REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.8530 OF 2009

Union of India ....Appellant(s)

VERSUS

M/s. Susaka Pvt. Ltd. & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed by the Union of India against the final judgment and order dated 11.02.2005 passed by the High Court of Bombay in Appeal (Ld) No.666 of 2003 in Arbitration Petition No.96 of 2003 whereby the Division Bench of the High Court allowed the appeal filed by respondent No.1 herein and set aside the order dated 21.04.2003 passed by the Single Judge in Arbitration Petition No.96 of 2003.

2. The issue involved in the appeal is short and, therefore, it is not necessary to set out the entire factual scenario of the case except to the extent necessary to appreciate the issue.

3. In short, the question, which arises for consideration in this appeal, is whether the Arbitral Tribunal was justified in awarding interest on various claims for different periods to the claimant (respondent No.1), namely, (i) for a pre-reference period, i.e., 04.03.1996 to 05.05.1999 @ 15% p.a.; (ii) *pendent lite,* i.e., for the period from 06.05.1999 to 09.09.2002 @ 12% p.a.; and (iii) post reference period, i.e., 09.09.2002 till payment @ 18% p.a., total (first and second) Rs.12,89,033/- on the awarded sum.

Brief facts:

4. A works contract (repairing work of 25 No. stators of TAO-659 Traction Motors of Electric Locomotives type WCAMI of Electric Loco

Shed-Valsad) was awarded by the Union of India (Railways) - the appellant herein to respondent No.1 (claimant) on 19.12.1994.

5. In execution of the works contract, various disputes arose between the parties. Since the General Conditions of Contract (in short, "GCC") contained Clause 56(1) to decide the disputes arising out of the contract through arbitration, respondent No.1(claimant) invoked the arbitration clause and filed an application in the High Court of Bombay under Section 11(5) of the Arbitration and Conciliation Act (hereinafter referred to as "the Act") praying therein for appointment of the Arbitral Tribunal in terms of Clause 56(1) and to make a reference to the Arbitral Tribunal for deciding the disputes which had arisen between the parties.

6. The High Court, by order dated 27.07.2001, with consent of both the parties allowed respondent No.1's application and referred the various claims (1

to 17) made by the respondent (claimant) against the appellant for their adjudication by the Arbitral Tribunal, which consisted of three Arbitrators (Railway Officials). The order making the reference to the Arbitral Tribunal reads as under:

> **"There is no dispute that claims Nos. 1 to 13 which are mentioned in the letter dated 19th August, 1999, Exhibit "B" to the Application, are already referred for arbitration to Shri B.B. Verma, Presiding Joint Arbitrator & FA & CAO (I), Churchgate and two other Arbitrators, (i) Shri Arunendra Kumar, Jt. Arbitrator & CRSE, Churchgate and (ii) Shri S.K. Kulshrestha, Jt. Arbitrator & CE, N.F. Railway.**
>
> **2. By Consent, claim at Sr. No. 16 (Claim No. 2.1) and at Sr. No. 17 (Claim No. 2.2) are also referred for arbitration to the same Arbitrators who shall decide these claims along with claim Nos. 1 to 15. They shall also be free to decide pre-reference interest, Pendente lite interest, further interest and costs considering the agreement. The Respondent shall be free to file counter-claim, if any."**

7. Parties submitted to the jurisdiction of the Arbitral Tribunal, filed their statement of claim/reply etc. and adduced evidence. The Arbitral Tribunal, by their unanimous reasoned award dated

11.09.2002, partly allowed the claims of respondent No.1 against the appellant as under:

Claim No.	**Brief Description**	**Claim Amount in Rs.**	**Amount awarded in Rs.**
1.1	Loss suffered due to under-utilization of equipment purchased specially for this contract.	6,97,554	3,48,777
1.2	Material purchased not utilized.	3,00,723	3,00,723
1.3	Loss of Profit	4,65,409 (Revised to Rs. 4,44,620)	2,32,703
1.4,1.5 & 2.1	1.4 –Overheads during contracted period under utilized- 1.5 –Overheads from 9.6.1995 to 4.3.1996 – 2.1 –Overheads from 5.3.1996 to 30.06.1996	4,65,409 3,89,165 3,06,748	3,41,830
1.7 & 2.2	1.7 – Amount for the period 1.7.94 to	3,28,085	1,64,042

	29.6.1996 2.2 – Amount for the period 5.3.96 to 30.09.1996	1,24,174	
1.6	Payment under price variation clause	85,106	85,106
1.8 & 2.3 2.4	Payment of pre lite interest from 13.12.95 to 5.5.99	As accrued	12,89,033
		Total	27,62,214

8. The appellant-Union of India, felt aggrieved of the Arbitral Award, challenged its legality by filing an application under Section 34 of the Act in Bombay High Court (Single Judge).

9. The Single Judge, by order dated 21.04.2003, allowed the appeal in part and made two modifications in the arbitral award with respect to the date of award of interest on the claim of respondent No.1 for damages and on the claim of one purchase item. The Single Judge made the interest payable from the date of award till

realization. So far as the challenge to other claims including award of interest on such claims were concerned, the Single Judge rejected the appellant's all objections and upheld the award in totality for all purposes.

10. Respondent No.1 (claimant), felt aggrieved against that part of the order of the Single Judge which interfered in part in the arbitral award, filed appeal before the Division Bench. So far as the appellant-Union of India was concerned, they did not file any appeal against that part of the order of the Single Judge which had rejected substantially their application filed under Section 34 of the Act. In this view of the matter, the award to that extent became final.

11. By impugned judgment, the Division Bench of the High Court allowed respondent No.1's appeal and set aside the order of the Single Judge. It was held that no ground under Section 34 of the Act had

been made out by the Union of India to modify the award to the extent of awarding interest on the claim. In other words, in the opinion of Division Bench, the ground on which the limited interference was made by the Single Judge for setting aside a part of the Award in relation to award of interest from a particular date on two (2) claims to respondent No.1 (claimant) was not a ground falling under Section 34 of the Act and, therefore, the order of Single Judge was not legally sustainable. It was accordingly set aside resulting in upholding of the entire award and dismissal of Section 34 application in its entirety. It is against this order, the Union of India (Railways) felt aggrieved and filed the present appeal by way of special leave in this Court.

12. Heard Ms. Kiran Suri, learned senior counsel for the appellant and Mr. Vinay Navare, learned counsel for respondent No.1.

13. Ms. Kiran Suri, learned senior counsel, appearing for the appellant (Union of India) while challenging the legality and correctness of the impugned judgment has argued only one point.

14. According to learned counsel, the Arbitral Tribunal mis-conducted in awarding interest on various claims and, therefore, a ground to set aside the arbitral award under Section 34 of the Act is made out.

15. Placing reliance on Clause 13(3) of GCC, learned counsel urged that since clause 13(3) provides that no interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract (except Government securities), respondent No.1 (claimant) was not entitled to claim interest on any of the heads.

16. In other words, the submission was that the Arbitral Tribunal mis-conducted in awarding

interest to respondent No.1 (claimant) on their various claims when the clause 13(3) of GCC did not allow them to claim any interest on the sums payable under the contract except on Government securities, if deposited with the appellant.

17. It was, therefore, her submission that the award to this extent was not legally sustainable and, therefore, it was liable to be set aside under Section 34 of the Act. Learned counsel elaborated this submission by placing reliance on the provisions of the Act and some decided cases cited at the Bar.

18. In reply, learned counsel for respondent No.1 (claimant) supported the impugned judgment and contended that the aforementioned point urged by the appellant was neither raised nor urged before the Arbitral Tribunal nor the High Court, i.e., Single Judge and also Division Bench and hence it cannot be permitted to be raised, for the first time, in an

appeal under Article 136 of the Constitution for want of any factual foundation and finding by any Court on such plea.

19. Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the argument of learned counsel for respondent No.1 as, in our view, it has a force and hence deserves acceptance.

20. It is not in dispute that the appellant did not raise the plea based on clause 13(3) of the GCC against respondent No.1 at any stage of the proceedings either in their reply filed before the Arbitral Tribunal or/and in submissions except raising it, for the first time, before this Court in this appeal.

21. On the other hand, we find that in Section 11 (5) proceedings, the appellant did not raise this objection in their reply and instead gave their express consent to refer the issue of award of

interest payable on various claims (1 to 17) to Arbitral Tribunal considering the said claim to be arbitrable under the contract.

22. In our opinion, the appellant could have registered their objection before the Single Judge at the time of making a reference to the Arbitral Tribunal by pointing out Clause 13(3) of GCC or could have reserved their right to raise such objection before the Arbitral Tribunal. It was, however, not done.

23. Not only that, we further find that the appellant, in their reply, filed before the Arbitral Tribunal also did not raise this plea and allowed the Arbitral Tribunal to adjudicate the said issue on merits.

24. If the appellant was so keen to place reliance on clause 13(3) of GCC to defeat the claim of respondent No.1 relating to the award of interest on various claims, then it was necessary for the

appellant to have raised such plea specifically, in their reply, before the Arbitral Tribunal. No such plea was raised even before the Arbitral Tribunal.

25. Though we find that the appellant raised this ground, for the first time, in Section 34 proceedings [see-ground (cc)] before the Single Judge but again this ground was not pressed at the time of arguments. It is clear from the perusal of the Single Judge's order. Not only that, the appellant again did not raise this plea before the Division Bench.

26. In the light of aforementioned factual scenario emerging from the record of the case, we cannot grant any indulgence to the appellant (Union of India) to raise such plea for the first time here. In our view, it is a clear case of waiver or/and abandonment of a plea at the initial stage itself.

27. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his

private capacity, which may be dispensed with without infringing any public right or public policy. *Cuilibet licet renuntiare juri pro se introducto*. **(See Maxwell on The Interpretation of Statutes 12th Edition at page 328)**

28. If a plea is available-whether on facts or law, it has to be raised by the party at appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.

29. In our opinion, the appellant is otherwise not entitled to raise the plea on yet another ground. It is not in dispute that the appellant's application filed under Section 34 of the Act was partly allowed by the Single Judge only to the extent of two claims regarding award of interest. In other words, the

application suffered dismissal substantially on all other claims except two claims mentioned above. However, despite suffering substantial dismissal, the appellant did not file any appeal to challenge the part dismissal of their application.

30. In this view of the matter, in our view, the order of the Single Judge insofar as it resulted in dismissal of the appellant's application became final and attained finality. In order to keep the issue alive, the appellant was under obligation to file regular appeal before the Division Bench against that part of the Single Judge's order by which their application under Section 34 of the Act in relation to all other claims had been dismissed. It was only then in the event of dismissal of the appeal, the issues raised therein could have been pursued in appeal to this Court under Article 136 of the Constitution and that too only on the grounds

raised therein and decided against the appellant. It was, however, not done by the appellant.

31. In our opinion, therefore, this is yet another infirmity which renders the appeal devoid of any merit.

32. In our considered view, the grant of award of interest on arbitrable claims by the Arbitral Tribunal is not inherently illegal or against any public policy or *per se* bad in law or beyond the powers of the Arbitral Tribunal. In other words, it is permissible to award interest in arbitrable claims by the Arbitral Tribunal.

33. Indeed, Section 31(7) (a) and (b) of the Act empowers the Arbitral Tribunal to award interest on the awarded sum and secondly, it is always subject to the agreement between the parties.

34. It is a well-settled principle in Arbitration Law that the award of an Arbitral Tribunal once passed is binding on the parties. The reason being that the

parties having chosen their own Arbitrator and given him an authority to decide the specific disputes arising between them must respect his decision as far as possible and should not make any attempt to find fault in each issue decided by him only because it is decided against one party. It is only when the issue decided is found to be bad in law in the light of any of the specified grounds set out in Section 34 of the Act, the Court may consider it appropriate to interfere in the award else not. The case at hand falls in former category.

35. This case reminds us of the apt observations made by former Chief Justice M.C. Chagla in **Firm Kaluram Sitaram** vs. **The Dominion of India,** AIR 1954 Bombay 50. That was also a case between the Railways and private party (citizen) wherein the learned Chief Justice, in his distinctive style of writing, commented upon the manner in which the Railway contested the case against the private party

(citizen) by raising some technical pleas and observed as under:

> "**Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person."**

36. The aforementioned observations has full application to the case at hand because here also, the appellant (railways) pursued their technical legal point up to this Court against respondent No.1 (claimant) without even raising it at any stage of proceedings much less to find out whether it could be made a ground under Section 34 of the Act to seek its setting aside. All was being done to defeat respondent No.1's just claim of interest which was rightly awarded by the Arbitral Tribunal and upheld by the Courts below on other grounds.

37. Learned counsel for the appellant did not urge any other point to attack the impugned judgment

including the reasoning given in support of the award of interest except to urge the aforesaid point to challenge its legality, which we have repelled by not permitting the appellant to raise it in this appeal.

38. In view of foregoing discussion, we find no merit in the appeal, which thus fails and is accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

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.....J.
[NAVIN SINHA]

New Delhi;
December 08, 2017