

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P. No.219/2004

% Date of Decision : 31st of August, 2007

MR. MOHINDER PAL SINGHPetitioner
! Through : Mr. B.L. Wali, Adv.

versus

\$ NORTHERN RAILWAYRespondent
^ Through : None

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **B.N.CHATURVEDI, J.**

1. The petitioner was allotted by the respondent,

5 cycle/scooter parking sites measuring 375 sq. mtrs., 625 sq. mtrs., 2419 sq. mtrs., 1625 sq. mtrs. and 600 sq. mtrs. respectively at Ghaziabad city side Railway Station on a total license fee of Rs.17,51,000/- for a period of two years i.e. from 1st April, 1999 to 30th September, 2000. The petitioner deposited an amount of Rs.2,91,840/- as advance license fee for four months besides security amount of Rs.1,75,100/-. The balance license fee of Rs.14,59,160/- was payable in 20 equal installments of Rs.72,958/- each. Though the petitioner deposited the requisite amounts and completed all the formalities as required, he was given possession of only three sites measuring 375 sq. mtrs, 1625 sq. mtrs. and 600 sq. mtrs. In spite of repeated requests, the respondent failed to hand over possession of the other two sites measuring 2419 sq. mtrs. and 625 sq. mtrs. It was only on 13th

September, 2000 that the possession of 4th site of 2419 sq. mtrs. was handed over to the petitioner though he had been paying license fee therefor regularly right from the very inception. Similarly, the possession of the 5th site of 625 sq. mtrs. was handed over to him on 30th September, 2000 only inspite of the fact that he had continued to pay license fee therefor also from the very beginning. Amongst other claims before the Arbitrator the petitioner sought refund of proportionate amount deposited on account of license fee for the said two sites but the respondent did not respond to his request in that regard. He eventually invoked the arbitration clause in the agreement and the disputes as set out by the petitioner in his statement of claims were thus referred to arbitration. Apart from seeking refund of the proportionate amount of license fee for the period prior to handing over of possession of the 4th and 5th

sites, the petitioner also claimed an amount of Rs.1,06,870/- on account of interest @ 24% on the sum of Rs.5,43,813/- being the license fee deposited by him for the site measuring 2419 sq. mtrs. and another sum of Rs.27,345/- @24% of Rs.1,45,082/- being the license fee deposited for the site measuring 625 sq. mtrs. for the periods 1st April, 1999 to 13th September 2000 and for 1st April, 1999 to 30th September, 2000, respectively. Besides, claims on certain other counts were also made by the petitioner but the same need no mention since the petitioner at the time of hearing confined his challenge to the award only with respect to his claim on account of interest as aforesaid being not granted by the arbitrator.

2. The respondent denying entitlement of the petitioner to all his claims as set out in the statement of claims contested petitioner's claim to any interest

as well under Claims No.4 and 5 on the plea that since the very amounts on which interest was being claimed were not payable to him, the question of payment of any interest thereon does not arise. The respondent while contesting the petitioner's claims made a counter claim of Rs.66,020/- for unauthorised use of electricity on the parking sites by the petitioner but the same was disallowed by the arbitrator.

3. The arbitrator made his award dated 22nd March, 2004 allowing petitioner's claims being claim No.1 and 2 directing refund of proportionate license fee to the tune of Rs.5,43,813/- and license fee of Rs.1,45,082/- deposited by the petitioner for the site 2419 sq. mtrs. and in respect of site measuring 625 sq. mtrs., respectively. The arbitrator however did not award any interest on the said amounts for the period in question falling between the date/s of allotment

and handing over of possession of the 4th and 5th parking sites to the petitioner. The awarded amount on account of claims No.1 and 2 was required to be paid within 90 days from the date of publishing of the award failing that a simple interest @6% per annum was payable to the petitioner by the respondent.

4. Though in his objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') the petitioner questioned the validity of the award declining Claims Nos.3 to 8 and sought the award to be set aside, at the time of hearing, learned counsel for the petitioner restricted his challenge to the award in regard to non-grant of interest and costs only. It was argued that in view of petitioner's Claims No.1 and 2 being allowed by the arbitrator he should have also been granted interest thereon unless the arbitrator had strong reasons for not awarding the same. It was contended that the arbitrator omitted to

assign any reason in his award while ignoring the petitioner's claim of interest on the amounts under Claims No.1 and 2 and thus the award is liable to be suitably modified to grant interest to the petitioner as also costs of Rs.75,000/- for the proceedings before him.

5. The respondent contested the petitioner's claim on account of interest on the plea that the arbitrator in his wisdom did not find the petitioner's claim for interest worth being awarded and, in the circumstances, no interference with the award is called for.

6. Under Claim No. 4 the petitioner claimed an amount of Rs.1,60,870/- on account of interest @ 24% per annum on the sum of Rs.5,43,813/- for the site measuring 2419 sq. mtrs. for the period from 1st April, 1999 to 13th September, 2000. Similarly, under Claim No.5 in his statement of claims the petitioner

made a claim of Rs.27,345/- as interest @ 24 % on the sum of Rs.1,45,082/- for the period from 1st April, 1999 to 30th September 2000. Though the Arbitrator awarded the petitioner's claim for Rs.5,43,813/- and Rs.1,45,082/-, but omitted to grant any interest on the said amounts inspite of the petitioner having made separate claim in that regard in his statement of claims.

7. The settled law on the point is that interest ought to be granted in all cases where there is a decree of money unless there are strong reasons to decline the same (see Jagdish Rao & Bros. Vs. Union on India, **1999 (1) ARB LR 696**). The Arbitrator inspite of having granted the petitioner's claims No.1 and 2 in his statement of claims, omitted altogether to deal with the aforesaid claim of the petitioner on account of interest. In view of non-grant of interest, the claims of the petitioner in that regard would be

taken to have been declined. Since no reasons find mention in the award declining petitioner's claim on account of interest, it is difficult to justify non-award thereof by the Arbitrator.

8. Section 31 (7) (a) empowers an arbitral tribunal to award interest, unless otherwise agreed by the parties, at such rate in a case where an arbitral award is for payment of money, 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 date on which the award is made. In M/s Jagdish Rai & Brothers Vs. Union of India; **JT 1999 (2) SC 268** the Apex Court has ruled that interest can be granted at four stages viz. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before Arbitrator, (3) future interest arising between date of Award and

date of the decree and (4) interest arising from date of decree till realisation of award amount (see also Secretary Irrigation Department, Govt. of Orissa and Ors. Vs. G.C. Roy; JT 1991 (6) SC 349 and B.V. Radha Krishna Vs. Sponge Iron India Ltd; (1997)4 SCC 693). It may be noticed that in view of respondent's failure to hand over possession of 4th and 5th parking sites to the petitioner no amount of license fee could have been chargeable in respect thereof until possession thereof was given to him. The respondent however even without making the said two parking sites available to the petitioner, continued to charge license fee in respect thereof between the periods in question which was eventually held to be not justified by the Arbitrator and consequently refund of the amounts Rs.5,43,813/- and Rs.1,45,082/- by the respondent to the petitioner was granted by way of the impugned award. Clearly,

inspite of the respondent being not entitled to charge license fee for the said two sites for the periods when the possession of such sites had not been made available to the petitioner, withholding of that amount and not refunding the same even on request being made by the petitioner in that regard, rendered it liable to compensate the petitioner for depriving him of making use of that amount. In the given situation non-grant of interest, without strong reasons, would not appear to be justified. The award is thus liable to be modified so as to grant interest on the awarded amount for the pre-reference period as aforesaid.

9. The petitioner would appear to have been well within his rights to seek refund of the license fee paid by him for the period the two parking sites had not been made available to him inspite of his repeated requests. The respondent however did not accede to such a justified payment from him and thereby forced

him to invoke the arbitration clause for adjudication of disputes between him and the respondent by an arbitral tribunal. In the circumstances, it was the respondent which was responsible for making the petitioner to take recourse to adjudication by reference to arbitration. The expenses incurred by him in the process should have thus been held recoverable from the respondent. The Arbitrator however, inspite of being empowered in that regard under Section 31 (8) of the Act, omitted to exercise his power in this respect and did not award any costs to the petitioner even though a separate claim for the same had been made. Grant or non grant of costs should normally abide by final outcome of the proceedings. It is not a case where the petitioner inspite of being partially successful could be held to have been dis-entitled to costs by virtue of terms of agreement between him and the respondent. Since

an unjustified omission on the part of the respondent to refund the license fee realised by it compelled the petitioner to invoke arbitration proceedings, the expenses incurred by him on this score are liable to be recovered from the respondent. As the Arbitrator ignored the petitioner's claim on this count, the award is liable to be modified so as to include payment of reasonable costs of the proceedings to the petitioner.

10. In view of the above allowing the petitioner's Claim Nos. 4 and 5 interest @10% per annum on Rs.5,43,813/- and Rs.1,45,082/-, for the periods 1st April, 1999 to 12th September, 2000 and 1st April, 1999 to 29th September, 1999 respectively is granted in favour of the petitioner and against the respondent. Besides, an amount of Rs.35,000/- is awarded towards costs under Claim No. 8. The award dated

22nd March, 2004 shall stand modified accordingly.

The petition is thus disposed of in the aforesaid terms.

August 31, 2007
sa

(B.N.CHATURVEDI)
JUDGE