

SUPREME COURT OF INDIA

State of Orissa

Versus

Sudhakar Das (dead) by Lrs.

(CJ.,S. Rajendra Babu and R.C. Lahoti, JJ.)

Civil Appeal No. 2256 of 1984.

23.02.2000.

ORDER

S. Rajendra Babu, J. - This appeal by special leave arises out of arbitration proceedings. The High Court of Orissa dismissed an appeal filed by the appellant against the order of Subordinate Judge, Bhubaneshwar making an award made by the Arbitrator a rule of the Court. The three main issues with which we are concerned in this appeal are :

- "1. Whether the Arbitrator could have granted an award for escalation in favour of the contractor ?
2. Whether the Arbitrator could have awarded pendente lite interest in favour of the contractor ? and
3. Whether the Arbitrator could have granted interest for the pre-reference period ?"

2. it is not disputed that the arbitration agreement contained no escalation clause. In the absence of any escalation clause, an Arbitrator cannot assume any jurisdiction to award any amount towards escalation. That part of the Award which grants escalation charges is clearly not sustainable and suffers from a patent error. The decree, insofar as the award of escalation charges is concerned, cannot, therefore, be sustained.

3. it is conceded by Ms. Mana Chakraborty, learned counsel for the State that the issue relating to the power of the Arbitrator to grant interest pendente lite where the agreement between the parties, as in the present case, did not prohibit grant of interest and the dispute referred to the Arbitrator included the claim of interest, is no longer res-integra and stands settled in favour of the claimant and against the State in ***Secretary, Irrigation Department, Government of Orissa & Others v. G.C. Roy, (1992) 1 SCC 508***, overruling the view to the contrary as expressed in ***Executive Engineer (Irrigation) Balimela & others v. Abhaduta Jena & Others, 1988(1) SCC 418***. The decree to the extent, it awards pendente lite interest in favour of the respondents, therefore, is sustained and the challenge to it fails.

4. So far as the award of interest for pre-reference period is concerned, it appears appropriate to us, keeping in view the fact that the proceedings in this case have remained pending for almost one and a half decade and the arbitration started as early as in 1975, to direct that the respondent shall execute the decree relating to the award of pre-reference interest only on furnishing a bank guarantee to the extent of that amount together with an undertaking that in the event the Constitution Bench, to which this issue has been referred to in ***Executive Engineer, Dhankanal***

Minor Irrigation Division, Orissa v. N. C. Budhiraj (Dead) by L.Rs., Civil Appeal No. 3586 of 1984, decides against the decree holder respondents, the State shall be entitled to encash the bank guarantee. The respondents shall kept the bank guarantee alive during the pendency of the matter before the Constitution Bench and on furnishing the bank guarantee and the undertaking the respondents can execute the decree in that behalf.

5. Thus, the appeal is disposed of in above terms. The impugned judgment and decree shall stand modified accordingly. No costs.