ences to arbitration were made by the court or in court proceedings of the disputes in the suit. In that context it was held in those cases that the arbitrator had power to grant interest. It was contended before us that this was a similar case. There was a court proceeding in this case regarding the appointment of the arbitrator and, as such, on the same analogy it should be treated that the arbitrator had power to grant interest. We are unable to accept this.

13. What Mr. Justice O. Chinnappa Reddy meant to say by the latter judgment in Executive Engineer (Irrigation) case, referred to in Food Corporation of India was where the disputes regarding the merit of the case were pending in the court and such disputes instead of being decided by the court, adjudication had been referred to an arbitrator by the court, in such cases the arbitrators deciding in the place of court, would have the same powers to grant interest pendente lite as the courts have under Section 34 of the Civil Procedure Code. Instant case is not such a

proceeding."

This principle would logically be applicable, as rightly contended by Shri Banerjee, only to cases where the refer- ence to arbitration arises in the course of a suit. Dr. Ghosh, however, submits that, except for Nachiappa v. Subramaniam, [1960] 2 SCR 209 and Hukumchand Mills, [1967] 1 SCR 105, the other cases referred to by Chinnappa Reddy, J. were all only cases in which an arbitrator had been appointed under s. 8 or 20 of the Arbitration Act. The principle enunciated, he submits, was actually a little wider than that contended for by Shri Banerjee. It is this that where an arbitrator is appointed by the Court and a reference is made to him, he has all the powers of the Court. He invites attention to the observations in Hukum- chand Mills, case [1967] 1 SCR 105, reiterated (in the context of post-award interest) in Union v. Bungo Furniture Co., [1967] 1 SCR 324 at p. 329) that it is "an implied term of the reference that the arbitrator will decide the dispute according to law and would give such relief with regard to pendente lite interest as a Court could give if it decided the dispute". He urges that Abhaduta Jena related to a batch of cases, arising out of references made prior to, and later than, the commencement of the Interest Act, 1978, but by the parties themselves under the terms of the contract, without reference to court and so it was held that pendente lite interest could not be granted. But that is not so in the present case. He says that this decision was simply followed in State v. Construction India, [1987] Suppl. SCC 708, in the Food Corporation case [1988] 1 SCC 547 and in State v. Sharma and Co., [1988] 4 SCC 353. The Gujarat Water Supply case [1989] ISCC 532 was, he urges, also a similar case (see para 5) though in that case there appear to have been some proceedings in Court earlier. In short, he virtually submits that Abhaduta Jena and Sharma's case have unduly restricted the grant of pendente lite interest and require reconsideration and that pendente lite interest should be awarded in all cases where the intervention of Court is sought for the appointment of arbitrators, directly or indirectly, at any stage.

Generally speaking, it would only seem reasonable that the power to grant interest pendente lite should be treated as ancillary to the award of damages or compensation which, but for the delay in the litigation (whether in Court or by way of arbitration), the claimant should have received much earlier. However, though pendente lite interest has been made available in Court proceedings, its extension to arbitration law appears to have acquired some technical limitations resulting in denial of pendente lite interest in most cases of arbitration. Even if we accept the contention of Dr. Ghosh, pendente lite interest cannot still be awarded by an arbitrator appointed by the parties under a private agreement for which there may be no justification in equity. These anomalies have arisen because formerly an arbitrator could not be treated as a Court to which the Code of Civil Procedure applied and because now the Interest Act, 1978, while including arbitra- tion proceedings within its ambit, has, apart from a refer- ence to s. 34, omitted to provide specifically for pendente lite interest. This has been clearly brought out by Chinnap- pa Reddy, J. We have earlier referred to passages from Abhaduta Jena which outline the principle the learned Judge had in mind for permitting pendente lite interest by an arbitrator. It is interesting, in fact, to notice that the present contentions of Dr. Ghosh (based on certain earlier decisions of this Court) appear to have been advanced by him in the Food Corporation case [1988] 1 SCC 547 to support a wider contention that pendente lite interest should be awarded even in an arbitration by private agreement (as in that case) so long as the terms of the arbitration agreement did not exclude the jurisdiction of the arbitrator to enter- tain such a claim. But the Court did not accept the conten- tion and followed Abhaduta Jena. Abhaduta

Jena has been followed in later cases also and its scope has been recently explained in Sharma's case [1988] 4 SCC 353. We may point out that in the latter case, a specific point was raised that since the Court had been concerned with the appointment of the arbitrator at some stage it should be treated as a reference to arbitration by court warranting the grant of pendente lite interest but this contention was negatived and the principle confined only to cases where a reference to arbitration is made in the course of suits. The position was similar in the Gujarat Water Supply case [1989] 1 SCC 532 but pendente lite interest was denied. In view of Abhaduta Jena and the clarification specifically set out in para 13 of Shartna's case, we are unable to accede to the contention of Dr. Ghosh, attractive as it is an equitable proposition. The Division Bench of the High Court had no occasion to consider the above recent pronouncements of this Court. Further, it is seen that, before the Division Bench, the Union took an objection that under clause 16(2) of the general conditions of contract, the contractors could claim no interest on the amounts that may be determined as payable to them. The Division Bench met this contention by relying on a circular issued by the Government of India making the claim for interest entertainable in arbitration "if notice had been issued in this behalf by the arbitrator". There is, however, no finding and nothing on record brought to our notice to show that any specific notice, claiming interest, had been given as contemplated by the contract. Having regard to all these considerations, we are unable to uphold the order of the Division Bench on this issue.

This takes us to the second point urged on behalf of the Union in regard to interest. The contention is that the learned Single Judge had restricted it to the date of the award, and that this has become final as the contractors have preferred no appeal therefrom. The grounds of appeal before us by the Union are confined only to the mistake in not taking into account the sum of Rs.6,76,540 and do not raise any question regarding post-award interest. It is, therefore, not open to Shri Banerjee to raise this question. That apart, on merits also the contention raised that post- award interest has been declined by the High Court is not correct. The contention overlooks the course of pleadings between the parties. The arbitrators had, in the annexure to the award, computed interest from 5.10.82 to 26.3.84 i.e. from the date of the termination of the contract till the date of the award and in the award, had granted interest on the amount awarded from the date of award till the date of decree or payment. A point had been raised before the High Court in the memo of objections that the arbitrators had erred in awarding interest in the manner mentioned in the award but the objection urged by the Union before the learned Single Judge was a different one viz. that the arbitrators ought not to have granted interest for the period prior to the date of reference without any agreement or right in law to claim such interest. It is this conten- tion that was accepted by the learned Single Judge who deleted the interest award prior to the date of the refer- ence and held that the arbitrators had jurisdiction to award interest from the date of the reference till the date of the award. This did not affect the arbitrator's direction in the main part of the award, that interest will accrue on the amount of the award (if the said amount was not paid within 60 days) till the date of payment or decree, whichever is earlier. This part of the award was not questioned. In fact, the decree drawn up in consequence of the order of the learned Single Judge, specifically directs (a) interest on the awarded amount from 6.5.83 (date of reference) to 26.3.84 (date of the award); (b) "thereafter, interest on the amount' awarded at 11% from 27.3.84 to 11.12.84" (date of the decree); and (c) interest thereafter at 9% per annum. The objection of the Union in the LPA on the question of interest was only that the arbitrators had erred in awarding interest from 6.5.1983 to 26.3.1984. It

is this contention that was accepted by the Division Bench. The High Court had, therefore, not decided that the contractors were not entitled to interest beyond the date of the award. This contention of the Union, therefore, fails and is rejected. In the result C.A. 1280/88 is allowed and C.A. 128 1/88 is allowed in part. There will be no order as to costs.

R.N.J. Appeals allowed.