

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CIMA No.29/2011

Date of order: .02.2014

Ved Parkash Rathore & Co.

v.

State of J&K and anr.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:

For the appellant(s) : Mr. K.S.Johal, Sr. Advocate with
Mr. Ashray Choudhary, Advocate.

For the respondent(s) : None.

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|-----|---|---|--------|
| i) | Whether to be reported
Press/Media | : | Yes/No |
| ii) | Whether to be reported in
Digest/Journal | : | Yes/No |

M.M.Kumar, CJ

1. This order shall dispose of four appeals*. Two of the appeals filed by the State whereas other two have been preferred by the Contractor. The facts have been taken from CIMA No.29/2011.

2. The instant appeal has been preferred by the Contractor against the judgment and order dated 15.10.2010 passed by the learned Single Judge of this Court while disposing of AA Nos.4 & 5 of 2001. The learned Single Judge has dismissed the applications for setting aside the awards dated 22.02.2001. The learned Single Judge has dismissed the arbitration applications while upholding the awards dated 22.01.2001. It is

appropriate to mention that the arbitrator has awarded a sum of Rs.33,139.75 in one award and Rs.1,09,598.00 in other award. The learned Single Judge has reduced the rate of interest at all the three stages from 12% per annum to 9% per annum. The operative portion of the order reads as under:-

“In the present case, the agreement between the parties, does not expressly prohibit grant of interest pendent elite or otherwise. So viewed, the Arbitrator acted within his powers when he allowed interest on the claimed amount pre-reference, pendent elite and future. For the reasons discussed, none of the grounds urged for setting aside the award, is established. The applicants have failed to prove that the Arbitrator has mis-conducted himself or the proceedings issues 1 and 2 are accordingly decided in favour of non-applicant and against the applicants. So viewed, applications CMP No.24/2001 and CMP no.30/2001 for setting aside the award, are dismissed. Resultantly, the award is made rule of the court. However, the rate of interest as also the direction that post award interest would be payable on the claimed amount along with the interest accumulated on the claimed amount – pendente lite, warrant a second look. It would in the facts and circumstances of the case, be in the interest of justice to reduce the rate of interest at all the three stages from 12% per annum to 9% per annum. Further future interest i.e. post award interest at the rate of 9% per annum would be restricted to the claim amount i.e. Rs.33,139.75 in the case of Claim-I, and Rs. 1,09,598.00 in the case of Claim-II only. Decree sheet be drawn up.”

3. The only issue raised before us by Sh. K.S.Johal, learned Senior Counsel on behalf of the contractor is that once the findings recorded by the arbitrator have not been interfered with the grant of interest @ 12% could not have been reduced to 9% without any sustainable reasons. According to the learned

counsel, the order passed by the learned Single Judge is cryptic and is thus liable to be set aside to that extent.

4. No one has put in appearance on behalf of the respondents.

5. Having heard the learned counsel and having perused the paper book, we are of the considered view that the award passed by the arbitrator ordinarily is not interfered. The arbitrator in his awards has granted interest @ 12% per annum w.e.f. April, 1976 for all the stages. It is well settled that the discretion exercised by the arbitrator is not to be interfered with. In that regard reliance may be placed on the observations made in the case of *Uttar Pradesh Cooperative Federation Limited v. Three Circles*, (2009) 10 SCC 374. Therefore, we set aside the order passed by the learned Single Judge to the extent it reduces the rate of interest to 9% per annum and restore the rate of interest awarded by the arbitrator.

6. The appeals of the contractor (CIMA Nos.29/2011 & 30/2011) are allowed and those of the State (CIMA Nos.18/2011 & 19/2011) are dismissed.

(Dhiraj Singh Thakur)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
.02.2014
Vinod.

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S.No.	Case No.	Title
1.	CIMA No.29/2011	Ved Parkash Rathore & Co. v. State of J&K and ors.
2.	CIMA No.30/2011	Ved Parkash Rathore & Co. v. State of J&K and ors.
3.	CIMA No.18/2011	State of J&K & anr. v. Ved Parkash Rathore & Co.
4.	CIMA No.19/2011, CMA No.20/2011	State of J&K & anr. v. Ved Parkash Rathore & Co.

(Dhiraj Singh Thakur)
Judge

(M. M. Kumar)
Chief Justice

Jammu.
02.2014.