

(1977) 03 KL CK 0020
In the High Court Of Kerala
Case No : M.F.A. No. 49 of 1976

Commander Works Engineers

APPELLANT

Vs

Eapen Verghese

RESPONDENT

Date of Decision : 07-03-1977

Acts Referred:

Arbitration Act, 1940 — Section 30, 39(1)
Constitution of India, 1950 — Article 299, 299(1)
Government of India Act, 1935 — Section 175(3)

Citation : (1977) 03 KL CK 0020

Hon'ble Judges : R.Bhaskaran, J;Chandrasekhara Menon, J

Bench : Division Bench

Advocate : K. Parasaran, General, for the Appellant; S. Narayanan Potti and Sankarasubban, for the Respondent

Final Decision : Dismissed

Judgement

Chandrasekhara Menon, J.—The Respondent in this appeal entered into a contract with the Union of India for the construction of an access road to N.A.D. (Naval Armament Depot), Alwaye. The work under the contract consisted mainly of excavation of earth from the quarry, transporting of earth to the place, where the embankment on which the road to be laid has to be raised and raising the embankment. The contract was a lump sum contract for a sum of Rs. 5,48,659 and was predominantly a labour contract. During the course of the execution of the work a dispute arose between the contractor (the Respondent) and the Commander Works Engineers, Cochin - the Appellant herein - who on behalf of the Union of India was seeing to the execution of the work. It can be said that the dispute mainly centered around "the nature of the soil" to be excavated from the quarries viz., whether it is ordinary rock (laterite) or hard soil. As non payment for extra expenditure for excavating the ordinary rock would have materially affected the progress of work, reference was made to the Arbitrator during the currency of the contract itself. The contract had provided (in para 70 of General Condition of Contract I.A.F.W. 2249) that unless the parties otherwise

agree reference to arbitration shall not take place until after the completion, alleged completion or abandonment of the works or the determination of the contract. In the particular circumstances the reference to arbitration was made as agreed to by the parties. The provision for reference to arbitration in the contract - para 70 referred to above is to the effect that all disputes, between the parties to the contract, other than those disputes for which the decision of the C.W.E. - Commander Works Engineers - or any other person is by the contract expressed to be final and binding shall after written notice by either party to the contract to the other of them - be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents. The Arbitrator appointed was a Senior Officer in the department - a Superintending Engineer - who no doubt retired during the course of arbitration and his award was published on 6th July 1972 after his retirement from service, which was on 21st November 1971. The contractor submitted his various claims before the Arbitrator and the Appellant submitted his objections thereto. The Arbitrator passed an award for Rs. 8,91,561?36 altogether for the claims of the contractor allowed by him.

2. The Respondent-contractor filed O.P. 38 of 1972 in the Court of the Additional Subordinate Judge for a decree in terms of the award. The Appellant as Respondent in the said O.P. filed application I.A. 4762/72 in the same court for setting aside the award or modification of the same. The award was challenged on the grounds:

(i) there is legal misconduct inviting court's jurisdiction u/s 30 (a) of the Arbitration Act; and

(ii) there is error apparent on the face of the record. After a detailed discussion of the case the award was accepted by the learned Sub Judge and a decree was passed in accordance with the award. The contractor-Respondent herein was held entitled to 6 per cent interest from the date of decree till date of realisation on the amount held due to him. The parties were directed to suffer costs of the proceedings.

3. Aggrieved by the order of the Subordinate Judge, the Commander Works Engineers, has approached this Court for relief u/s 39(1)(vi) of the Arbitration Act.

4. The contentions taken up by the Appellant can be summarised as follows: The Arbitrator had deviated from the terms of the contract by which he has to pass an award and has really exceeded his terms of reference. The General Conditions of Contract I.A.P.W.-2249 and M.E.S. Standard Schedule of Rates form part of the contract and the Arbitrator was required to pass his award in terms of the contract. This the Arbitrator has ignored. According to the Arbitrator the extra work involved due to presence of rock at the quarry immediately below the surface soil amounted to radical change in the contract work and not merely a deviation as contemplated under the agreement. But all these circumstances

were such as were taken care of even at the time of entering into contract and were provided for under the term "deviation". Whenever the contractor has to execute such work by deviation, payment has to be made to him in accordance with the terms of the contract. If really it was the case of the contractor that these things have resulted in a radical change of the contract, then he should have come for a fresh arrangement, because the radical change can be recognised only under a fresh agreement. It was also contended at the time of argument that the contractor cannot plead a case of implied agreement based on the circumstances of the case, because of the mandatory provisions in Article 299 of the Constitution. The Learned Counsel for the Appellant, Sri Parasaran, Advocate-General of Madras very strongly contended that the Arbitrator in proceeding on the basis of a radical change in the contract has acted without jurisdiction. This contention was based on Clause 7 of the Contract I.A.P.W.-2249 wherein it was provided. "The contractor shall not make any alteration, in addition to or omission from the works as described in the tender documents except in pursuance of the Chief Engineer. No work that radically changes the original nature and scope of the contract shall be ordered as a deviation and in the event of disagreement between the contractor and the Accepting Officer, the decision, of the next higher authority (or Chief Engineer in the case of contracts accepted by him) shall be final and binding on the contractor". The Learned Counsel pleaded that the action of the Arbitrator in this matter being absolutely without jurisdiction, the fact that objection was not taken before the Arbitrator or even in the court below in regard to this jurisdictional question will not be of any significance. It was also contended on behalf of the Appellant that the Arbitrator's jurisdiction in the nature of the agreement extends only to matters arising out of the contract.

5. The Appellant urges that the award is vitiated by errors of law apparent on the face of the record. The Appellant had objected to the following claims awarded by the Arbitrator:

According to Appellant claim No. 6-A and 6-B really constitute one composite claim for application of the rates provided in Clause 17 (a) (iv) in Section 1 - General Rules of M.E.S - Standard Schedule Rates. The Arbitrator had awarded separate amounts under each of these two heads even though the claim under 6-A really covered the claim under 6-B if the rates provided under Clause 17 (a) (iv) of the S.S.R. is correctly applied. It is said that the Arbitrator has thus led himself into a clear error in awarding damages for the same purpose twice over. Claim No. 6-B related to extra payment for working in foul position and tidal conditions. The work site is situate at a distance of about 17 kilometres from sea-coast and is not affected by tides and is not in foul position. Therefore, no claim is admissible under 6-B. Even assuming that there were tidal conditions at the site of the embankment, the Arbitrator had to arrive at the amount payable to the contractor by finding out the quantum of work done in actual tidal conditions and foul positions and apply the extra co-efficient as stipulated in Clause 17 of the S.S.R. which is a part of the contract. Clause 17 provides that the rates

therein should apply to actual work done in the foul position or liquid mud and interrupted by tides. The clause also provides that the rates so stipulated are inclusive of loss of materials, tools and plants or reinstatement of damage in connection with such work. But the Arbitrator failed to comply with the terms of Clause 17. He has applied the rates as per the clause even to the portion of the work above the water level. He also applied the same principle and formula to the work of excavation in the quarries far removed from the above work site and to the transportation of earth from quarries to the place of forming embankment where there was no water or liquid mud or foul position.

6. It is the Appellant's case that the Arbitrator has misconducted himself-legal misconduct is what is alleged which might not amount to moral turpitude. Without taking physical measurements, arriving at the actual quantum of the work involved and applying the rates contained in the S.S.R. to the work involved, using his engineering skill and technical know-how, he being a qualified Engineer and the arbitration proceedings related to Engineering contract, he awarded huge amounts as claimed by the contractor without any material on record or evidence. He is alleged to have misinterpreted condition 7 of the General conditions of contract. He manifestly misdirected and exceeded the scope of condition 7 of the general conditions by limiting the deviation limit to individual item of schedule "A" of the contract agreement under claim No. 1 instead of limiting it to "individual trade items" and awarding the market rate in respect of claim No. 2. In regard to the claim for loss due to flood made by the contractor it is contended that this is not an item coming under the accepted risk under condition 1 (p) of the General conditions of Contract (I.A.F.W. - 2249) forming part of the contract. The Respondent was continuing the work during the extended period of contract (during which time the alleged flood occurred) and therefore not entitled to claim damages which is not provided for in the contract. Thus the Arbitrator exceeded his jurisdiction.

7. Sri S. Narayanan Potti, Learned Counsel for the Respondent, meeting the case of total lack of jurisdiction on the Arbitrator in the matter of allowing the claim of the contractor on the basis of radical change in the nature of contract and not a mere deviation as such, very strongly contended that such a plea cannot be raised now as neither before the Arbitrator nor before the learned Sub Judge such a case had been taken. Nor even in the appeal" memo, such a question has been specifically raised. The issue of lack of jurisdiction as now raised is not a contention to be raised in vacuum but on relevant factors to be established in evidence. The claim is based on the work done under the contract and the arbitration clause will apply and the Arbitrator will have jurisdiction in the matter. Mr. Potti also pleaded that even assuming that the claim is on quantum meruit, it is an incidence of the contract and hence can be referred to arbitration. This is an Engineering contract where extras are bound to arise and payment for extras are matters arising out of the contract. Assuming it is based on an implied agreement, Mr. Potti argued, it will be binding upon the Government and not hit by Article 299. Mr. Potti also points out that in respect of the work, the Petitioner

has been directed to proceed with the work by the Government pending arbitration and therefore the Appellant is now estopped from questioning the Arbitrator's jurisdiction in the nature of reference to arbitration during the course of the work. It is also contended that as no question of deviation came up before the Chief Engineer, the Arbitrator's jurisdiction to allow a claim based on the basis of radical change of the original nature and scope of the agreement cannot be questioned. In regard to the alleged legal misconduct of the Arbitrator, Mr. Potti, contends that in the nature of the award which is not a speaking one, such a challenge cannot be made. The court cannot consider whether the view of the Arbitrator on the evidence is justified. It is not open to the court to speculate where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. On the assumption that the Arbitrator must have arrived at his conclusion by a certain process of reasoning the court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the court to attempt to probe the mental process by which the Arbitrator has reached this conclusion where it is not disclosed by the terms of the award. No question also of an error apparent on the face of the award will arise in such case. It is only when the Arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the court is competent to examine, whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award.

8. In considering the question of jurisdiction of the Arbitrator as regards the claim of the Respondent-contractor for payment for excavation of rock at market rates, we might first look to his claim. What he demanded was that consequent on the major change of ordinary rock (laterite) cutting which according to him was incorrectly ordered by Garison Engineer as hard soil, as such excavation is altogether outside the scope of contract, he is entitled for payment for excavation in ordinary rock (laterite) in quarries at the governing, market rates on principles of quantum meruit in law. The Arbitrator decided the matter in favour of the contractor, the reason which he gave in his examination being that change from hard soil to laterite radically changed the nature and scope of the agreement, because the quantities of laterite thus extracted from the quarries would be of an enormous magnitude as compared to what has been catered for list at provisional items of the contract. The jurisdiction of the Arbitrator to decide whether there has been a radical change or not is questioned by the Learned Counsel for the Appellant in the nature of the provision in Clause 7 of I.A.F.W. - 2249. We are of the view that in the nature of the agreed reference of the question to the Arbitrator and as the Appellant did not raise the jurisdiction of the Arbitrator to decide the question either before the Arbitrator or even before the court below, the Appellant is disentitled to raise this question in appeal. It also cannot be said that the work done by the Respondent for which the claim is made is outside the contract as such and the Appellant, it is clear from the circumstances the reference, was made, did not want the Chief Engineer to decide on the question whether there was a radical change in the

contract. A claim in quantum meruit can well be an incidence of this and can be referred to arbitration. That can well come within para 70 of the General Condition of the contract which states that all disputes between the parties to the contract other than those for which the decision of the C.W.E. or any other person is by the contract expressed to be final and binding shall after written notice by either party to the contract to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents. The Appellant had no case at the time of reference that this claim is one which is by the contract to be decided by a person mentioned therein, thus ousting Arbitrator's jurisdiction. The variation of the work for which the claim is made is well within the contract. As stated in Hudson's Building and Engineering Contracts, a simple contract may be validly varied by subsequent agreement of the parties, so long as there is consideration to support the variation agreement. If, at the time when the variation agreement is made, obligations remain partly unperformed under the original contract by both the parties, there will usually be consideration for the agreement. Also if work is varied in accordance with express power in the contract, no change in the terms of the contract is involved and the variation order need only comply with the requirements of the contract in order to be valid. (See Hudson, 10th Edn. pp. 22 and 24).

9. A claim in quantum meruit can well be a dispute within the scope of contract. The following observations of Sellers, J., in *Government of Gibraltar v. Kenny* 1956 3 All E.R. 22 will be of use here. There the claim for the quantum meruit was based on the allegations that the agreement ceased to have any application to the services rendered by the first Defendant in that case as quantity surveyor or that it was frustrated. The learned Judge said:

I must now deal with the merits of the claim as it is framed before me. The question has to be judged by an interpretation of the arbitration clause and the claims which are sought to be made in the arbitration.

In my view, this arbitration clause is very wide. It covers

...any dispute or difference which shall arise or occur-between the parties hereto in relation to anything or matter arising out of or under this agreement....

The distinction between matters "arising out of and "under" the agreement is referred to in most of the speeches in *Heyman v. Darwins Ltd.* (1942 1 All E. R. 337) and it is quite clear that "arising out of is very much wider than "under" the agreement. This clause incorporates a difference or dispute in relation to anything or matter "arising out of as well as "under" the agreement, and, in my view everything which is claimed here in this arbitration can be said to be a dispute or difference in relation to something "arising out of the agreement.

It is true that a quantum meruit is a quasi contract and arises, in a sense on an implied contract and not on any express agreement, but in my view in the circumstances of this case (although it may not be in all cases) the quantum

meruit is an incident which arises out of the contract. It is not a remedy for breach or arising on frustration, but it is an incident, in my view, which does arise as a consequence of the contract or "arising out of it. One has only to look at the pleadings at the points of claim, and to visualise what is involved in the arbitration to see the close association between the written contract and the claim advanced in this way on a quantum meruit.

10. As Russel points out in "Arbitration" 18th Edn. page 71, the phrase "all disputes" or "all claims" by itself is possibly wider than "all disputes arising out of the contract". The phrase in an arbitration clause of a contract, "all disputes arising between the parties", has been held to mean "disputes arising under this agreement" rather than "disputes arising in relation to the subject-matter of the agreement".

11. In regard to the Respondent's claim, even if it is assumed was based on an implied contract that cannot be negated because of non-compliance to make to a written contract under Article 299(1) of the Constitution. We might in this connection quote the following words of Gajendragadkar, J., in State of West Bengal Vs. B.K. Mondal and Sons, .

It is well-known that in the functioning of the vast organisation represented by a modern state government officers have invariably to enter into a variety of contracts which are often of a petty nature. Some times they may have to act in emergency, and on many occasions in the pursuit of the welfare policy of the state government officers may have to enter into contract orally or through correspondence without strictly complying with the provisions of Section 175(3) of the Act. If, in all these cases, what is done in pursuance of the contracts is for the benefit of the government and for their use and enjoyment and is otherwise legitimate and proper Section 70 would step in and support a claim for compensation made by the contracting parties notwithstanding the fact that the contracts had not been made as required by Section 175(3). If it was held that Section 70 was inapplicable in regard to such dealings by government officers it would lead to extremely unreasonable consequences and may even hamper, if not wholly bring to a standstill the efficient working of the government from day to day. We are referring to this aspect of the matter not with a view to detract from the binding character of the provisions of Section 175(3) of the Act, but to point out that like ordinary citizens even the state government is subject to the provisions of Section 70, and if it has accepted the things delivered to it or enjoyed the work done for it, such acceptance and enjoyment would afford a valid basis for claims of compensation against it. Claims based on a contract validly made u/s 175(3) must, therefore, be distinguished from claims for compensation made u/s 70, and if that, distinction is borne in mind there would be no difficulty in rejecting the argument that Section 70 treats as valid the contravention of Section 175(3) of the Act. In a sense it may be said that Section 70 should be read as supplementing the provisions of Section 175 (3) of the Act.

The observations made therein with regard to Section 175(3) of the Government

of India Act 1935, will in all force apply to Article 299(1) of the Constitution.

12. We, therefore, find no merit in the contention that the Arbitrator has acted without jurisdiction.

13. Even with regard to the above aspect and also in respect of the allegation of misconduct, taking due note of the fact that the award is not a speaking award as such, it has to be pointed out that factors which allege to vitiate the award cannot be culled out from what the Arbitrator said in his evidence. An Arbitrator may not be called to give evidence as to the elements which he took into consideration in determining the quantum of compensation, or as to the exercise of his discretionary power to award compensation - [See *Bucclench (Duke) v. Metropolitan Board of Works* - 1872 L.R. 5 H.L. 418 referred to in *Russel on Arbitration*, 11th Edn., page 330].

14. It is well settled that a mistake in an arbitration award can be a ground of remission or setting it aside only when such mistake is apparent on the face of the award or of a document which forms a part of it. The principle is that as the parties choose their own Arbitrator, they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. Therefore, even when an Arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake. Mere reference to the contract in the award is not to be held as incorporating it.

15. In *Hodgkinson v. Fertile* 1857 3 C.B. (N.S.) 189 Williams, J., stated the principle as follows:

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 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.

This observation was cited with approval in *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.*, and also in *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI)*, New Delhi, .

16. The principle is that the court, while examining an award, will look at document accompanying and forming part of the award. Thus, if an Arbitrator were to refer to the pleadings of the parties so as to incorporate them into the award, the court can look at them. In some cases, however, courts extended the principle and set aside the award on a finding that the contract, though only referred to but not incorporated into the award as part of it, had been misconstrued and such misconstruction had been the basis of the award - [See

Landauer v. Asser 1905 (2) K.B. 184 and Absalom Ltd. v. Great. Western (London) Garden Village Society Ltd. 1933 AG 592.]

17. The correctness of the decision in 1905 (2) K.B. 184 (cited supra) was challenged before the Privy Council in Champsey Bhara and Co. v. Jivraj Balloo Spinning Co. 1923 A.C. 480 : AIR 1923 P.C. 66 The Privy Council though it did not expressly overrule the King's Bench case, said that the decision was not binding on the Board and the principle in such cases was formulated thus:

An error in 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 then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound.

In that case it was said that the mere fact that the court would have construed a document differently than the Arbitrator would not induce the court to interfere unless the construction given by the Arbitrator is such that it is against the well-established principles of construction.

18. In *Giacomo Costa Fu Andrea v. British-Italian Trading Co.* 1962 2 All E.R. 53 Diplock L.J., said:

It seems to me, therefore, that on the cases, there is none which compels us to hold that a mere reference to the contract in the award entitles us to look at the contract. It may be that in particular cases a specific reference to a particular clause of a contract may incorporate the contract, or that clause of it, in the award. I think that we are driven back to first principles in this matter, namely, that an award can only be set aside for error which is on its face. It is true that an award can incorporate another document so as to entitle one to read that document as part of the award and by reading them together, find an error on the face of the award.

19. In considering the question whether a contract or a clause of it is incorporated in the award, the Supreme Court said in *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI)*, New Delhi, - the question is one of construction of the award. The test is, does the Arbitrator come to a finding on the wording of the contract. If he does, he can be said to have impliedly incorporated the contract or a clause in it whichever be the case. But a mere general reference to the contract in the award is not to be held as incorporating it.

20. In *Akliebolaget Legis v. Berg and Sons* 1964 1 LLR 203 Justice Roskill said:

The first ground upon which *Aktiebolaget Legis*, the applicants, have sought to attack this award is that it bears an error of law upon its face. That raises two questions. First, is the contract referred to on the face of the award incorporated

into the award so as to entitle the court to look at the terms of that contract for the purpose of determining whether in truth the award bears an error of law upon its face, and, secondly, is there also to be taken as incorporated into the award the terms of a letter written after the date of the award by Mr. Andrews to the then solicitors for the applicants on November 6th, 1963? In that letter-written apparently in response to a request from the applicants through their solicitors - Mr. Andrews gave certain reasons for his award.

It is said by Mr. Mustill that one has only to look at that letter to see that those reasons are erroneous in law, and he contends that, looking at those reasons (which he said must be considered together with the award) the award is bad on its face. Mr. Mustill agreed that he could not succeed on this point merely by showing that the bare terms of the contract were incorporated into the award, but he said that he could and did seek to argue that the reasons were incorporated into the award, and that looking at those reasons together with the award, and, if possible, together with the contract, there was in his submission a plain error of law upon the face of the award which, if established, would necessarily result in the award either being set aside) or, if not set aside, at least remitted for further consideration.

Before one can determine whether or not there is an error of law upon the face of the award, one has first to decide at what document or documents one is going to look, because, until one decides of what document or documents the award consists, one cannot decide whether or not that award contains an error on its face.

* * *

* * *

I have already said that, in my judgment, one must apply the same test in determining whether those reasons were incorporated as I have endeavoured to apply in determining whether the contract was incorporated. There are one or two other cases which, in my judgment, support that conclusion. The first is a case decided as long ago as 1802, *Kent v. Elstob and Ors.* 1802 3 East 18; 1802 (102) E.R. 502. The headnote reads thus:

If an Arbitrator profess to decide upon the law, and he mistake it, the court will set aside the award; although the Arbitrator's reasons do not appear upon the face of the award, but only upon another paper delivered therewith.

Then follows this sentence:

So it seems it would be if such reasons appeared in any other authentic manner to the court.

Mr. Mustill agreed there was nothing in the judgment to support that. I do not think I need do more than quote the judgment of Mr. Justice Gross, who delivered the leading judgment because Lord Ellenborough, G. J., was absent on

a special commission at the Old Bailey. The learned Judge said:

The award is clearly wrong, considering it to be founded upon the reasons stated by the Arbitrator in the paper delivered with it (which altogether must be taken as one instrument); for it appears from thence that he proceeded upon a ground which cannot be supported in our law. And he has done wrong, according to his own principles and view of the subject; for it is evident that he meant to determine according to law, and he has mistaken it; therefore the award is not such as he intended it to be.

It is to be noted, as appears from the top of P. 503 of the report in the English Reports that the paper containing the reasons was delivered by the Arbitrator together with the award. In the present case, the letter (which I have already read) of November 6 is dated nearly a fortnight after the date of the award. The award on its face made no reference to any other document, and I can see no justification for treating that letter of November 6, written as it obviously was as a matter of courtesy, as forming part of the award. It is quite true that the letter does not contain the usual disclaimer (which arbitrators are in the habit of making when giving reasons), that the reasons given are expressly stated to form no part of the award. But in my judgment, once the umpire had made and published his award, he was *functus officio*, and he may not, as I understand the position, thereafter alter his award save within the very strict limits for which the Arbitration Act, 1940, makes provision, as, for example, if he has omitted to deal with the costs.

21. In *Kanpur Nagar Mahapalika Vs. Narain Das Haribansh*, the Supreme Court said that,

if an error of law appear on the face of the award, it is a ground for remitting it or setting it aside. An exception arises where the parties choose specifically to refer a question of law to arbitration....

It is sufficient if the arbitrator gives an award on the whole case and he need not deal with each issue separately. It is open to the Arbitrator to decide on the rival contentions of the parties as to limitation. In doing so, if an Arbitrator makes a mistake either in law or on fact and if such mistake does not appear on the face of the award, the award will not be bad notwithstanding any mistake.

22. In *N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, Justice Mathew speaking for the Bench said that 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 then say is erroneous. His Lordship was adopting the proposition laid down by the Privy Council in *AIR 1923 P.G. 66*, which had been adopted in other Supreme Court cases also. 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.

23. It is not misconduct on the part of an Arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence, (see Russel on Arbitration 18th Edn. p. 391.) There the learned author quotes from Lord Justice Atkin in *Gillespie Bros. Co. v. Thompson Bros.* (1922) 13 L.I.L. R 519 at 524.

It is no ground for coming to a conclusion on an award that the facts are wrongly found. The facts have got to be treated as found.... Nor is it a ground for setting aside an award that the conclusion is wrong in fact. Nor is it even a ground for setting aside an award that there is no evidence on which the facts could be found, because that would be mere error in law, and it is not misconduct to come to a wrong conclusion in law and would be no ground for ruling aside the award unless the error in law appeared on the face of it....

24. In *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI)*, New Delhi, it is stated that the fact that the Arbitrator answered a legal point does not mean that he has incorporated into the award or made part of the award a document or documents, the construction of which, right or wrong, is the basis of the award. The error, if any, in such a case cannot be said to be an error apparent on the face of the award entitling the court to consider the various documents placed in evidence before the umpire but not incorporated in the award so as to form part of it and then to make a search if they have been misconstrued by him.

25. As Seervai in his well-known commentary on Constitution of India states the word "apparent" in the expression "error apparent on the face of the record" does not mean "obvious", though it is one of its meanings, but means "made manifest to the understanding" by being stated in the order. An error of law appears on the face of the order if a proposition of law is stated in the order, which then becomes a speaking order, (see Seervai on Constitution of India-page 966, Vol. II-2nd Edn.). And as the learned author himself has stated this meaning given to the words "error of law apparent on the record" is the very meaning which the Privy Council has given to the words "an error of law apparent on the face of the award", or "an error of law on the face of the award" in *Champsy Bara's case* 1923 A.C. 480 : AIR 1923 P.C. 66 a case which has been accepted in England and in India as laying down the correct law, (we have earlier quoted the relevant observations therein from the judgment of Lord Dunedin).

26. On the basis of the principles laid down in the above decisions, it is impossible to come to a conclusion that the Arbitrator has misconducted himself in this case or has committed an error apparent on the face of the record. His award just gives the amounts that are being awarded by the Arbitrator in respect of the claims specified therein. No reasons are given therein as to how he came to the figure.

Therefore, we dismiss the appeal with costs to the respondent.