

**(1985) 09 OHC CK 0006**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 542 of 1982**

Golak Chandra Roy

APPELLANT

Vs

Secretary, Irrigation Department and Others

RESPONDENT

**Date of Decision :** 20-09-1985

**Acts Referred:**

Arbitration Act, 1940 — Section 30, 39

**Citation :** (1985) 2 OLR 431

**Hon'ble Judges :** P.C. Misra, J

**Bench :** Single Bench

**Advocate :** Y. Das, J. Das, T. Hafiz, M.S. Haque and B.K. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

P.C. Misra, J.—This is an appeal u/s 39 of the Arbitration Act, 1940 against a judgment of the learned Subordinate Judge of Bhubaneswar in O. S. No. 231 of 1982 (I) by which the award of an Arbitrator has been set aside.

2. The appellant-claimant was entrusted with the work "Excavation of Surplus Channel of Kakalbaki M. I. Project with construction of Grade Walls and Energy Dissipation Blocks" under an agreement bearing No. 11 F-2 of 1977-78. The said agreement was executed between the claimant and the Executive Engineer, Minor Irrigation Division, Phulbani. A dispute within the meaning of Arbitration Act having arisen between the parties Shri B. S. Patnaik, Retired District Judge, was appointed as the Arbitrator. The Arbitrator entertained the claim petition and counter there to and after giving opportunities to the parties for substantiating their respective cases passed an award for Rs. 5,55,550/- in favour of the claimant appellant and further granted interest at the rate of 9 per cent per annum with effect from 3. 4. 1979 till the date of payment or the date of decree whichever is earlier. On receipt of the award the parties were noticed to file their objection against it, if any. The present respondents filed an objection which was registered as Misc. Case No 635 of 1982(A). The objection was mainly on the

following grounds :

- (i) There is error of law apparent on the face of the award.
- (ii) The Arbitrator had no jurisdiction to entertain claims beyond the agreement.
- (iii) The original agreement was for Rs. 3,16, 129/- which amount had already been received by the claimant. The exaggerated claim made by the claimant before the Arbitrator was without any basis and the Arbitrator has passed the impugned award without taking into consideration the agreement, measurement books and other documents filed by the respondents and without considering the submissions made on their behalf.

It has been also stated that passing of an unreasoned award by the Arbitrator in the aforesaid circumstances if an error or defect appearing on the face of the award.

3. The present appellant filed a counter in the aforesaid Misc. Case refuting all the objections taken against the award and prayed for making the award a rule of the Court.

4. The learned Subordinate Judge, after hearing the parties through their counsel, came to the conclusion that in the given circumstances the Arbitrator was not competent to give a lump sum and unreasoned award for such a huge amount which exceeds the contractual amount. He also held that an unreasoned award for a huge amount which does not incorporate the relevant documents and papers must be taken to be a case where the award has to be set aside as having errors on the face of it. Accordingly he allowed the aforesaid Misc. Case and set aside the award and disposed of the suit accordingly. It is against this judgment that the present appeal has been directed.

5. It has been held in a large number of decisions, specific reference to which is unnecessary, that an Arbitrator is not bound to give any reason for his award. The objection taken in this case against the award is that the amount awarded being in excess of the contractual amount the Arbitrator was obliged to give reasons in support of his award. It is not in dispute that the claim was in excess of the contractual amount. A contractor may be entitled to additional amounts in the event he is required to execute additional works or if there are justifications for being entitled to additional amounts depending upon the facts of each case. Therefore, the mere fact that; the awarded amount is in excess of the contractual amount, that would not vitiate the award. As already stated, the Arbitrator is not obliged in law to pass a reasoned award and there is no reason to deviate from the said principle in case of an award which is in excess of the contractual amount. At any rate, non-mention of the reasons in support of the award and non-incorporation of the documents thereto can by no stretch of imagination be characterised as an award in which there are errors apparent on the face of it.

6. It has been well-settled by a catena of decisions of the Supreme Court as well

as other High Courts including that of our own that 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. It is not open to the Court to attempt to probe the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of his award. Vide- Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others,

7. The learned Subordinate Judge in the impugned judgment has taken a hypothetical case and came to the conclusion that it would be expedient for the Court to interfere with an award where the Arbitrator has passed a non-reasoned lump sum award without incorporating the documents and papers in the award. The reasoning appears to me to be absurd.

8. As has been pointed out in the case of Champsey Bhara and Company v. Jivraj Balloo Spinning and Weaving Company Ltd. A. I. R. 1923 P. C. 66 and consistently followed by all the Courts in India and the Supreme Court vide Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, , "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.

9. The grievance as to the non-consideration of the documents by the Arbitrator is equally without any merit. As already stated, it is not open to the Court to probe into the mental process by which the Arbitrator reached his conclusion. Sufficiency or otherwise of the evidence in support of his conclusion is certainly beyond the scope for the Court to determine. In this case the award being a non-speaking award and no document having been incorporated or made the basis of the award the contentions raised on behalf of the present respondents before the trial Court were not tenable.

10. For the aforesaid reasons, the conclusion of the learned Subordinate Judge that there was error on the face of the award is wholly misconceived and the award could not be set aside on that ground.

11. For the aforesaid reasons, I would allow the appeal, set aside the impugned judgment passed by the learned Subordinate Judge and direct that the award be made a rule of the Court. In the peculiar circumstances of the case, I make no order as to costs of this appeal.