

**IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**  
**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE**  
**&**  
**HON'BLE Mr. JUSTICE D.V.S.S. SOMAYAJULU**  
**WRIT APPEAL Nos.461, 484, 491 and 497 of 2022**

**COMMON JUDGMENT**

**Dt.02.12.2022**

*(Prashant Kumar Mishra, CJ)*

The short question that arises for determination in these writ appeals is whether, despite there being a clause in the agreement disentitling the contractor to claim interest upon any guarantee fund or payments in arrears, nor upon any balance which may, on the final settlement of his accounts, found to be due to him and despite there being an arbitration clause or remedy of preferring civil suit, the writ court in exercise of powers under Article 226 of the Constitution of India can award interest on the amounts due to him pursuant to the work carried out by him in terms of the agreement.

2. All the writ appeals involve common questions of law and fact. Therefore, they are heard analogously and are being disposed of by this common judgment. For the purpose of disposal, W.A.No.484 of 2022 is taken as lead case.

3. Undisputedly, writ petitioners were awarded different contracts pertaining to construction of compound wall, barbed wire fencing etc., by the authorities/officers in the Department of Agriculture, Government of Andhra Pradesh. It is also not in dispute that consequent to the tender process and award of contract, similar agreements as have been filed with the material papers in the writ appeals, were executed between the parties and, further, upon execution of work, some amounts were paid to the contractors, but not the entire amounts as claimed by the contractors in terms of the contract. The impugned orders refer to the contention of the writ petitioners that estimated works have been completed but final payment has not been made despite representations submitted by them.

4. While allowing the writ petitions, the learned single Judge directed the respondents (appellants herein) to clear the bills submitted by the writ petitioners and release the payments with interest at 12% p.a., referring to the earlier decision in **S. Srinivas v. State of Andhra Pradesh and others**, reported in **2021 Lawsuit (AP) 390**.

5. Assailing the impugned orders insofar as they concern award of interest at the rate of 12% p.a. on the amount due to the writ petitioners/contractors, learned Advocate General appearing for the appellants has argued that in terms of clause 43 of the Conditions of Contract, writ petitioners are not entitled to interest; therefore, the appeals deserve to be allowed. He would refer to the judgments in ***Orissa State Financial Corporation v. Narsingh Ch. Nayak and others***, reported in **(2003) 10 SCC 261**, ***Garg Builders v. Bharat Heavy Electrical Limited***, reported in **AIR 2021 SC 4751** and ***Assistant Excise Commissioner and others v. Issac Peter and others***, reported in **(1994) 4 SCC 104**.

6. Per contra, learned counsel for the writ petitioners have submitted that interest is always held admissible as compensation for wrongful withholding of the principal sum, as the person is deprived of the use of his money to which he is legitimately entitled. According to them, the words "interest" and "compensation" are used interchangeably. The following judgments of the Hon'ble Supreme Court and High Courts are referred:

- ***Punjab and Sind Bank v. Allied Beverage Company Private Limited and others***, reported in **(2010) 10 SCC 640**;
- ***Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy***, reported in **(1992) 1 SCC 508**;
- ***Alok Shanker Pandey v. Union of India and others***, reported in **(2007) 3 SCC 545**;
- ***J. Devender Reddy v. Kakatiya University and another***, reported in **2015 (3) ALD 97**;
- ***Edward B. John v. State of Kerala***, reported in **[2015 (3) KHC 867]**;
- ***ABL International Limited v. Export Credit Guarantee Corporation of India Ltd.***, reported in **(2004) 3 SCC 553**;
- ***S. Srinivas v. State of Andhra Pradesh and others***, reported in **2021 Lawsuit (AP) 390**;
- ***M/s. Karnataka State Forest Industries Corporation v. M/s. Indian Rocks***, reported in **(2009) 1 SCC 150**, and
- ***Agni Aviations Consultant and others v. the State of Telangana and others***, reported in **2020 SCC OnLine TS 1462**.

7. The agreement executed between the parties forming part of the material papers contains Articles of Agreement, wherein clause 4 pertains to adjudication and disputes. It is reproduced hereunder for ready reference:

"4. ADJUDICATION OF DISPUTES:

Except as otherwise provided in the contract, any disputes and differences arising out of or relating to the contract shall be referred to adjudication as follows:

- 1) i) Settlement of all claims upto Rs.50,000/- in value and below by way of Arbitration to be referred as follows:
  - a) Claims upto Rs.10,000/- in value: Superintending Engineer (of another circle in the same department) i.e., Superintending Engineer, Eluru.
  - b) Claims above Rs.10,000/- and upto Rs.50,000/- in value another Chief Engineer (of the same department) i.e., Chief Engineer, N.H. Hyderabad.

The arbitration proceedings will be conducted in accordance with provisions of the Arbitration Act 1940 as amended from time to time. The arbitrator shall invariably give reasons in the award."

8. However, clause 4(ii) states that if the value of the claim is above Rs.50,000/-, the dispute shall be settled by a competent civil court only. The said clause is reproduced hereunder:

“(ii) Settlement of all claims above Rs.50,000/- in value:

1. All claim above Rs.50,000/- in value shall be decided by the civil court of competent jurisdiction by way of a regular suit and not by arbitration.
2. Either party shall make a reference for adjudication under this clause to the contract within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment.
3. The relevant clause of Andhra Pradesh standard specification stands modified to the extent provided in this clause.”

9. The Conditions of Contract attached to the main agreement also contains clause 23 for settlement of disputes. As per clause 23.2 of the Conditions of Contract, all disputes or difference arising of or relating to the contract shall be referred to the adjudication and the arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification thereof and the arbitrator is required to pass a reasoned award. It also provides that reference for adjudication under this clause shall be made by the contractor

within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment, whichever is earlier. Claims above Rs.50,000/- are to be settled by a competent civil court only.

10. Clause 43 of the Conditions of Contract is also significant to delve on the issue involved in these appeals. The said clause is reproduced hereunder for ready reference:

“43. Interest on Money due to the Contractor:

43.1 No omission by the Executive Engineer or the sub-divisional officer to pay the amount due upon certificates shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee fund or payments in arrear nor upon any balance which may, on the final settlement of his accounts, found to be due to him.

11. Based on the above-quoted provisions of the Conditions of Contract, particularly, clause 43, it is contended by the State that writ petitioners are not entitled for interest, whereas writ petitioners have claimed interest as compensation for wrongful withholding of the amount due to them.

12. To award interest, learned single Judge has referred to the decision in **S. Srinivas** (supra), wherein reliance has been placed on the judgment of the Hon'ble Supreme Court in **G.C. Roy** (supra) and that of the High Court of Andhra Pradesh in **J. Devendra Reddy** (supra).

13. The issue as to whether award of interest *de hors* the terms of contract is admissible or not, has not been gone into by the learned single Judge. At the time of hearing, learned Advocate General drew our attention to Ground Nos.2 and 4 of the writ appeals and contended that since the writ petitions were allowed at the admission stage without giving opportunity for filing counter by the appellants and despite there being alternative and efficacious remedy, the said issue has not been considered by the learned single Judge.

14. In **Issac Peter and others** (supra), it has been held by the Hon'ble Supreme Court that in law there is no basis upon which the licensees can be relieved of the obligations undertaken by them under the contract. The remedy provided by Article 226, or for that matter, suits, cannot be resorted to wriggle out of the contractual obligations entered into by the licensees. It further held that rule of promissory estoppel and



rule of estoppel by conduct cannot be invoked to alter or amend specific terms of contract nor can they avail against statutory provisions and all the terms and conditions of contract, being contained in the statutory rules, would prevail. Referring to the rule of legitimate expectation also, it is held that rule cannot be invoked to modify or vary express terms of contract. Dealing with the submission that doctrine of fairness and reasonableness must be read into the contracts to which State is party, the Hon'ble Supreme Court held that duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create obligation upon the State which is not there in the contract. It was further held that we must confess, we are not aware of any such doctrine of fairness and reasonableness. The doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the

parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract — or rather more so. It is one thing to say that a contract — every contract — must be construed reasonably having regard to its language. But this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. Concluding the judgment, the Hon'ble Supreme Court held that we, therefore, are of the opinion that in case of contracts freely entered into with the State like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract, for the purpose of adding or altering to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contract and the laws relating to the contract. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts.

15. In ***Orissa State Financial Corporation*** (supra), the Hon'ble Supreme Court held thus in paragraph 6:

"6. The said order is under challenge in this appeal. On a plain reading of the impugned order it is manifest that the High Court while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the Corporation has been directed to advance a fresh loan to the writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs 16,500 and to order waiving of the interest till date etc. The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the

parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.”

16. In **Garg Builders** (supra), the Hon’ble Supreme Court held that if the contract prohibits pr-reference and *pendente lite* interest, arbitrator cannot award interest for the said period. In the said case, clause barring interest is very clear and categorical. It uses the expression “any moneys due to the contractor” by the employer which includes the amount awarded by the arbitrator. It further held that when there is an express statutory permission for the parties to contract out of receiving interest and they have done so without any vitiation of free consent, it is not open for the arbitrator to grant *pendente lite* interest nor such clause of the contract is ultra vires in terms of Section 28 of the Indian Contract Act, 1872.

17. In **Sayeed Ahmed and Company v. State of Uttar Pradesh and others**, reported in **(2009) 12 SCC 5**, the Hon’ble Supreme Court held that a provision has been made under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 in relation to the power of the arbitrator to award interest. As per this Section, if the contract bars payment of

interest, arbitrator cannot award interest from the date of cause of action till the date of award.

18. In **Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works) Palghat and others**, reported in **(2010) 8 SCC 767**, it was held by the Hon'ble Supreme Court that where the parties had agreed that interest shall not be payable, the arbitral tribunal cannot award interest. Same is the law laid down in the matter of **Bharat Heavy Electricals Limited v. Globe Hi-Fabs Limited**, reported in **(2015) 5 SCC 718** and **Sri Chittaranjan Maity v. Union of India**, reported in **(2017) 9 SCC 611**.

19. In the case in hand, writ petitioners have referred to the Constitution Bench judgment in **G.C. Roy** (supra). The contention as was raised before the Hon'ble Supreme Court in **G.C. Roy** (supra) was raised in **Garg Builders** (supra). Negating the contention, the Hon'ble Supreme Court observed that judgment in **G.C. Roy** (supra) was with reference to the 1940 Act, where there was no provision which prohibited the arbitrator from awarding interest for the pre-reference, *pendente lite* or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement

prohibits award of interest, the arbitrator cannot award interest for the relevant period.

20. The Interest Act, 1978 is a law to consolidate and amend the law relating to the allowance of interest in certain cases. However, even under the said enactment, particularly, under Section 3(3)(a)(ii), exceptions are carved out and the bar to payment of interest by contract is accepted. We may profitably refer to **Garg Builders** (supra), wherein the Hon'ble Supreme Court has referred to the provisions of the Interest Act, 1978, to observe thus in paragraph 9:

“.....however, Section 3(3) of the Interest Act carves out an exception and recognizes the right of the parties to contract out of the payment of interest arising out of any debt or damages and sanctifies contracts which bars the payment of interest arising out of debt or damages..”

21. Based on the decision in the matter of **ABL International Limited** (supra), learned counsel for the writ petitioners have contended that writ court can exercise powers under Article 226 of the Constitution of India to direct payment of amounts, which are undisputed and that even in contractual matters, writ petitions are maintainable. While

there can be no quarrel about this position of law, fact remains that in the case at hand, the agreement contains a dispute resolution clause. Without invoking the said clause, writ petitioners have approached this Court and the learned single Judge has allowed the writ petitions in respect of the arrears and at the same time, interest has also been awarded. Award of interest, even where it is made admissible under the contract, depends on host of factors most of which are contentious between the parties. Different considerations also apply for awarding interest under the various enactments like Interest Act, 1978, CPC etc. Rates of interest are also subject to fluctuations/market conditions etc. and are matters of pleading and proof. It is always advisable to leave such relief to be considered by the appropriate forum when the agreement contains arbitration and/or a clause for filing a civil suit. But, in a case of this nature, where the agreement specifically bars payment of interest on certain sums and the same has been agreed by the writ petitioners with eyes wide open after understanding the terms of the agreement, interest cannot be awarded *de hors* and contrary to clause 43 of the Conditions of Contract. These are clearly disputed questions of fact which cannot be decided in these writ proceedings. In

our considered view, learned single Judge has committed a serious error of law by awarding interest to the writ petitioners on the sum allegedly due for payment, which is not permissible in the teeth of clause 43 of the Conditions of Contract.

22. Accordingly, all the writ appeals are allowed. The orders passed by the learned single Judge to the extent of award of interest at the rate of 12% p.a., which alone has been challenged in these writ appeals, are set aside. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

23. The opinions expressed in this judgment are for the disposal of these writ appeals only. This judgment will not preclude the writ petitioners from seeking any relief including interest in an appropriate proceeding before the proper forum.

***Sd/-***

***Sd/-***

**PRASHANT KUMAR MISHRA, CJ D.V.S.S. SOMAYAJULU, J**

MRR