

(1987) 01 DEL CK 0062
In the Delhi High Court
Case No : F.A.O. (OS) No. 152 of 1985

College of Vocational Studies

APPELLANT

Vs

S.S. Jaitely

RESPONDENT

Date of Decision : 30-01-1987

Acts Referred:

Arbitration Act, 1940 — Section 14, 20, 30, 30(a)
Evidence Act, 1872 — Section 1

Citation : AIR 1987 Delhi 134

Hon'ble Judges : S.S. Chadha, J; S.N. Sapra, J

Bench : Division Bench

Advocate : Ishwar Sahai with Ms. Poonam Choudhary, for the Appellant; S.L. Watel, P.L. Sharma and D.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.N. Sapra, J.—By this first appeal, the appellant, the Principal College of Vocational Studies, seeks to challenge the judgment dated May 31, 1985 passed by the learned Single Judge in suit No. 1540-A of 1983, whereby the award dated October 10, 1983 has been made a Rule of the Court and decree in terms of the Award has been passed.

2. By an agreement dated May 2, 1978 entered into between the appellant and M/s. S. S. Jaitely, Engineers and Contractors (hereinafter referred to as the Contractor), the contractor agreed to construct the building of the college of vocational studies at Sheikh Sahai, Phase II, New Delhi on the terms and conditions contained therein. Under the terms and conditions of the agreement, the work was to commence w.e.f. April 25, 1978. The total value of the work awarded to the contractor by the appellant was Rs. 18,68,160/-. The work was to be completed by August 24, 1979. Clause No. 31 of the agreement is a clause for extension of time. Clause 50 relates to the price escalation. Clause 45 of the Contract is an arbitration clause with the stipulation that in case, the claim in dispute is Rs. 50,000/- or above, then the arbitrator shall give reasons for his

award.

3. From the facts on the file it appears that the Contractor commenced the work with effect from April 25, 1978. However, by a letter dated July 24, 1978, the Contractor made a grievance to the appellant that first and second running bills were still pending and in accordance with the terms and conditions of the contract, the Contractor was to be paid on 4th of every month and that by this time three bills should have been paid. However, the Contractor by his letter dated July 29, 1978 withdrew his earlier letter dated July 24, 1978. By his letter dated November 25, 1978, the Contractor assured the appellant that the Contractor would be able to finish the work of the college building before the stipulated time. Again the Contractor vide letter dated April 7, 1979 made various grievances to the appellant to the effect that the regular bills were not being paid to the Contractor by the appellant for the work done. In this regard the Contractor made the mention that though the work was commenced on April 25, 1978 and the Contractor submitted the bills in time but the payments were made after four months, i.e. in October and November, 1978. The Contractor for the first time complained in this letter that the sanctioned drawings were made available to the Contractor for the first time on August 6, 1978 and that it was only in October, 1978 and on January 15, 1979 that the first and second instalments of the architectural and structural drawings were made available. The appellant vide his letter dated April 9, 1979 refuted the allegations of the Contractor as contained in his letter dated April 7, 1979. The appellant in reply stated that the drawings fully sanctioned were made available to the Contractor by the Architects absolutely in time and even before the Contractor prepared the time schedule. Regarding the payments, the appellant stated in his reply that the payments had been made to the Contractor absolutely in time as and when bills were received in the College after due verification from the Architects as per the terms of the contract. However, vide letter dated April 19, 1979, the Contractor withdrew his letter dated April 9, 1979.

4. However, a meeting to review the progress for the construction of the college was held in the office of the Principal on May 30, 1979. Amongst others the Principal, the Architect Mr. Bose and the Contractor Mr. S. S. Jaitely were present. In this meeting the period of completion of the work was extended up to December 31, 1979. The Contractor also assured that he would from then onward increase the labour force skilled and unskilled. Except for penalty clause the Contractor agreed to the decision taken in this meeting. Vide letter dated November 17, 1979 the Contractor cancelled the Agreement.

5. The Contractor filed a petition being suit No. 165A of 1980 u/s 20 of the Arbitration Act, 1940 in this Court. In this petition, the Contractor raised various disputes and under these disputes claimed various amounts. Vide Judgment dated July 25, 1980 D. R. Khanna, J. allowed the said petition and made a reference of disputes to the arbitrator to be nominated by the Principal, College of Vocational Studies, in term of Clause 45 of the agreement dated May 2, 1978.

In pursuance of the order of the Court, the Principal of the College of Vocational Studies, appointed Shri K. C. Goyal as the sole arbitrator to adjudicate upon the disputes raised by the Contractor as well as the appellant.

6. The Contractor filed the statement of claim before the arbitrator and claimed the following amounts :

A. For refund of Security deposit of

Rs. 9,023.00

B. For value of work done, materials forfeited, escalation on steel and Cement (as per final bill) submitted by the claimants.

Rs. 3,43,280.94

B(i) For value of claimants T & P at site by the respondents

Rs. 92,271.00

C. For release of Bank Guarantee

Rs. 32,000.00

D. For infructuous expenditure and cost of enabling structures :

Rs. 30,000.00

E. For loss of profits on work abandoned

Rs. 1,15,285.00

F. For pendente lite and future interest at 18% per annum on the sum awarded from the date it became due for payment

G. For costs of arbitration

7. The appellant resisted all the claims of the Contractor and also made the following counter claims before the arbitrator;

Total value of work to M/s. S. S. Jaitely Amounts received by the claimants

Rs. 18,68,160.00

Rs. 7,47,264.00

Rs. 11,20,914.00a

Value of work as per lowest tender for the balance work (M/s. Capital Construction Co.)

Rs. 19,27,452.00B

Difference (B-A) payable by the claimants under Clause 34 of the Agreement

Rs. 8,06,538.00

2. Liquidated damages under clause 30 for non-completion of the work in stipulated time - 10% of the contract amount

Rs. 1,86,816.00

3. Losses incurred on A/c of rent of college building for non completion in time on 31-12-1979 Rent of present building from 1-1-80 to 31-3-1981 at Rs. 7200/- per month

Rs. 1,08,000.00

4. Losses due to rent of Principal's bungalow from 1-8-1979 to 31-3-81 at Rs. 500/- per month

Rs. 10,000.00

Rs. 11,11,354.00

5. Rent of Class IV Staff quarters from 1-1 -HO to 31-3-1981

Rs. 12,000.00

6. Watch & Ward 3 persons from 1-1-80 to 31-3-81

Rs. 10,125.00

7. Actual expenditure incurred on arbitration (Tentative)

Rs. 50,000.00

8. Losses on Architect's fees on Rs. 8,06,538/- at 4%

Rs. 32,061.00

9. Losses due to escalation in Sanitary and Electrical works which could not be completed due to non completion of the building work by the claimants (Tentative)

Rs. 50,000.00

10. Amount recoverable vide XIth RA bill detailed under para 29

Rs. 25,772.66

Total Rs. 12,91,512.66

Credit to which the Claimants are entitled :

1. Cost of unused materials left at site to be utilised on the work by the Contractor for the balance work as per R-20/B

Rs. 78,966.44

2. Cost of tools and plants to be adjusted against liquidated damages, as per R-20/C

Rs. 39,909.00

Total

Rs. 1,15,875.44

Net payable by M/s. S. S. jaitley

Rs. 11,75,637.22

8. The Contractor also denied each and every claim made by the appellant before the arbitrator. The arbitrator entered upon the reference and commenced the arbitration proceedings for the purposes of adjudicating upon the disputes between the parties. However, during the course of arbitration proceedings before the arbitrator, the appellant made an application being I. A. No. 3348 of 1982 in suit No. 165 A/80 thereby seeking relief that the counter claims as made by the appellant be also referred to the said sole arbitrator. By order dated January 11, 1983 D. R. Khanna, J. directed that the counter claims of the College of Vocational Studies were also covered by the order of reference and as such the counter claims were liable to be adjudicated upon by the arbitrator.

9. The Contractor filed various documents before the Arbitrator but did not lead any oral evidence. The appellant filed various documents and also produced three witnesses.

10. Mr. K. C. Goyal the arbitrator made and published his award on October 10, 1983. By this award, the arbitrator rejected all the counter claims made by the appellant. Regarding the claims of the Contractor, the arbitrator awarded a total sum of Rs. 3,15,541.63 plus interest at the rate of 15 per cent per annum reckoned from March 27, 1980 till the date of the award and also future interest at the rate of 12 per cent per annum on the entire amount of the award excepting the amount awarded under claim "C". The Contractor filed an application being suit No. 1540-A/83 u/s 14 of the Arbitration Act, 1940 for filing of the award in the Court. The appellant filed objections u/s 30 of the Arbitration Act, 1940 thereby challenging the aforesaid award on various grounds contained therein. The learned Single Judge however, was pleased to dismiss the objections of the appellant vide judgment dated May 31, 1985 and modified the award to the extent that in place of Rs. 3,15,541.63 the Contractor would be entitled to Rs. 3,00,541.63 on claims A, B, B1 and D. The Contractor further would be entitled to Rs. 46,704/- under the head "B" (for loss of profits) and also interest at the rate of 12 per cent per annum on Rs. 3,47,245.63 from the date of the award till the date of passing of the decree.

11. Mr. Ishwar Sahai, Learned Counsel for the appellant, firstly submitted that the arbitrator has misconducted himself and has exceeded the terms of reference as he has not given any reasons in allowing and awarding various amounts in favour of the Contractor. He has submitted that the arbitrator has only given his conclusion in awarding the amounts without giving any reasons. Mr. Sahai has further submitted that under law, when the arbitrator was required to give

reasons under terms of agreement, the arbitrator should have dealt with the contention of the parties with facts and dates and should, have given a reasoned award.

12. Before dealing with the contention of Learned Counsel for the appellant as well as Mr. Watal Learned Counsel for the respondent it will be appropriate to refer to the various judgments which have been relied upon by Id. counsel for the parties, during the course of argument before us.

13. In Smt. Santa Sila Devi and Another Vs. Dhirendra Nath Sen and Others, , the Supreme Court has observed as follows :

Before dealing with this point it is necessary to emphasise certain basic positions. The first of themat a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal See Selby v. Whitbread and Co., (1917) 1 KB 736 at p. 748). Besides it is obvious that unless the reference to arbitration specifically so requires, the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference. Vide Re. Brown and the Croydon Canal Co. (1839) 9 Ad and Ell 522 : 112 ER 1309 and Jewell v. Christie (1867) 2 CP 296. Further, as Parke, B. himself put it during the course of arguments in (1853) 138 ER 1254 :

Unless the contrary appears the Court will presume that the award disposes finally of ail the matters in difference." and to repeat a sentence from the extract quoted earlier :

Where an award is made de premises ,the presumption is that the arbitrator intended to dispose finally of all the matters in difference; and his award will be held, final, if by any intendment it can be made so.

We shall approach the argument addressed to us in the light of these considerations. Now the award opens with a paragraph which recites, after setting out the reference :

Whereas I have heard and duly considered all the allegations advanced evidence adduced before me regarding the respective cases of the parties.... I do hereby make and publish this, my award in writing as to all the disputes mentioned above.

It need hardly be added that the arbitration agreement and the statements filed extracts from which we have set out earlier were among the documents incorporated with this award and included among the matters considered by the arbitrator which disputes he intended to resolve by this award. The award, therefore, on its face intended and purported to decide all the disputes raised for this adjudication and therefore the Court will assume that he has considered and disposed of every claim made or defence raised. Since the award now impugned expressly states that it is made "de premises "i.e. of and concerning all the

matters in dispute referred to the arbitrator, there is a presumption that the award is complete. In the circumstances the principle of construction enunciated by Parke B. aptly covers the case and the silence of the award as regards the claim for accounting must, therefore, be taken to be intended as a decision rejecting the claim to that relief."

In *Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore*, the Supreme Court has observed as follows :

On a consideration of the contentions, and submissions of the parties, the arbitrator directed the appellant to pay Rs. 1,17,108.79 and to give up its claim to 46½ bales. As the respondent was allowed to retain the bales, the arbitrator passed a lump sum award for Rs. 1,17,108.79 only in respect of both items of the respondent's claim. The arbitrator could give a lump sum award. He was not bound to give a separate award for each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it. In AIR 1923 66 (Privy Council) , the Privy Council stated :

An error in law on the face of the award means in Their Lordships view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.

In the present case, the arbitrator gave no reason for the award. We do not find in the award any legal proposition which is the basis of the Award, far less a legal proposition which is erroneous. It is not possible to say from the award that the arbitrator was under a misconception of law. The contention that there are errors of law on the face of the award is rejected."

In *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.,* , the Supreme Court has observed as follows :

...it is well settled that the Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out whether or not the arbitrator has committed an error of law and that the award of the arbitrator can be set aside on the ground of error of law on the face of the award only when in the award or in a document incorporated with it, as for instance a note appended by the arbitrator stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. In the present case, the affidavits filed by the parties before the arbitrator are not incorporated in the award and it is, therefore, not permissible for the Court to examine these affidavits in order to ascertain whether the arbitrator has committed any error of law. In *Hodgkinson v, Fernie.* (1857) 3 CB (NS) 189 at p. 202, the law on this point has been clearly stated by William, J. as follows :

"The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact. the only exceptions to that rule, are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established, viz., where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.

In the President, State of Orissa and Another Vs. Kalinga Construction Co. (P) Ltd., the Supreme Court has observed as follows :

A bare perusal of the judgment of Misra J. would show that he decided the matter as if he was entertaining an appeal against the award itself. He re-examined and re-appraised the evidence which had been considered by the arbitrator and held that the arbitrator was wrong in coming to the conclusion that the work was done by manual labour alone.....

The arbitrator had believed the statement of the Chief Engineer that Ext. P-6 had neither been issued under his authority nor with his approval. Once this part of his statement was believed by the arbitrator it was not open to Misra, J. to sit in appeal over the conclusion of the arbitrator in proceedings for setting aside the award.

In Union of India (UOI) Vs. Mohan Lal Capoor and Others, the Supreme Court has observed as follows :

We next turn to the provisions of Regulation 5(5) imposing a mandatory duty upon the Selection Committee to record "its reasons for the proposed supersession". We find considerable force in the submission made on behalf of the respondents that the "rubber stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. This apology for reasons to be recorded does not go beyond indicating a conclusion in each case that the record of the officer concerned is not such as to justify his appointment "at this stage in preference to those selected.

However. this judgment is under the provision of Regulation 5(5) of IAS/IPS (Appointment by Promotions) Regulations 1955.

14. In N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, the Supreme Court has observed as follows :

An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can say is erroneous (see AIR 1923

66 (Privy Council) . In Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., this Court adopted the proposition laid down by the Privy Council and applied it. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law.

15. In K.P. Poullose Vs. State of Kerala and Another, the Supreme Court has observed as follows :

Under Section 30(a) of the Arbitration Act an award can be set aside when an arbitrator has misconducted himself or the proceedings. Misconduct u/s 30(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision.

16. In Hind Construction Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by Lrs Vs. State of Maharashtra, the Supreme Court has observed as follows :

It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasised portion of the aforesaid statement of law is based on *Lamprell v. Billericay Union*, (1849) 3 Easch 283 at P. 308; *Webb v. Hughes*, (1870) 10 Eq 281 and *Charles Rickards Ltd. v. Oppenheim*, (1950) 1 KB 616.

17. In Delhi Development Authority Vs. Alkaram, this Court has observed as follows :

Under Section 30. Arbitration Act the Court exercises a limited jurisdiction and can only deal with matters within a limited scope. When the arbitrator gives reasons for his award this does not open the door to the Court to see what the contention of each party was and what was the evidence given by the parties on it, and then examine the evidence to see whether the disputed findings of fact are sufficiently supported by the evidence. The theory propounded before us that the Court can see the "reasonableness of the reasons" if accepted.

would cut at the root of the whole purpose of arbitration, the basic idea of which is that the arbitrator's decision shall be final, (per Wilmer L. J. in *Tersons Ltd v.*

Steven age Development Corporation, (1963) 3 All ER 863, 867).

The general rule therefore is that the award is final as to both fact and law. An exception to this general rule is the doctrine that error of law, if it appears on the face of the award is a ground for setting it aside, (See Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, : Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), ; Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI), New Delhi,). If these principles were had in mind much of the challenge which was taken to the award before us is beside the mark altogether.

It will be right to point out here that though the arbitrator by the terms of the arbitration clause is required to give reasons for the award he is not to write a detailed judgment as we judges do in courts. The requirement of reasons meets the elementary demand of the parties to be told "the reason why" for a particular conclusion arrived at by the arbitrator. For the arbitrator it is an act of self-discipline. But to say that the court will be entitled to examine the "reasonableness of the reasons" is to allow the concept of reasons to run wild. The theory is a disguised attempt to turn questions of fact into questions of law with a view to having them retried by the court, with the result that all the objects sought to be attained by means of arbitration - decision by the tribunal chosen by the parties, and finality and quickness and cheapness - would be defeated by protracted proceedings in the courts, as has happened in this case before the single Judge and before us. There is a danger of attempts being made to reopen issues of fact which are concluded by the arbitrator's findings..... However, sufficiency and quality of evidence is a matter for the arbitrator. The Court is not permitted to reappraise the evidence and sit as a Court of appeal over the arbitrator's award. P. B. Mukharji, J. (as he then was) has expressed this very succinctly in Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd., as follows :

In my opinion appraisement of evidence by the Arbitrator is ordinarily never a matter which this Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of evidence. It is not a question here in this case of any violation of natural principles of justice in refusing to give a hearing to any party or in refusing to have the evidence of a particular party. The arbitrator in my opinion is the only Judge of the quality or the quantity of evidence and it will not be for this Court to take upon itself the task of being a Judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the Arbitrator but that by itself is no ground in my view of setting aside an award of an arbitrator. It is familiar learning but requires emphasis that by Section 1. Evidence Act the Evidence Act in its rigour is not intended to apply to proceedings before an Arbitrator

The ratio of a judgment in Delhi Development Authority Vs. Uppal Engineering Construction Co., is similar to that of case Delhi Development Authority Vs. Alkaram, .

18. From the judgments, as mentioned above, the legal position in brief emerges as under. There are limits for judicial reviewability and the Courts exercise limited jurisdiction in the proceedings for setting aside an award u/s 30 of the Arbitration Act, 1940. The Courts do not exercise appellate jurisdiction over the verdict of an arbitrator and as such cannot go into the merits of the case nor the Courts can reappraise and re-examine the evidence led before the arbitrator. Unless it is specifically agreed between the parties by means of an arbitration agreement, the arbitrator is not bound to give reasons for his verdict, in other words, the arbitrator can give a non speaking award unless he is required by means of an agreement or terms of reference to give reasons for his award. The Courts also cannot look into the insufficiency of the evidence led before the arbitrator. When the arbitrator is required to give reasons, it is not for the Courts to see the reasonableness of the reasons given by the arbitrator or sufficiency of the reasons. However, what reasons are required, it depends upon the facts of each case.

19. Misconduct u/s 30(a) of the Arbitration Act does not mean only a moral lapse but it comprises legal misconduct which is complete, if the arbitrator on the face of the award arrives at an inconsistent conclusion even on his own findings or arrives at a decision by ignoring material documents which throw abundant light on the controversy between the parties and can help in arriving at a just and fair decision. An error of law on the face of the award does not mean an error found in the arbitration proceedings or the documents submitted by the parties or the evidence led by the parties before the arbitrator. An error of law on the face of the award means what the Court can find in the award or a document, actually incorporated or annexed thereto. As stated above, the Court cannot sit in appeal to reexamine and re-appraise the evidence considered by the arbitrator and once a statement or part of the statement given by a witness before the arbitrator has been believed or disbelieved by the arbitrator, it is not open for the Court, in the proceedings for setting aside the award, to re-examine such part of evidence and arrive at a different conclusion than what the arbitrator had arrived at. Where under an agreement the arbitrator is required to give reasons for his award, he is not required to give a detailed judgment or detailed reasons. By reasons it means that the award should be speaking one. In the reasoned award what is expected from the arbitrator is that he should indicate his mind whereby it can be ascertained as to how he has arrived at a particular conclusion. In case of reasoned award, the arbitrators required to indicate the trend of his thought process but not his mental meanderings, the purpose of commercial arbitration, being speedy certainly and a cheaper remedy. When the finding of the arbitrator is based on no evidence, then certainly the Court can go into such finding and set aside such an award as being perverse. The arbitrator is entitled to decide rightly or wrongly but if an error of law appears on the face of the award, then the Court can interfere and set aside the award.

20. One of the basic points for the determination, according to the arbitrator, was as to whether the Contractor was justified in cancelling the contract dated May 2,

1978 and if the Contractor was not justified then could the Contractor be liable for the counter claims as made by the appellant. The finding of the arbitrator in his award on this point is as under :

I find that it stands proved that there was a failure on the part of the respondents to provide the requisite drawings for the commencement of the work in time and subsequent failure to supply the relevant drawings in a continuous and systematic manner, which failure continued till the final cancellation of the Contract by the claimants. As regards the allegations, that the payments of the running bills were abnormally delayed on several occasions because of paucity of funds, I hold that the Claimants have proved their point beyond any measure of doubt, by referring to the ledger entries filed before me by the respondent's witness Sri Subhash Arora. I would, however, not see much force in the claimant's allegations, if such delayed payments were a stray incident, but I find that this failure was repetitive in this case and so I cannot brush aside the default.

21. The first submission made by Mr. Ishwar Sahai, Learned Counsel for the appellant is that the arbitrator has not given any reasons for his aforesaid findings. His contention is that these are only the conclusions and findings of the arbitrator and he has failed to give any reason as to how he has arrived at such conclusions. He has further argued that the facts and circumstances stated in the award preceding the aforesaid findings are the allegations, counter allegations and the contentions raised by the parties before the arbitrator and these cannot be termed as reasons. The second contention of Mr. Sahai is that even these findings are perverse because there is no evidence on the record to support such findings. His third submission on this point is that the arbitrator has misconducted the proceedings as he has not considered a very material document i.e. the minutes of the meeting held on May 30, 1979 to review the progress of the construction of the college building in which the Contractor was also present. His submission is that this document is very material as it throws an abundant light on the matter in controversy for a fair and just decision.

22. Mr. Watel, Learned Counsel for the respondent on the other hand has submitted that the facts mentioned by the arbitrator preceding the aforesaid findings are his reasons, and that there is sufficient evidence on the record to support the aforesaid finding. This argument of Mr. Watel is without any force. Mr. Watel has relied upon the case, Delhi Development Authority Vs. Alkaram, and has argued that his contentions are fully covered by the ratio of the judgment in that case. No doubt the arbitrator is not required to give the detailed reasons but the requirement is that he must indicate his mind as to how he has arrived at a particular finding. We are not examining the reasonableness of the reasons, but whether the Arbitrator has given any reason. In our view the arbitrator has not given any reasons for coming to the aforesaid conclusions. The said DDA case (supra) was in fact a case of a reasoned award and one of the points was, whether there was any evidence in support of the reasons/

conclusions of the arbitrator. For instance in that case, the arbitrator on each claim gave his award and then, thereafter stated his reasons for arriving at a particular finding. The claim No. 1 was justified to the extent of Rs. 30,033.15. Under this claim the length of the gaps was worked out to 3138.26 metres and the rate of payment of filling the gaps was worked out at Rs. 9.57 per metre. So there were reasons for arriving at such a conclusion. So is the case with regard to the other claims. This is not the case with regard to the present award.

23. The facts and circumstances, as mentioned by the arbitrator in his award preceding the aforesaid findings of the arbitrator, with regard to the failure on the part of the respondent to provide the requisite drawings and also with regard to the delayed payment of the running bills, are not the reasons, but the same are allegations and the counter allegations made by the parties and the contentions raised by them. A reading of the contents of the award preceding these findings will show that these are not the reasons given by the arbitrator for coming to the aforesaid conclusion. The words "The claimants have further alleged" find mention at two places preceding the aforesaid findings, which show that these facts were merely stated by the parties in support of their cases.

24. Moreover, we find that there is no evidence on the record to show that there was a failure on the part of the appellant to provide requisite drawings for the commencement of the work or there was a continuous and systematic failure which continued till the final cancellation of the contract by the Contractor in November, 1979. In his letter dated April 7, 1979 the Contractor himself has admitted that the sanctioned drawings were made available to the Contractor for the first time on August 6, 1978 and it was only in October, 1978 and on January 15, 1979 that the first and second instalments of the architectural and structural drawings were made available. However, in the award the arbitrator has mentioned about the statements made by the Contractor to the effect that the failure on the part of the appellant to supply the requisite drawings dragged on till February 1, 1979. But in his findings, the arbitrator has held that such failure as to provide the requisite drawings in the commencement of the work in time and subsequent failure to supply the relevant drawing was in a continuous and systematic manner which continued till the cancellation of the contract by the Contractor, that was in November, 1979. There is no evidence on the record to support this finding. As such the same is perverse.

25. Regarding the finding with regard to the delayed payments Mr. Ishwar Sahai has submitted that except for first two running bills, the payments were made in time after verification by the Architect of the bills of the Contractor as per the terms of the Agreement. It is correct according to the record, that only the payments under the first two running bills were delayed. The payment under the subsequent running bills were made in time in accordance with the agreement, by the appellant to the Contractor. He submits that the finding of the arbitrator to the effect that the failure with regard to the payments was repetitive is without any evidence on the record and as such the same is perverse. Mr. Watel has

however, submitted that this finding is correct as the arbitrator has based this finding by referring to the ledger entries filed before the Arbitrator. From the record it is apparent that except for the payments under the first two running bills, which were delayed, all the bills were made within time under the terms of the agreement. Thus, we are of the view that the finding of the arbitrator to the effect that with regard to the payment there was a repetitive failure on the part of the appellant, is perverse.

26. The document containing the minutes of the meeting held on May 30, 1979 to review the progress of the work in question, was a material document for the purposes of a fair and just adjudication of the difference between the parties. If we just go through this document it becomes clear that in this meeting the Contractor, who was present, raised no objection, whatsoever, except the penalty clause, to the various decisions taken in the meeting and reduced into writing. The Contractor did not raise any objection as to his difficulty that the sanctioned drawings were made available to him for the first time on August 6, 1978 and that it was only in October, 1978 and on January 15, 1979 that the second instalment of the architectural and structural drawings were made available. From this document it becomes clear that the progress of the construction of the college building was extremely unsatisfactory and the Contractor was told categorically to keep up the schedule of work. The Contractor undertook to complete the construction of the building by December 31, 1979 and gave the assurances that he would from then onward increase the labour force. In this meeting architects were also present and they pointed out that the Contractor was not bringing the cement at site in spite of the special quota for the cement allocated to the college. It is inconceivable that the Contractor would have made these promises and given the assurances if the complete drawing had not already been made available to him. Similarly, regarding the payments of bills, the Contractor made no grievance in this meeting. Thus, in our view this document is a very material document which throws a light for a fair adjudication of the disputes between the parties. By ignoring this document, the arbitrator has not only misconducted the arbitration proceedings but the award suffers from a manifest error on the face of it.

27. Claim No. "B" for Rs. 3,43,280.94 and B-1 for Rs. 92,271/- made by the Contractor relate to the final bill for the various structures and the valuation of the materials, tools and plants which were allegedly confiscated by the appellant at the time of rescinding of the contract. The award of the arbitrator on these two claims is as under :

I have meticulously gone through the aforesaid exhibits and the contractual stipulations pertaining to them, and have also analysed the rates for extra items which are in dispute and have arrived at the conclusion that the Claimants are entitled to receive an amount of Rs. 2,91,518.63 only against these claims. I, therefore, award an amount of Rs. 2,91,518.63 (Rupees two lakhs ninety one thousand, five hundred eighteen and paise sixty three only) against claims "B"

and B-1 of the Claimants.

Mr. Ishwar Sahai has contended that the arbitrator has not given any reason, whatsoever, for awarding a sum of Rs. 2,91,518.63 against the appellant. He has further contended that in deciding and adjudicating upon the claims B and B-1 of the Contractor, it was not a mere matter of computation and that no evidence was led by the Contractor as to the rates of the tools and plants, and as such, the arbitrator could not himself analyse the rates of the tools and plants. No evidence was also led on the other items including the extra items. Mr. Watel on the other hand submits that reasons for arriving at the finding under claims B and B-1 are to be found in the award and the documents filed before the arbitrator. He further submits that in fact the arbitrator has made his own analysis by correcting various entries in red ink in the concerned document and for finding the reasons, the reference should be made to the documents and exhibits and one will find the reasons on the basis of which the arbitrator has awarded the aforesaid amount of Rs. 2,91,518.63 against claims B and B-1. We are unable to accept the contentions made by Mr. Watel.

28. A bare reading of the finding against these two claims B and B-1, will show that the arbitrator has merely given his conclusions and verdict without giving any reasons. Reasons are the links on the material, documentary or oral evidence, adduced before the arbitrator, on which certain inferences are drawn and conclusions are made. There must be some rational nexus between the two indicated in the award. The arbitrator may not set out every process of reasoning or may not deal with every point raised but must, when he is called upon to give reasons, to tell the "reason" why he came to the particular conclusion. It is not possible for us to find out as to how and why the arbitrator has arrived at the said figure of Rs. 2,91,518.63. During the course of arguments, we asked Mr. Watel to tell us even now, as to how this amount of Rs. 2,91,518.63 had been worked out. Even he could not tell us how this amount had been worked out by the arbitrator. There is no indication of the mind of the arbitrator in arriving at such a conclusion in awarding this amount of Rs. 2,91,518.63. We are of the view that these findings against claims B and B-1 are without any reason, whatsoever, and as such the arbitrator has not only misconducted the arbitration proceedings but has exceeded the terms of reference under which he was required to give reasons for his findings. As we have already held that the finding of the arbitrator to the effect that the Contractor was justified in cancelling the agreement, are perverse and the arbitrator has misconducted himself and the arbitration proceedings, so the award of the arbitrator against other claims of the Contractor and counter claims of the appellant are also liable to be set aside.

29. In view of the aforesaid circumstances we allow this appeal and set aside the judgment under appeal. The award dated October 10, 1983 is also set aside. The appellant is awarded costs of the appeal.

S.S. Chadha, J.

30. I agree.