

M/S DUGRA RAM PRASAD
v.
GOVT. OF ANDHRA PRADESH

NOVEMBER 23, 1994

[K. RAMASWAMY AND K. JAYACHANDRA REDDY, JJ.]

Arbitration Act, 1940—Contract to execute work—Amount due to contractor withheld—Claim of State that work not executed as per contract—Arbitration—Entitlement of interest on amounts withheld by State—Held: Party not entitled to interest.

The appellant had entered into a contract to construct foodgrains godown. In execution thereof, a dispute had arisen whether the appellant had executed the work as per the contract and was entitled to certain sums of money withheld by the engineer and also to the interest payable thereon. The dispute had been referred to the Arbitrator, who in his Award awarded a sum of money with interest on the amounts wrongfully withheld by the engineer. The State challenged the entitlement of interest on the amounts withheld by the engineer. The High Court negatived the claim for interest. These appeals by special leave arise from the judgment of the High Court.

The appellant contended that when the appellant had executed the work within the period, in terms of the contract, and the officials of the respondent had wrongfully withheld the due payment, on the respective dates, the appellant was entitled to the interest on the amounts wrongfully withheld. It further contended that Clause 69 of the M.D. S.S. was inapplicable to the facts of this case.

The questions which arose for consideration were whether the appellant was entitled to payment of interest from the respective dates on which the amounts were withheld by the concerned engineer and whether the dispute was arbitrable.

Dismissing the appeal, this Court

HELD: 1.1. The claim of the State appears to be that the appellant had not constructed the godown in accordance with the specifications and that, therefore, they withheld the payment. Unless the dispute is resolved and the amount is found due, the contractor is not entitled to

A the payment of it. The interest in terms of clause 69 of MDSS is contracted out. When such be the position, then mere reference does give jurisdiction to the arbitrator to award interest for the period prior to the reference. [4G & H, 5 A]

A.P. S.R.T.C. v. P. Ramana Reddi, (1989) 1 ALT 195, Distinguished.

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1.2. In this case the contractor is not entitled to payment of interest in terms of clause 69 of MDSS for the period anterior to the reference for arbitration until the final settlement of the amount due to the contractor of his account is determined. In this case that dispute was determined by the arbitrator in his award. Therefore, from the date of withholding till the date of award the appellant is not entitled to the payment of interest. The arbitrator has no jurisdiction to arbitrate that dispute. The High Court, therefore, rightly negated the claim for interest. [5E & F]

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Executive Engineer (Irrigation) v. Abhaduta Jena, [1988] 1 SCC 418;
D *State of Orissa v. Niranjana Swain*, [1989] 4 SCC 269; *Secretary, Irrigation Department v. G.C. Ray*, [1992] 1 SCC 508; Distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2262-63 of 1977.

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From the Judgment and Order dated 23.4.75 of the Andhra Pradesh High Court in Memo of Cross-Objection in C.M.A. No. 191 of 1973.

B. Kanta Rao for the Appellant.

A.K. Ganguli, T.V.S.N. Chari and Nikhil Nayyar for the Respondent.

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The following Order of the Court was delivered :

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These appeals by special leave arise from the judgment of the Division Bench of the Andhra Pradesh High Court in Memo of, Corss Objection in C.M.A. No. 191/75 dated 23.4.75. The appellant had entered into a contract on 16.3.65 to construct foodgrains godown at Karimnagar. In execution thereof, a dispute had arisen whether the appellant had executed the work as per the contract and is intitled to certain sums of money withheld by the engineer and also to the interest payable thereon at 12% etc. The dispute has been referred to the Arbitrator, a retired Chief Engineer, who in his Award dated 12.4.72 awarded a sum of Rs. 27, 776 with interest at 12% on the amounts wrongfully withheld by the Engineer. We are concerned in

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these appeals only with the entitlement of interest on the amounts withheld by the engineer. The Division Bench concluded, while negating the claim for interest, thus: A

“We are, however, inclined to agree with the first ground given by the Court below in negating the claim for interest. Under clause 69 of M.D.S.S. which has to be treated as part of the contract, it is provided “nor shall the contractor be entitled to interest upon any guarantee fund or payments in arrears, nor upon any balance which may, on the final settlement of his accounts, be found to be due to him.” Even if it is assumed that the recoveries from the bills were wrongfully made, such sums would be sums which would be found due to the contractors on the final settlement of accounts.” B C

We are not concerned with the correctness of the views expressed on other issues as the State did not file appeals. Shri Kanta Rao, the learned counsel for the appellant contended that when the appellant had executed the work within the period, in terms of the contract, and the officials of the respondent had wrongfully withheld the due payment, on the respective dates, the appellant is entitled to the interest on the amounts wrongfully withheld. He further contends that clause 69 of the M.D.S.S. is inapplicable to the facts of this situation. In support thereof, he places reliance on the judgment of a learned single Judge of that Court reported *A.P.S.R.T.C. v. P. Ramana Reddi*, (1989) 1 ALT 195. D E

The question, therefore, is whether the appellant is entitled to payment of interest from the respective dates on which the amounts were withheld by the concerned engineer and the dispute is arbitrable? F

Clause 69 of M.D.S.S. reads thus:

“69. Interest on money due to the contractor:—

- (a) No omission by the Executive Engineer or the Sub-Divisional officer to pay the amount due upon certificates shall vitiate or make void the contract, nor shall be contractor be entitled to interest upon any guarantee fund or payments in arrear, nor upon any balance which may, on the final settlement of his accounts, be found to be due to him.” G H

A A-reading of this clause gives an indication that interest on money due to the contractor was negated in the following circumstances:

(1) the omission by the Executive Engineer or Sub-Divisional officer to pay the amount due upon certificates shall not vitiate or make the contract void:

B (2) the contractor shall not be entitled to interest upon:

(a) any guarantee found;

(b) payments in arrears; and

C (c) upon any balance which may on final settlement of his account to be found to be due to him. The question is whether the contractor is entitled to the payment of interest on the amounts wrongfully withheld from the respective dates. Clause (c) of the second part of clause 69 of the MDSS would indicate that there should be a final settlement of the account and upon its settlement, if it is found to be due and payable to the contractor, on

D such amount also the contractor is not entitled to the payment of interest as contracted under clause 69 of the MDSS. When such is the position, whether the contractor is entitled to payment of interest on mere making a claim and reference made to the arbitrator and whether the arbitrator gets jurisdiction to award interest on the amount due from the respective dates on which the payments were withheld by the concerned engineer?

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It is true that the learned single Judge of the A.P. High Court appears to have considered the question and the construction of clause 69 was put up is in favour of the contractor as contended for. It is not a correct approach. The construction put up on clause 69 of MDSS is not correct. However, on

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the facts in that case there does not appear to be any dispute as to the amount due. Therefore, the learned Judge had proceeded that since the contract provides for withholding the payment for a suspended period of six months, if the amount is withheld beyond that period, the contractor would be entitled to the payment of interest. That is not the factual scenario in this case. The very dispute is whether the appellant is entitled to the payment of

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the amount pursuant to the contract. The claim of the State appears to be that the appellant had not constructed the godown in accordance with the specifications and that, therefore, they withheld the payment. Unless the dispute is resolved and the amount is found due, the contractor is not entitled to the payment of it. Thereon interest in terms of clause 69 of the MDSS is contracted out. When such be the position, then mere reference

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does give jurisdiction to the arbitrator to award interest to the period prior to the reference. A

This Court in *Executive Engineer (Irrigation) v. Abhaduta Jena*, [1988] 1 SCC 418, in para 20 held that:

“In the remaining cases which arose before the commencement of the Interest Act, 1978, the respondents are not entitled to claim interest either before the commencement of the proceedings..... They are nor entitled to claim interest for the period prior to the commencement of the arbitration proceedings for the reason that the Interest Act, 1839 does not apply to their cases and there is no agreement to pay interest or any usage of trade having the force of law or any other provision of law under which the claimants were entitled to recover interest.” B C

This ratio was followed by another Bench of this Court in *State of Orissa v. Niranjana Swain*, [1989] 4 SCC 269. In *Secretary, Irrigation Department v. G.C. Roy*, [1992] 1 SCC 508, the Constitution Bench was concerned with the case whether the contractor is entitled to interest *pendente lite*. The controversy, therefore, centres round the question whether the contractor is entitled to the interest *pendente lite*. The ratio therein, therefore, has no relevance for the purpose of this case. The ratio in *Jena's* case on the above quoted ratio is still good law. Accordingly, we are of the view that the contractor is not entitled to payment of interest in terms of clause 69 of MDSS for the period anterior to the reference for arbitration until the final settlement of the amount due to the contractor of his account is determined. In this case that dispute was determined by the arbitrator in his award. Therefore, from the date of withholding till the date of award the appellant is not entitled to the payment of interest. The arbitrator has no jurisdiction to arbitrate that dispute. The Division Bench, therefore, rightly negated the claim for interest. D E F

The appeals are accordingly dismissed, but in the circumstances, without costs. G

A.G.

Appeals dismissed.