CASE NO.:
Appeal (civil) 3134 of 2002

PETITIONER:
Hindustan Zinc Ltd

RESPONDENT:
Friends Coal Carbonisation

DATE OF JUDGMENT: 04/04/2006

BENCH:
Arun Kumar & R V Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal by special leave is against the judgment dated 17.8.2001 of the Rajasthan High Court in Civil Misc. Appeal No. (SB) 227/1997.

2. In pursuance of a tender invitation dated 14.10.1991 issued by the appellant for supply of Metallurgical coke (for short 'coke'), the respondent submitted its offer dated 8.11.1991. The appellant accepted the said offer and placed a purchase order dated 16/18.12.1991 on the respondent for supply of 15,000 MT of coke, to be supplied to its Vizag Unit and Tundoo Unit. Clause (2) of the purchase order contained the specifications for the supply of coke and Clause (3) related to price. The price agreed, exclusive of taxes and duties, was Rs.2,231/- per MT of coke. The loading charges was Rs.32 per MT. The transportation charges were Rs.950 per MT for delivery at Vizag Unit and Rs.120 per MT for delivery at Tundoo Unit. Therefore, the FOR price was Rs.3,213 per MT for Vizag Unit and Rs.2,383 per MT for Tundoo Unit. Clause 5 provided for price variation. Sub-clause (i) thereof provided for variation in prices of coke and sub-clause (ii) provided for variation in transportation cost. As we are concerned with the variation in price of coke, Clause 5(i) is extracted below :-
"Price Variation :

(i) For Metallurgical Coke : The Metallurgical coke price specified in para 3 above is based on the coal price ruling as on 8.11.1991 (The date of submission of the offer). In case there is any increase in the coal price by the Coal Companies w.e.f. 9.11.1991 and during the currency of contract period, you will be paid Rs. 1.65 per MT of Met. Coke for each Re.1/- per MT increase in coal (coking coal washery) price from the price ruling as on 8.11.1991 on production of documentary evidence."

Clause 13 provided for settlement of disputes by arbitration.
3. Coke is the processed product of coal obtained by carbonization, that is heating coal without air. When burnt, Coke generates a higher temperature, than coal and produces very little smoke or ash and is used in blast furnaces. The coking coal used for manufacturing coke is graded as Steel Grade I, Steel Grade II, Washery Grade I, Grade II, Grade III

and Grade IV depending upon the ash content/impurities. The lesser the ash content/impurities, the higher the grade of coal. The contract terms (the purchase order) gave only the specifications of coke to be supplied, that is Fixed Carbon 71% +/- 2%; Ash 27% +/- 2%; Moisture : 3% maximum; and VM : 1% maximum. The porosity required was 45% +/- 2% and size 4" to 6". The contract did not specify the use of any particular quality of coal for producing coke of the required specification.

4. The respondent claimed that it used Washery Grade II for the supplies made between the period 18.12.1991 and 13.7.1992; that it found that Washery Grade II coal was not suitable for producing the Metallurgical Coke of the specifications required by the appellant; and that therefore it switched over to the use of Washery Grade I coal from 14.7.1992 and used the said higher quality coal up to 27.7.1994 when the last supply was made.

5. The appellant granted escalations in price of coke from time to time by increasing the basic price of coke (Rs.2,231 per MT) and made payments accordingly. The appellant, however, granted escalations only on the basis of price variation of Washery Grade II coal (that is difference between base price of Washery Grade II coal as on 8.11.1991 and the prevalent price of Washery Grade II coal) and not with reference to Washery Grade I coal.

6. The respondent was not satisfied with the price escalation given by the appellant. There was some correspondence in that behalf. The respondent ultimately sent a letter dated 16.12.1996 claiming that in regard to 7995.135 MT of Metallurgical Coke supplied to Vizag Unit from 14.7.1992 onwards, the amount due on account of escalation was Rs.19,89,977.37. It was alleged that the Vizag Plant had refused to accept the claim of the respondent that it were using washery grade I and continued to give the difference on the basis of the price of washery grade II. In regard to Tundoo Plant, it was alleged that though the appellant agreed to the use of washery grade I, payment on account of escalation was not made and Rs.21,18,355.92 was due for the supplied made from 14.7.1992. Therefore, the respondent sought reference to arbitration in regard to its said claims. The dispute relating to said claims was referred to an Arbitral Tribunal consisting of Ms. Justice Kanta Bhatnagar, Mr. B.D. Sharma and Mr. T.S. Vardya as arbitrators.

7. The respondent submitted a claim statement dated 20.5.1997 before the Arbitrators, where the amount claimed was slightly modified. Respondent claimed Rs.21,47,947.56 in regard to supplies to Vizag Unit, and Rs.21,18,355.92 in regard to supplies to Tundoo Unit, in all Rs.42,66,303.48. Respondent also claimed interest at 21 per cent per annum from the due date till date of award and from the date of award till the date of payment. The appellant filed its statement of objections dated 11.7.1997 resisting the claim.

The Arbitral Tribunal passed a reasoned award dated 17.1.1998, the operative portion of which is extracted below :

1. The claimant is entitled to the escalation in the supply price of their Met. Coke, in accordance with the price variation formula given in clause-5 of Annexure-1, relating to change in price of Coking Coal-Washery Grade-II upto 14.07.1992, and thereafter in the price of

Coking Coal-Washery I. The base price for determining escalation is the price of coking Coal Washery Grade II ruling as on 8.11.1991. The escalation covers supply of Met. Coke to both the units of the Respondents viz. Vizag and Tundoo.

2. a) In regard to the amount of escalation, and the corresponding quantities the Claimants has submitted statements vide Schedules 1 and 2. However difference in respect of certain bill-wise supplies have been pointed out by the Respondents vide Schedule R-1 and R-2, enclosed with their HZL/HO/CON/4(9)Arb/3 of 16.08.1997. The Respondents have not disputed the rest of the figures in Claimants Schedules 1 and 2. On the other hand, no supporting evidence has been received from the claimants to deny the specific variations submitted by the Respondents which pertain to supplied quantities.

b) Based on the above, we Award the following total escalation amounts, indicated alongside the accepted supplies :-

For Vizag	:	7987.597 MT.	Rs.21,45,591.21
For Tundoo	:	7248.040 MT.	Rs.20,32,762.15
	TOTAL		Rs.41,78,353.36

3. The Claimant is entitled to receive interest at the rate of 21% per annum on the amount/s found due, from the date/s they became due, till the date of this Award. The Claimants is to receive interest at the rate of 18% per annum from the date of award till realization.

4. Both parties will bear their own cost of Arbitration.
5. This Award is full and final settlement of all claims of the claimants referred to us for our adjudication."

8. The appellant filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') numbered as Civil Suit No.2/1998 on the file of the Additional District Judge (No.II), Udaipur, praying that the said award by set aside. It contended that the award was contrary to the price escalation clause contained in the contract. It also submitted that the amount awarded had been arrived at arbitrarily without disclosing how the said sum of Rs.41,78,353.36 was arrived at.

9. The trial court by judgment dated 3.2.1999 allowed the petition in part. The operative portion of the trial court's judgment (translation) is extracted below :

"It is, therefore, ordered that Friends Coal Carbonisation is entitled to get increase in price from Hindustan Zinc Ltd. on the basis of price increase considering basic price of washery grade I after 14.7.92 under clause 5. The difference in the price of washery grade I and washery grade II on 14.7.92 cannot be considered as price increase of washery grade I. The price of washery grade I on 8.11.91 shall be considered as base price for increase in price.

The amount payable to Friends Coke Carbonisation by Hindustan Zinc Ltd. is determined as under :

1. Vizag Unit 7,987.597 MT Rs. 4,77,806.10
2. Tundoo Unit 7248.040 MT Rs. 6,64,397.80

Total Rs.11,42,203.90

M/s Friends Coal Carbonisation will be entitled to get according to terms of Contract, interest at 21% per annum on the above mentioned amount from the date on which the amount is due till date of award and will be entitled to get interest at 18% per annum on the above mentioned amount from date of award till realization."

10. The appellant accepted the said decision and paid Rs.24,17,646/- to the respondent on 6.2.1999 calculated as follows :

i)
Amount due (to the extent upheld by the court)
Rs.11,42,203.90
ii)
Interest thereon at 21% P.A. from due date till date of award
Rs.10,59,143.00
iii)
Interest at 18% P.A. from date of award till date of payment

Rs. 2,16,299.00

Total
Rs.24,17,646.00

The respondent, however, was not satisfied with the Judgment of the trial court. It filed an appeal before the Rajasthan High Court under Section 37 of the Act. A learned Single Judge allowed the said appeal by judgment dated 17.8.2001, and set aside the judgment dated 3.2.1999 of the trial court. The award dated 17.1.1998 was upheld in entirety. The learned Single Judge held that having regard to the scope of interference under Section 34(2)(b) of the Act, the trial court could not have examined the terms of the contract nor interpret them for the purpose of deciding whether the claims were covered by the terms of the contract. The High Court held that where the dispute regarding escalation was specifically referred to the Arbitral Tribunal for decision, the court could not interfere on the ground that the award was beyond the terms of the contract. Reliance was placed by the High Court on the decisions of this Court in Konkan Railway Corporation Ltd. v. Mehul Construction Co. [AIR 2000 SC 2821], P.V. Subba Naidu v. Government of Andhra Pradesh [1998 (9) SCC 407] and Indu Engineering & Textiles Ltd. v. Delhi Development Authority [2001 (5) SCC 691].

11. The said judgment of the High Court is challenged in this appeal. Having accepted the decision of the trial court and paid the amount due as per the said decision, the only ground urged in this appeal is that for calculating the price escalation, the difference should be with reference to base price of the washery coal used and not with reference to base price of a lower quality of washery coal.

12. This Court in Oil & Natural Gas Corporation Ltd. v.

Saw Pipes Ltd. [2003 (5) SCC 705] held that an award contrary to substantive provisions of law or the provisions of the Arbitration and Conciliation Act, 1996 or against the terms of the contract, would be patently illegal, and if it affects the rights of the parties, open to interference by court under Section 34(2) of the Act. This Court observed :

"The question, therefore, which requires consideration is \026 whether the award could be set aside, if the Arbitral Tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31(3), which affects the rights of the parties. Under sub-section (1)(a) of Section 28 there is a mandate to the Arbitral Tribunal to decide the dispute in accordance with the substantive law for the time being in force in India. Admittedly, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force. Suppose, if the award is passed in violation of the provisions of the Transfer of Property Act or in violation of the Indian Contract Act, the question would be \026 whether such award could be set aside. Similarly, under sub-section (3), the Arbitral Tribunal is directed to decide the dispute in accordance with the terms of the contract and also after taking into account the usage of the trade applicable to the transaction. If the Arbitral Tribunal ignores the terms of the contract or usage of the trade applicable to the transaction, whether the said award could be interfered. Similarly, if the award is a non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it couldn't be set aside by the court. If it is held that such award could not be interfered, it would be contrary to the basic concept of justice. If the Arbitral Tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34."

"\005\005\005.., in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be \026 award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or
(b) the interest of India; or
(c) justice or morality, or
(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience

of the court. Such award is opposed to public policy and is required to be adjudged void."

13. The High Court did not have the benefit of the principles laid down in Saw Pipes (supra), and had proceeded on the assumption that award cannot be interfered, even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in Saw Pipes (supra), has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

14. After the matter was argued at some length, both counsel on instructions submitted that they agreed in principle on the following aspects :

a) the respondent is entitled to escalation in price, calculated as per the escalation clause (clause 5 of the purchase order) on the basis of the price difference between the actual price paid for the coal used and the base price of such coal on 8.11.1991.

b) The respondent had used washery grade II in regard to the supplies from 18.12.1991 to 13.7.1992. Therefore, in regard to supplies during the said period, the price escalation, if any, had to be calculated with reference to base price and actual price of Washery Grade II.

c) The respondent had used washery grade I in regard to the supplies from 14.7.1992. Therefore, in regard to supplies between 14.7.1992 till 20.7.1994 (date of last supply), the price escalation had to be calculated with reference to the difference between the base price and the actual price at which the respondent purchased washery grade I coal.

d) The award of the Arbitral Tribunal was only in regard to the supplies made between 14.7.1992 to 20.7.1994 when the respondent used washery grade I.

e) The interest payable on the amount found due shall be 21 per cent per annum from the date when the amount became due till the date of the award, and 18% per annum from the date of award till the date of payment.

On 21.3.2006, we recorded briefly the aforesaid agreed position and granted time to the parties to file calculations of the amount due on that basis.

15. The appellant accordingly filed a detailed calculation sheet, the abstract of which is extracted below :-

Supply Period

Quantity (in MT)
Escalated price (Per MT)
Price already paid (Per MT)

Difference in
price (per
MT)
Total
Amount
Re : Tundoo Unit

14.7.1992 to 16.1.1994
5326.98
2469.52
2603.37
2661.71
2428.34
2569.19
2620.53
41.18
219365.04

17.1.1994 to 20.7.1994
1921.06
2852.19
2927.69
2620.53
2696.03
231.66
445032.76
Total
7248.04

Total
660397.80
Re : Vizag Unit

16.7.1992 to 28.1.1993
6421.492
2469.52
2428.34
41.18
264437.04

12.3.1993 to 1.5.1993
416.735
2603.37
2428.34
175.03
72941.13
28.10.1993 to 27.12.93
953.81
2661.71
2587.93
73.78
70372.10
7.2.1994 to 26.2.1994
195.56
2852.19
2587.93
264.26
51678.68
Total
7987.597

459428.95

CST
18377.15

Total
477806.10
Price Escalation: Rs.664397.80 + 477806.10 = Rs.11,42,203.90
Interest up to date of payment (6.2.99) : = Rs.12,75,442.00
Total : Rs.24,17,645.90

The appellant submitted that the said amount of Rs.24,17,646/- was paid in full on 6.2.1999 itself after the trial court judgment and nothing more requires to be paid.

16. On the other hand, the respondent submitted a note stating that a sum of Rs. 43,09,075/- was due, with interest from 17.1.1998, and even after adjusting Rs.24,17646/- paid by appellant on 6.2.1999 and Rs.30,36,149/- (amount deposited by appellant as a condition for stay granted by this Court and withdrawn by respondent on 1.1.2003) a sum of Rs.122,88,796/- is due as on 31.3.2006. The respondent has not filed any calculation-sheet showing the break-up of the said sum of Rs.43,09,075/-. As there was no agreement, we heard further arguments in the matter.

17. The following facts are not in dispute :

(i) The respondent supplied in all 19,033.84 MT of metallurgical coke to the appellant as detailed below :

S.No.
Unit Name
Supplied upto
14.7.2002
Supplied after
14.7.2002

1.
Tundoo
1761.69 MT
7248.040 MT
2.
Vizag
2036.513 MT
7987.597 MT

Total
3798.203 MT
15235.597 MT

(ii) The contract price for supply of metallurgical coke was Rs.2231/MT. If there was any increase in the price of coal used for producing the met. coke, the respondent was entitled to a price increase of Rs.1.65 per MT for every Rs. 1/- per increase in the price per MT of such

coal over and above the base price of such coal (price as on 8.11.1991).

(iii) The price as on 8.11.1991 was Rs. 540.02 per MT for washery grade II coal and Rs. 654.42 per MT for washery grade I coal.

(iv) The respondent purchased and used washery grade II coal for the supplies of coke made between 18.12.1991 to 13.7.1992; and purchased and used washery grade I coal for the supplies of coke made after 14.7.1992 up to 20.7.1994.

(v) The Award of the Arbitral Tribunal grants the escalation only for the supplies between 14.7.1992 to 20.7.1994, when the respondent used washery grade I coal.

(vi) The price of coal was Rs.659.62 per MT in regard to washery grade II and Rs.798.98 per MT in regard to washery grade I coal as on 14.7.1992 and the said price went up further thereafter from time to time.

(vii) The appellant had, in fact, already admitted escalation in the price of coke supplied, worked out on the basis of increases in price of washery grade II coal, and paid the increased prices, as follows (the rates are per MT) :

For supplies to Tundoo Unit :
a) Rs. 2428.34 (14.7.1992 to 16.2.1993).
b) Rs.2562.19 (17.2.1993 and 18.6.1993).
c) Rs. 2620.53 (19.6.1993 to 16.6.1994).
d) Rs.2696.03 (17.6.1994 to 20.7.1994).

For supplies to Vizag Unit :
e) Rs.2428.34 (16.7.1992 to 1.5.1993).
f) Rs.2587.93 (28.10.1993 to 26.2.1994).

18. The dispute arose on account of the fact the respondent who was earlier using Washery Grade II coal [in regard to the supplies upto 13.7.1992] started using washery grade I coal from 14.7.1992, on the ground that it found it difficult to produce the coke of the required specifications, by using washery grade II coal. The appellant initially contended that as respondent was earlier using washery grade II coal, it will escalate the price only with reference to the price increase of washery grade II coal and not washery grade I coal. On the other hand, the respondent contended that as washery grade I coal was used, which was costlier, they should be paid escalation with reference the price of washery grade I coal and not with reference to washery grade II coal. The arbitrators, as notice above, made an award which in principle, was correct. They held that the respondent was entitled to escalation in the price of metallurgical coke, by applying the price variation formula contained in clause (5) of the Purchase Order relating to the Washery Grade I, with effect from 14.7.1992. They rejected the contention of the appellant that the escalation should be worked out only with reference to the prevailing price of washery grade II coal, even if Washery Grade I was used. They also rightly stated that the difference in price for purposes of escalation should be worked out with reference to the base price of coal on 8.11.1991. Where they apparently committed a mistake is in stating that escalation should be worked out with reference to the base price of washery grade II, even when respondent was using washery grade I.

19. Having regard to clause (5) of the Purchase Order, the escalations have to be worked out with reference to the increase in price of coal. If washery grade II coal was used, the difference between the prevailing price of washery grade II and the base price of washery grade II on 8.11.1991, multiplied by a factor of 1.65 was to be the escalation. Similarly, if washery grade I coal was used, the difference between the prevailing price of washery grade I coal and the base price of washery grade I coal on 8.11.1991 multiplied by a factor of 1.65, was the escalation. This meant that if the base price of washery grade II was 'A' (as on 8.11.1991) and base price of washery grade I was 'B' (as on 8.11.1991), and the actual price paid was X for washery grade II and 'Y' for washery grade I, then the escalation would be [Y-B] x 1.65 in regard to supplies between 14.7.1992 to 20.7.1994. But what the respondent did while submitting the calculations before the arbitrators was to take the prevailing market price of washery grade I coal and deduct the base price of washery grade II as on 8.11.1991 and multiply the difference by a factor of 1.65, that is claim [Y-A] x 1.65.

20. The award of the Arbitral Tribunal, as noticed above, holds that the respondent is entitled to price increase only in regard to 7248.040 MT of coke supplied to Tundoo Unit and 7,987.597 MT of coke supplied to Vizag Unit. These quantities indicate that escalation was granted by the Arbitral Tribunal only in respect of supplies from 14.7.1992 when respondent started using washery grade I coal. Washery grade I is a superior variety of coal when compared to washery grade II coad and the price of washery grade I coal was Rs. 654.42 on 8.11.1991 whereas the price of washery grade II coal was only Rs.540.02 as on 8.11.1991. If respondent had to be given escalation from 14.7.1992 in regard to washery grade I coal, necessarily the escalation had to be worked out with reference to the base price of washery grade I coal on 8.11.1991. By no stretch of imagination the price increase can be worked out in respect of supplies from 14.7.1992, by taking the difference between the prevailing price of washery grade I and the base price of washery grade II coal as on 8.11.1991. Let us demonstrate this position with reference to an actual price example. From 14.7.1992, the respondent used washery grade I coal. Admittedly, the price of washery grade I coal on 14.7.1992 was Rs.798.98. Having regard to the escalation clause, price escalation had to be worked out by taking the difference between the price of washery grade I coal on 14.7.1992 (Rs.798.98) and the base price of washery grade I on 8.11.1991 (Rs.654.42) that is Rs. 144.56 and multiply it by a factor of 1.65 which works out to Rs.238.52. But what the respondent claimed was by calculating the difference between the market price of washery grade I coal on 14.7.1992 (798.98) and the base price of washery grade II coal on 8.11.1991 (540.02) that is Rs.258.96 multiplied by the factor of 1.65 and arrive at the escalation as Rs.427.28 per MT. This is in clear violation of the provisions of Clause 5 of the purchase order relating to price variation.

21. The contract only mentioned the specifications of metallurgical coke and did not specify the quality of coal to be used for producing the metallurgical coke. It was open to the respondent to use any grade of coal, provided it supplied the coke of the quality specified. The purchaser was concerned with the specifications of the product it purchased, namely, metallurgical coke. It was not concerned with the quality of the raw material (that is coal) used for producing the metallurgical coal. The price of metallurgical coke was not linked to or based on the basic price of any particular quality of washery coal.

Therefore, neither the respondent nor the Arbitral Tribunal could assume that the contract price of Rs.2231/- was based on the base price of washery grade II as on 8.11.1991. Having regard to the escalation clause, the price increase should be with reference to the coal that is used. It cannot be worked out by taking the difference between the higher cost of superior quality coal and lower base price of inferior quality of coal.

22. In the operative portion, the Arbitrators having correctly stated that the respondent will be entitled to price increase as per the escalation clause and that from 14.7.1992, the price escalation will be with reference to change in the price of washery grade I coal, acted in violation of the specific terms of the contract by stating that - "The base price for determining escalation is the price of coking coal washery grade II coal ruling as on 8.11.1991." This sentence should have actually been as follows: "The base price for determining escalation is the price of washery grade I coal ruling as on 8.11.1991, for determining escalation for supplies from 14.7.1992." A reading of the award shows that what was intended to be given was escalation in terms of an escalation clause in the purchase order. But on account of apparent error in the Award, the calculation of escalation has been done with reference to the prevailing price of superior quality of coal (washery grade I) and the base price of inferior quality of coal (washery grade II) instead of calculating escalation with reference to the prevailing price of the superior quality of coal (washery grade I) and the base price of superior quality of coal (washery grade I). In fact, when queries by us, the learned counsel for respondent could not explain with reference to contrary terms, how the base price of washery grade II coal could be applied to calculate the escalation in coke price produced by using washery grade I coal.

23. The appellant has given calculation fully and correctly which shows that the escalation was only 11,42,203.90. This was what was awarded by the trial court and this amount had been paid with interest of Rs.12,75,442 in all Rs.24,17,646 on 6.2.1999. In spite of our directions on 21.3.2006, the respondent has not given the actual calculations but has furnished only the final figure of claim. The respondent's memo makes it clear that the respondent wants the escalation to be calculated for supplies from 14.7.1992 with reference to the base price of washery grade II coal and not with reference to washery grade I coal. This is impermissible. The order of the Division Bench is unsustainable as it failed to interfere with the portion of the award which is opposed to the specific terms of the contract. On the other hand, the trial court had correctly decided the matter.

24. Therefore, we allow this appeal, set aside the judgment of the High Court and restore the judgment of the trial court. Parties to bear their respective costs.

25. On 11.11.2002, this Court had directed the appellant to deposit a sum of Rs.30,36,149.46 and permitted the respondent to withdraw the same by furnishing bank guarantee. The respondent has accordingly withdrawn the said amount on 1.1.2003. As the appellant has succeeded in full, the respondent shall refund the said sum of Rs.30,36,149.46 to the appellant with interest @ 18% per annum from 1.1.2003 to date of payment. If the payment is made in full within a period of sixty days from today, the interest shall be at a concessional rate of 12% P.A. from 1.1.2003 to date of payment.