

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

*Reserved on: 19.11.2024
Pronounced on: 29.11.2024*

AA No. 09/2014

**Union of India Through Chief Engineer,
Udhampur Zone Udhampur, C/O 56 APO**

.....Petitioner(s)

Through: Mr. Vishal Sharma, DSGI.

Vs

**M/S Sharma Construction Co.
Akhnoor District Jammu**

..... Respondent(s)

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Uday Bhaskar, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** Petitioner – Union of India, through the above titled petition filed under Section 34 of J&K Arbitration and Conciliation Act 1997, seeks setting aside of the award dated 06.12.2013 [*hereinafter called, “the impugned award”*] passed by Sole Arbitrator Satish Chander (C.E.) (for short ‘Arbitrator’), granting an amount of ₹ 5,24,735/- with interest, in favour of the respondent-contractor, while no claim of the Union of India was found favour and accepted, by him.
- 02.** Out of a contract for **“Provision of Storage Shed, Road and Infrastructure at Rakh Muthi/Jourian”** vide No. CEUZ-31/2003-2004, certain disputes between the

respondent as contractor-claimant and the petitioner arose as such, Chief Engineer Satish Chander was appointed as sole arbitrator in the matter, by the Engineer-in-Chief, IHQ of MoD (Army), New Delhi, vide his letter No. 13600/NC/413/11/E8 dated 07.11.2012 in terms of Condition No. 70 of IAFW-2249 (General Conditions of Contract), forming part of the arbitration contract between the parties.

03. Petitioner alleges that the learned Arbitrator failed to appreciate the importance of Condition No. 65 of IAFW-2249, though it was argued fully but he demonstrated his adamancy to accept this argument by giving his own twist to the issue which was uncalled for from him; that the petitioner-Union of India attended the arbitration proceedings thereafter, under reservation, reserving its right to challenge the award under Section 16(6) of the Arbitration and Conciliation Act, 1994.

04. The impugned award has been assailed 'inter alia' that the impugned award is in conflict with the Public Policy of the State causing great monetary loss to the public exchequer and enriching the undeserving contractor; that the Arbitrator failed to lay down the agreed procedure although he was requested for the same as he did not follow the procedure for adducing evidence, whether oral or written, as required under Section 24 of J&K Arbitration and

Conciliation Act, 1997; that the award has been passed without any valid reasons; that the arbitrator had no jurisdiction to hear the claim of the contractor as according to the General Condition No. 65 IAFW, no claims could be raised after accepting the final bill by the contractor, who had received the final bill without protest; that the delay in completion of the contractual work was solely caused by the contractor itself, as such, it was not entitled to claim any compensation regarding this contract as Claim No. 1 pertains to its abnormal prolongation of the contract which was unduly rejected by the arbitrator; that the arbitrator had not appreciated Clause 31 of C.A. by granting Claim No. 2 for escalation in the prices of Steel, Cement and Bitumen etc. etc. and Normal Escalation was awarded, without freezing the Price Index as on original date of completion and had wrongly awarded ₹ 1.44 lacs for this claim of the contractor; that the re-imbursement of loss suffered due to Tornado on 02.07.2006 has also been wrongly concluded granting ₹ 80,000/- in favour of the contractor; that the arbitrator also exceeded his jurisdiction by awarding ₹ 2,32,800/- in favour of the contractor for reimbursement of extra expenditure on watch and ward without any details of labour deployment; that the Claim No. 6 of the contractor was also not properly appreciated and an amount of ₹ 42,410/- was awarded wrongly and

illegally for damages on late payment of final bill; that the interest awarded is not only illegal but also high as the interest cannot be awarded more than 6% in any case as per the provisions of J&K Arbitration and Conciliation Act, 1997.

- 05.** Pursuant to notice, the respondent filed its objections to the petition, controverting the assertions made in the petition and stating that the learned Arbitrator has passed the award perfectly in consonance with law and does not call for any interference by this Court with regard to all the claims filed by the petitioner as a contractor and after consideration of the evidence led by both the sides before the learned Arbitrator. It has been specifically stated that Section 31(7) of the J&K Arbitration and Conciliation Act, 1997 provided for grant of interest by the arbitrator for any pre-reference and pendent-lite period at such rate, as the Arbitrator may deem reasonable and after passing of the award @ 18% per annum till the date of payment; that the Section came to be amended on 21.04.2010, whereby the jurisdiction of the Arbitrator to award interest was confined to 6% per annum for all the periods. This amendment was prospective in nature, therefore, the Arbitrator awarded interest @ 10% on the awarded amount from 13.02.2008 to 20.04.2010 and further at the rate of 6% from 21st April 2010 onwards till date of award and that granting of the

interest by the Arbitrator was absolutely in consonance with law.

06. Learned counsel for the petitioner while arguing in line with the assertions made in the petition urged that the learned Arbitrator had passed the award granting claims of the respondent – contractor arbitrarily and that the interest has also been wrongly granted to the contractor in the impugned award in contravention to sub-section (7) of Section 31 of the J&K Arbitration and Conciliation Act, 1997. Initially arguing on all the claims, the learned counsel for the petitioner, however, finally restricted his arguments to the rate of interest awarded by the learned Arbitrator and it was argued that in view of the amendment in Section 31 in the year 2010, the interest has been wrongly granted @ 10% and 12% instead of uniform simple interest @ 6% as statutorily provided.

07. The Apex Court in a case titled “**Executive Engineer (R and B) & Ors. Vs. Gokul Chandra Kanungo (Dead) through his LRs**” reported as **AIR 2022 SC 4857** in an identical matter while discussing the provisions of Section 31 of the Act of 1996, which was almost *pari materia* of Section 31 of the Act of 1997, except the limit of rate of interest, in para 10 of the judgment held as under:

“10. A perusal of clause (a) of sub section (7) of Section 31 of the 1996 Act would reveal that, no doubt, a discretion is vested in the arbitral tribunal to include

in the sum for which the award is made interest, 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. However, it would reveal that the section itself requires interest to be at such rate as the arbitral tribunal deems reasonable. When a discretion is vested to an arbitral tribunal to award interest at a rate which it deems reasonable, then a duty would be cast upon the arbitral tribunal to give reasons as to how it deems the rate of interest to be reasonable. It could further be seen that the arbitral tribunal has also a discretion to award interest on the whole or any part of the money or for the whole or any part of the period between the date of cause of action and the date on which the award is made. When the arbitral tribunal is empowered with such a discretion, the arbitral tribunal would be required to apply its mind to the facts of the case and decide as to whether the interest is payable on whole or any part of the money and also as to whether it is to be awarded to 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.”

08. The Apex Court in the case titled **“Mcdermott International Inc. Vs. Burn Standard Co. Ltd. & Ors.”** reported as **(2006) 11 SCC 181** in paragraph 154 held as under:

“154. The power of the arbitrator to award interest for pre-award period, interest pendent lite and interest post-award period is not in dispute. Section 31(7)(a) provides that the arbitral tribunal may award 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 award is made, i.e., pre-award period. This, however, is subject to the agreement as regard the rate of interest on unpaid sum between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre- award period would depend upon the facts and circumstances of each case. The arbitral tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on whole or part of the award money; and (iii) whether interest should be awarded for whole or any part of the pre-award period.”

09. Section 31 of the J&K Arbitration and Conciliation Act, 1997 deals with the **“Form and contents of arbitral**

award", providing that it shall be made in writing and shall be signed by the members of the arbitral tribunal, stating the reasons upon which it is based except that the parties have agreed that no reasons are to be given or the award is based on agreed terms under section 30 of the Act, on a settlement.

- 10.** Sub-section (7) of Section 31 of the J&K Arbitration and Conciliation Act, 1997 provides, firstly that 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 not exceeding 6% as it may deem 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. Further more, such an award shall carry interest @ 6% per annum from the date of the award to the date of payment. It would be beneficial to extract the relevant provision contained in sub-section (7) of section 31 of the J&K Arbitration and Conciliation Act, 1997 as under:

S. 31(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, not exceeding 6% as it may deem 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 [six per centum] per annum from the date of the award to the date of payment.

11. On a bare reading of the afore-extracted provision contained in sub-section (7) of Section 31 of the J&K Arbitration and Conciliation Act, 1997, it is amply clear that from the date when the cause of action arose, till the award is made, the Arbitrator has powers to award interest as he/she may deem reasonable but not exceeding 6% on the whole or any part of the money or for the whole or any part of the period. In other words, the Arbitrator can exercise powers for grant of interest from the date of the cause of action arose, to the date the award is made, at any rate, not exceeding 6%, per annum as may be deemed reasonable.

12. The learned Arbitrator is, thus, within his competence to award interest at the rate as he may deem reasonable but not exceeding 6% per annum for whole of the period. The interest to be awarded on the awarded amount has also to be 6% from the date the award is made to the date of payment. The learned Arbitrator has, thus, a discretion in the matter of granting interest with a limit of 6% per

annum, from the date of arising of the cause of action, to the date of the award made which included the period pre-reference to the arbitration and the arbitration period till passing of the final award, whereas there is no dispute with regard to 6% per annum simple interest for the future period payable from the date of the award to the date of the payment.

- 13.** The awarding of interest @ 6% per annum from the date of arising of the cause of action to the date of the award was amended in the year 2010 with the incorporation of the expression "**at such rate as it deems reasonable**" and the future interest was also brought down to 6% per annum instead of 18% per annum.
- 14.** Reverting to the impugned award, it appears that the same was passed on 06.12.2013 after the amendment was made in the year 2010, as such, the learned Arbitrator was bound by the amended provision as contained in sub-section (7) of Section 31 of the J&K Arbitration and Conciliation Act, 1997.
- 15.** The learned Arbitrator, while deciding Claim No. 7 which relates to interest component, had granted interest at different rates for the past, pendente lite and future periods of reference as follows:

- (a) Past interest is awarded on amount awarded against Claim No. 3 to 6 and the interest shall be simple interest at the rate of 10% (Ten Percent) per annum and shall be calculated from 13 Feb 2008 to 20 Apr 2010;
- (b) Past and pendente-lite interest is awarded on amount awarded against claim No. 3 to 6 and the interest shall be simple interest at the rate of 6% (Six Percent) per annum and shall be calculated from 21 Apr 2010 to the date of award and
- (c) A period of three months from the date of award is allowed to the Respondent for making payments in terms of this award. If the payment is not made within three months, then the awarded amount shall carry simple interest at 12% (Twelve Percent). There shall be no future interest on the amount of past and pendente lite interest calculated as per (a) and (b) also.

16. In view of the amendment made in the year 2010 in the sub-section (7) of Section 31 of the Jammu and Kashmir Arbitration and Conciliation Act, 1977, the learned counsel for the respondents contended to draw the attention of this Court to the fact that the amendment has the prospective effect and shall not be applicable to the period when the cause of action arose to the respondent-contractor till this amendment, as such, the learned arbitrator had all the powers to grant interest even higher than 6% and granting of interest @ 10% as past interest w.e.f., 13.02.2008 to 20th of April, 2010 cannot be questioned by the petitioner and disturbed by this court. However, he has contended that thereafter the interest could have been granted upto 6% only for past pendente lite or future period. He agreed that

the interest granted by the learned arbitrator @ 12% is liable to be modified by this Court.

17. The contention of the learned counsel with regard to the limit upto 6% of the interest for the whole period being prospective in nature is required to be understood from the language of the amendment incorporated in sub-section (7) of Section 31 of the Act. The provision as extracted above, is clear in view of the amendment made by Amendment Act No. VI of 2010 which is quoted as “at such rate not exceeding 6% as it may deem reasonable for 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.** Therefore, with the sweeping phraseology used in the section itself, it is explicitly clear that the amendment is not of prospective but was that of retrospective nature, making the limit of 6% interest applicable from the date the cause of action arose and not from the date of the amendment of the Act, came into force.

18. Viewed thus, it can be safely held that the learned Arbitrator had misdirected himself with regard to granting of interest on all the claims at different rates as he was within his competence to grant interest to the contractor on his claims at such rate not exceeding 6% as it may deem reasonable for the period till the award is passed but

thereafter the award is liable to carry interest @ 6% per annum.

- 19.** Since no reason has been assigned and the learned Arbitrator had granted interest @ 6% per annum for past and pendente lite period, this Court is of the considered opinion that the learned Arbitrator has taken an erroneous view of the matter, with regard to rate of interest imposed on the award. The same requires to be modified. The impugned award is, thus, ordered to be maintained with regard to the claims. However, the same is modified with regard to the interest, directing that the amount of award shall carry simple interest @ 6% for whole of the period, right from the date of arising of cause of action to the realization of the amount.
- 20.** Arbitration Application is, thus, disposed of and the impugned award is modified in the above terms.

(M A CHOWDHARY)
JUDGE

JAMMU
29.11.2024

Bunty

Whether the order is speaking: Yes

Whether the order is reportable: Yes