

SUPREME COURT OF INDIA

REPORTABLE

Bench: Chief Justice, Justices J.B. Pardiwala, Manoj Misra

Date of Decision: 20th November 2023

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 12690 OF 2023

DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT

...PETITIONER(S)

VERSUS

M/S CHRISTY FRIEDGRAM INDUSTRY ...RESPONDENT(S)

Subject: Petition for Special Leave arising from final judgment/order of the High Court of Karnataka in Commercial Appeal No.525/2022 involving termination of agreements for Mahila Supplementary Nutrition Production and Training Centres by the petitioner and subsequent arbitration and legal proceedings.

Headnotes:

Arbitration and Award Enforcement – Dispute between Department of Women and Child Development, Karnataka, and M/s Christy Friedgram Industry – Arbitration over termination of agreements for nutrition centres – Sole arbitrator awarded a total sum of Rs. 1,66,47,31,962/- to the respondent, including various claims and interests. [Paras 1-2]

Legal Proceedings and Challenges – Award challenged under Section 34 of the Arbitration and Conciliation Act, 1996 – Commercial Court and High Court dismissed the challenges – Special Leave Petition by respondent dismissed by Supreme Court on 27 July 2022 – Petitioner's challenge to award also rejected, with High Court declining to condone delay of 225 days in filing appeal. [Paras 3-5]

Consideration of Independent Challenge by Petitioner – High Court's observation on impact of SLP dismissal corrected – Petitioner's independent challenge to arbitral award acknowledged – However, delay in filing commercial appeal not condoned due to insufficient explanation. [Paras 6-9]

Negotiations and Court's Intervention on Interest Rate – Parties engaged in negotiations for amicable solution – Supreme Court, upon agreement

of parties, scaled down post award interest rate to 9% per annum – Remaining parts of the award unaffected. [Paras 10-12]

Compliance and Settlement of Dues – Petitioner deposited award amount with interest – Joint statement by advocates to quantify exact payable amount post-modification of interest rate – Balance refundable to petitioner after respondent's withdrawal. [Paras 13-14]

Decision – Special Leave Petition disposed with modifications to post-award interest rate – All pending applications disposed of. [Paras 14-15]

Referred Cases: Not applicable.

O R D E R

- 1 Agreements were entered into between the Department of Women and Child Development of the State of Karnataka (the petitioner) and the respondent for the establishment of Mahila Supplementary Nutrition Production and Training Centres on 28 September 2007, 7 July 2008 and 2 April 2009. The petitioner terminated the agreements with effect from 31 May 2012.
- 2 A sole arbitrator was appointed to adjudicate upon the dispute between the parties. By an award dated 30 December 2018, the claims were allowed together with interest in the following terms:
 - “a. Under Claim-A, due amount of Rs. 16,13,23,938/- with interest thereon @ Rs.18% per annum w.e.f. 01.06.2012 to 30.10.2018 for 76 months total interest Rs.18,39,12,704/- total amount comes to Rs.34,52,36,642/- (Rupees Thirty Four Crores Fifty Two Lakh Thirty Six Thousand Six Hundred Forty Two only).
 - b. Under Claim – B, due amount of Rs.12,57,47,964/- with interest thereon @ Rs.18% per annum w.e.f.01.06.2012 to 30.10.2018 for 76 months total interest Rs.14,33,52,644/- total amount comes to Rs.26,91,00,608/- (Rupees Twenty Six Crores Ninety One Lakhs Six Hundred Eight only).
 - c. Under Claim – C, the amount of loss calculated Rs.1 per kg. w.e.f.01.07.2014 to 30.10.2018 which comes to Rs.24,08,90,000/- interest @ Rs.15% per annum w.e.f.01.06.2014 to 30.10.2018 for 52 months, on which total interest comes Rs.15,65,78,500/- and total amount comes to Rs.39,74,68,000/- (Thirty Nine Crores Seventy Four Lakh Sixty Eight Thousand only).
 - d. Claim under – D Loss calculated under supplies of MOUs at the same rate as per Claim C Rs.24,08,90,000/- and interest thereon @ Rs.15% per annum w.e.f.01.06.2014 to 30.10.2018 for 52 months total interest comes to Rs.15,65,78,500/- total amount comes to Rs.39,74,68,000/- (Thirty Nine Crores Seventy Four Lakhs Sixty Eight Thousand only).
 - e. Under Claim – E Under this claim, consolidated loss is considered and amount of Rs.10,00,00,000/- (Rupees Ten Crores) is awarded as

compensation with interest @ Rs.12% per annum from the date of 01.11.2013 to 30.10.2018 which comes to Rs.6.00 Crore, total comes to Rs.16,00,00,000/- (Sixteen Crores only).

- f. Under Claim – I, a sum of Rs.10,00,00,000/- (Rupees Ten Crores) is awarded towards the loss of reputation and mental agony on account of illegal termination with no interest till award.
- g. Total sum of Rs.1,66,47,31,962/- (Rupees One Hundred Sixty Six Crores Fourty Seven Lakh Thirty One Thousand Nine Hundred Sixty Two only) awarded to the claimant with future interest from the date of 01.11.2018 till its payment within 90 days @ of Rs.12% per annum and thereafter if the payment is not made within 90 days than 14% interest would be payable.
- h. A cost of Rs.5,00,00,000/- (Rupees Five Crores) is also allowed in favour of the claimant and payable by the respondent towards the cost of Arbitration Proceedings which continued for five years. The respondent is directed to pay the aforesaid amount awarded in favour of the claimant within 90 days.
- i. The order date 24.12.2015 and 30.12.2018 are also part of this Award.”

3 The award of the sole arbitrator was challenged by the respondent under Section 34 of the Arbitration and Conciliation Act 1996 before the Commercial Court. The Commercial Court rejected the challenge against which the appeal was also dismissed by the High Court. Thereafter, a Special Leave Petition was dismissed by this Court on 27 July 2022.

4 The petitioner had also questioned the legality of the award in proceedings under Section 34 of the Arbitration and Conciliation Act 1996. The Commercial Court rejected the petition on 25 October 2021. Against the order of the Commercial Court, the petitioner instituted Commercial Appeal No 525 of 2022 with a delay of 225 days.

5 The High Court by its impugned order dated 9 March 2023 has declined to condone the delay by observing that the reasons for condonation did not establish a sufficient cause. The High Court also adverted to the fact that the appeal preferred by the respondent was initially rejected by the Division Bench, and later the Special Leave Petition was also dismissed by this Court.

6 At the outset, it needs to be noted that the High Court was not correct in observing that the dismissal of the Special Leave Petition filed by the respondent will have an impact on the remedy which is preferred by the petitioner independently in its own challenge to the arbitral award. While dismissing the Special Leave Petition which was filed by the respondent, this Court had in its order dated 27 July 2022 observed that since the order passed by the arbitral tribunal had attained finality, the respondent to that

petition, namely, the petitioner in the present proceedings shall honour the award.

- 7 It is common ground that the commercial appeal before the High Court was filed by the petitioner after the dismissal of the Special Leave Petition by this Court at the behest of the respondent. The respondent who had succeeded in the arbitral proceedings was pursuing his own remedies against the award. The rejection of the respondent's challenge would not foreclose the petitioner from pursuing its own remedies to the award of the arbitral tribunal. A statement was made on behalf of the petitioner, namely, the State of Karnataka, in the earlier proceedings before the High Court that the award had not been challenged and had attained finality. This statement was a statement of fact as it obtained at the relevant point of time.
- 8 For the above reasons, in our view, the State of Karnataka was not precluded from pursuing its own remedies in accordance with law.
- 9 However, the fundamental problem with the commercial appeal which was filed by the petitioner before the Division Bench was the delay of 225 days. The explanation which was tendered on behalf of the State of Karnataka was clearly not sufficient for the purpose of condoning the delay. The High Court has dwelt on this aspect in the course of its judgment and we do not find any reason for this Court to take any other view of the matter. Apart from setting out the steps which were taken internally in the departmental processes, there was no cogent explanation for the delay.
- 10 In view of this position, this Court would ordinarily proceed to dismiss the Special Leave Petition. However, during the course of the hearing on the previous occasion, the Court was apprised of the fact that certain negotiations have taken between the parties before the State Government to find an amicable solution to the dispute. Mr Jaideep Gupta, senior counsel appearing on behalf of the petitioner had sought an adjournment to apprise this Court on whether some mutually acceptable solution could be found by the parties confined to the interest which has been awarded in the arbitral award.
- 11 After taking instructions, senior counsel has informed the Court that the State of Karnataka would leave it to this Court to pass an appropriate order in regard to the payment of interest. No such order can be passed except with the consent of the respondent since the order declining to condone the delay has not been faulted. During the course of the hearing, Mr K K Venugopal and Dr S Muralidhar, senior counsel, both stated on instructions that the respondent

has no objection to the post award rate of interest being suitably scaled down by this Court.

- 12 Having considered the matter from all its perspectives, we are of the view that the post award interest as awarded by the arbitrator should be scaled down to nine per cent per annum. The rest of the award, it is clarified, shall not stand affected by this order. Ordered accordingly.
- 13 In pursuance of the order dated 21 August 2023, the petitioner has deposited the entire amount of the award together with interest. In order to secure compliance with the present order of this Court which has modified the post award rate of interest, it has been agreed that Mr V N Raghupathy, Advocate-on-Record appearing on behalf of the State of Karnataka and Mr Pulkit Tare, Advocate-on-Record appearing on behalf of the respondent shall prepare a joint statement of the exact amount which would be due and payable to the respondent in terms of the present order. This exercise shall be completed within a period of two weeks. The Registry shall permit the respondent to withdraw the amount so jointly quantified while the balance that remains in deposit shall be refunded back to the petitioner immediately thereafter.
- 14 Subject to the aforesaid modification, the Special Leave Petition shall stand disposed of.
- 15 Pending applications, if any, stand disposed of.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.