

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL PUBLIC WORKS DEPARTMENT

22 JUN 1992

No. DG(W)/COM/47

New Delhi, dated the 17.6.92

MEMORANDUM

Subject : Award of pendentelite interest by Arbitrator.

1. The question whether an Arbitrator has jurisdiction to award pendentelite interest has been reexamined in this Directorate in consultation with Ministry of Law & Justice. Ministry of Law & Justice have advised that the Supreme Court in a recent Judgement dated 12.12.91 in a case- Govt. of Orissa Vs. G.C. Roy has held that where the agreement between the parties does not prohibit grant of interest and where a party claims interest and the dispute (alongwith the claim for principal amount or independently) is referred to Arbitrator, the arbitrator shall have power to award interest pendentelite. This is for the reason that, in such a case, it must be presumed that interest was an implied term of the agreement between the parties and therefore, when the parties refer all their disputes or refer the dispute as to interest as such to the Arbitrator, the Arbitrator shall have the power to award interest. This does not mean that in every case the Arbitrator should necessarily award interest pendentelite. It is a matter within the discretion of the Arbitrator to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

2. In view of the above judgement, Ministry of Law & Justice have opined that the Arbitrator is empowered to award pendentelite interest when the undernoted two conditions are satisfied:-

- a) The agreement does not prohibit grant of interest; and
- b) the dispute (alongwith claim for principal amount or independently) is referred to the arbitrator.

3. All concerned are therefore requested to keep the above position in view while dealing with such cases. If there are any cases where arbitral awards have been challenged in Courts of Law and where award of pendentelite interest was the only issue, these cases may be re-examined in the light of above advice of Ministry of Law. Since such cases are no more sustainable in law, these may be considered by competent authorities for withdrawal from Courts.

(VJAY NORTANI)
P.O. TO D.G. (WORKS)

(Issued from file No. 1/10/92-R&C-759D)

To

1. All CEs in CPWD & PMD(DA).
2. All SEs/EEs/SSNs/Project Manager/Director of Hort./Dy. Director of Hort., in CPWD & PMD(DA).

...2/-