

(1990) 12 CAL CK 0033
In the Calcutta High Court
Case No : Matter No's. 3971-74 of 1988

In Re: P.N. Associates and Another; In Re: Indian Airlines and Another

Date of Decision : 04-12-1990

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 12(3), 33, 5
Evidence Act, 1872 — Section 115

Citation : (1991) 2 CALLT 233

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Monoranjan Mallick, J.—All these matters being interconnected have been taken up for hearing together and are disposed of by this common judgment as common questions of law and fact arise in all these 4 cases.

2. In all these 4 cases the petitioners have asked for leave to revoke the authority of the Arbitrator, Mr. R. K. Bhatnagar, Respondent No. 2, to act as Sole Arbitrator and for his removal from acting as such Sole Arbitrator and for appointment of any fit and proper person in place and stead of Mr. R. K. Bhatnagar. The facts which give rise to these petitions may be briefly stated as follows :

3. In respect of 4 separate contracts for construction of the quarters-in different places, entered into between the petitioner and the respondent, Indian Airlines, Separate Work Orders were issued sometimes in February, 1984. On the allegation by the respondent, Indian Airlines, that the petitioner had committed the breach of contract, the contracts had been rescinded and in the letter rescinding the contracts the respondent, Indian Airlines, claimed damages against the petitioners in respect of each of these contracts. Over such claim of the Indian Airlines the Regional Director of the Indian Airlines had requested their Managing Director to appoint a Sole Arbitrator to adjudicate the disputes in each of these 4 cases.

4. The petitioners through their Advocate disputed the said cancellation of the contracts and also put forward their counter-claim.

5. The Managing Director of the Indian Airlines by his letter dated 1st September, 1986 referred the disputes to the arbitration of Mr. R. K. Goel, Finance Manager, and in the said references the Managing Director had mentioned only 2 nos. of disputes indicating the claim amounts for each of these disputes and referred them for adjudication by the said Arbitrator. Subsequently, however, by letter dated 18th September, 1986 the said Managing Director also referred the disputes, specified by the petitioner in their letter dated 14th August, 1986 to the arbitration of the Sole Arbitrator, Mr. R. K. Goel.

6. Having reasonably apprehended bias of the said Arbitrator in all these four references the petitioner had filed four separate applications Under Sections 5, 11, 12 and 33 of the Arbitration Act, 1940 before this Court on 12th November, 1986. S. K. Hazari J. by his order dated 9th September, 1987 revoked the authority of Mr. R. K. Goel as Arbitrator and appointed Mr. R. K. Bhatnagar, Deputy Director of Finance, Indian Airlines, Sole Arbitrator in place and stead of Mr. R. K. Goel. As Mr. Bhatnagar had been appointed in place and stead of Mr. R. K. Goel, he was not required to arbitrate all the disputes arising and/or likely to arise out of the contracts, but only those which have been specifically mentioned in the final references made by the Managing Director.

7. However, the petitioners complain that statement of Facts were submitted by the respondent, Indian Airlines, pursuant to the direction of the Arbitrator, Mr. R. K. Bhatnagar, in which it had most arbitrarily and illegally raised 10 nos. of disputes which were higher in value in each of the cases than originally referred to. But, all those pretended disputes, mentioned for the first time in the Statements of Facts and not appearing in the reference, cannot and does not come within the scope of the Arbitrator's jurisdiction. The petitioner further alleges that in the Counter Statement of Facts the petitioner categorically objected to the Arbitrator's jurisdiction to entertain/consider the kid claims of M/s. Indian Airlines and thereby enlarge the scope of reference.

8. In these 4 petitions prayed for leave to revoke the authority of the Arbitrator the petitioners allege the following facts :-

(1) The Arbitrator has not been conducting the proceeding fairly, reasonably and legally.

(2) Deliberately belated issuance of notices informing of the fixation of the dates of the meetings was made in capricious manner so as to cause hardship to the petitioners and/or render impossible for the petitioners for attending the same with his Counsel duly instructed and prepared,

(3) The proceedings are wilfully being prolonged by the Arbitrator by fixing dates at long interval, more with an eye to his own convenience to come front New Delhi than for the convenience of the parties.

(4) The Arbitrator being an interested person appointed under the contractual provisions, his conduct in flouting the petitioner's objection to the enlargement of the scope of reference by inclusion of the respondent's claim not appearing in the reference as respect of these matters is malicious and amounts to legal misconduct in accordance with the settled principles of law.

(5) In respect of Matter No. 3971 of 1988 refusal of the Arbitrator disallowing the issue raised by the petitioners as to the enlargement of his jurisdiction and for consideration of matters not in the reference is a clear misconduct by him of the proceedings before him because the issues framed by the Arbitrator are capable of being misconstrued so as to entrench all claims mentioned in Respondent No. 1's Statement of Facts though they are outside the disputes in the respondent's reference as respect both matters and values.

(6) The conduct or rather, misconduct of the Arbitrator has evinced unmistakable bias against the petitioners and in favour of the Respondent No. 1, Indian Airlines.

It is, therefore, submitted that for efficacious and proper justice, anyone else may be appointed as Sole Arbitrator who is not connected with Indian Airlines.

9. Each of the cases have been contested by the respondent no. 1 M/s. Indian Airlines by filing an Affidavit-in-Opposition to which an Affidavit-in-Reply has also been filed by the petitioner. The following contentions have been raised by the respondent no. 1 contesting each of the petitions.

10. Pursuant to the orders all dated 9th September, 1987 passed in Matter Nos. 1918 of 1986 as well as Matter Nos. 1917 of 1986, 1919 of 1986 and 1920 of 1986. First sitting of the Arbitrator Mr. Bhatnagar was held on 30th October, 1987 when the petitioners were represented by their Learned Advocates. Since the Matter No. 1918 of 1986 (the present matter no. 3971 of 1988) was a bigger case in terms of the claim of the respective parties it was agreed by consent of parties that the said matter would be taken up for hearing first and accordingly it was decided that the matter no. 1918 of 1986 would be taken for hearing on 11th December, 1987. It would be further seen from the minutes of the said meeting held on 30th October, 1986 that the meeting of other arbitration matters being Matter Nos. 1917 of 1986, 1919 of 1986 and 1920 1986 would be fixed on 11th December, 1987. It would also been seen from the minutes of the meeting that the statement of claim would be filed on behalf of the respondent no. 1 on or before 20th November, 1987 in respect of Matter No. 1918 of 1986 and the petitioner would file their counter statement of facts in Matter No. 1918 of 1986, on or before 4th December, 1987. On or before 18th December, 1987, as scheduled, the next meeting of the Arbitration in respect of Matter No. 1918 of 1986 was held on 11th December, 1987 and by consent of parties the time to file rejoinder by the respondent no. 1 in Matter No. 1918 of 1986 was extended till 24th December, 1987 and the next meeting of arbitration was fixed on 14th January, 1988. So far as the other cases are concerned the time to file, the

statement of claim on behalf of the respondent no. 1 was extended till 18th January, 1988. Correspondingly the petitioners agreed to file their counter statements of fact in the said three matters on 28th February, 1988. The meeting fixed on 14th January, 1988 with regard to Matter No. 1918 of 1986 had to be adjourned till 18th January, 1988 on the prayer of the petitioners. The third meeting of the Arbitration in Matter No. 1918 of 1986 was held on 28th January, 1988. As the petitioners failed to appear on the said date fixed on 28th January, 1988, the same was adjourned on 11th February, 1988. On 11th February, 1988 by consent of parties the time to make and publish the award by the Arbitrator was extended by six months from February 11, 1988 with regard to Matter No. 1918 of 1986. In the said meeting- the respondent no. 1 before dispensing of the formal proof of the documents relied upon by the petitioners sought to adjudicate the said documents and accordingly prayed for a fortnight's time with regard thereto. Consequently, next meeting was fixed on 24th February, 1988. On the same date the time to make and publish the Award in respect of other three matters was extended by six months from 11th February, 1988. on the prayer of the petitioners, the respondent no. 1 extended the time to file their counter statement on 19th March, 1988 and rejoinder thereto by the respondent no. 1 within two weeks thereafter. It was further directed by the respondent no. 2 in the said meeting that the next hearing of Arbitration in respect of those three matters would be intimated by the respondent no. 2 after completion of pleading of the parties. The 4th hearing of the Arbitration in respect of Matter No. 1918 of 1986 was held on 24th February, 1988. In the said hearing respondents confirmed that out of 75 documents filed by the petitioner they acknowledged the receipt of 14 documents. The next meeting of the Arbitration was adjourned till 21st March, 1988. On 21st March, 1988 i.e. in the 5th hearing of the arbitration the parties agreed to the dispensing of the formal proof of the documents relied upon by them. The parties were directed to send the issues involved in the case and the next meeting of the arbitration was fixed on 12th April, 1988. The 6th hearing of the Arbitration could not be held before 23rd May, 1988 and on that date on the basis of the respective suggested issues submitted by the parties issues were framed and it can be seen from the copy of the said minutes that no objection was raised by either parties with regard to framing of the issues. The next hearing of the Arbitration was fixed on 23rd June, 1988. On that date the petitioners wanted to introduce an additional issue which was strongly objected to on behalf of the respondent no. 1. The respondent no. 2 did not accede to the demand of the petitioners for inclusion of a fresh issue at that stage. Consequently, the Arbitrator did not accede to the prayer of the petitioner in framing an additional issue on that date. The next sitting of the Arbitration was fixed on 6th August, 1988 but was adjourned till 11th August, 1988. By a telegram dated 9th August, 1988 the petitioner requested the respondent no. 2 to adjourn the sitting fixed on 11th August, 1988. The said letter and telegram was received in the office of the respondent no. 2 on the afternoon of 12th August, 1988. Since he was informed by respondent no. 1 who was communicated earlier about such prayer for adjournment the meeting was not

held on 11th August, 1988. Thereafter, the respondent no. 2 fixed the next date of hearing on 5th September, 1988. By a letter dated 1st September, 1988 addressed to the respondent no. 2, copy endorsed to the respondent no. 1, the petitioner requested the respondent no. 2 to adjourn the matter as on refixed the 15th September, 1988 since they have made applications before this Court for revoking the authority of the Arbitrator on 15th September, 1988.

11. After narrating the above facts it is submitted that from the conduct of the Respondent No. 1 that it would be abundantly clear that the respondent no. 2 conducted the proceeding in right earnest and accommodated both the parties without any discrimination. The minutes of the proceeding will clearly reflect that the respondent no. 2 was not in any manner biased to any party and these petitions have been made with the ulterior motive to frustrate the just and legitimate claim of the respondent no. 1 which were referred to the respondent no. 2 by this Court by the order dated 9th September, 1987. The respondent no. 2 was appointed by this Court by the order dated 9th September, 1987 in all these four matters by consent of parties and as such it is not open to the petitioner to make this application for revocation of the authority of the respondent no. 2 on the frivolous ground as sought to be made out in the instant petition. From the scope of the references made by this Court on 9th September, 1987 it is abundantly clear that all the disputes and differences arising out of an agreement dated 16th February, 1984 is arbitrable by the respondent no. 2 and as such issues purported to be incorporated by the petitioners to the extent that the respondent no. 2 had no authority to adjudicate the entire claim made by the respondent no. 1 in its statement of claim is of no consequence and in the event on the date of framing of the issue the same was discussed in extenso and the petitioners agreed that they are not insisting for incorporation of the said issue. By reason of the referring of the disputes and differences arising out of the agreement dated 16th February, 1984 by this Court references made by the Managing Director of the respondent no. 1 to Sri R. K. Goel became nonest and as such by no canon of construction it can be said that the respondent no. 2 can adjudicate only the claim as referred to Sri Goel by the Managing Director. The petitioners have participated in the Arbitration and is now estopped and/or precluded from making this application. It is, therefore, submitted that all these petitions are liable to be dismissed.

12. It is clear that in spite of four separate work orders for construction of quarters of different places the respondent no. 1 rescinded the contract and claimed damages under two heads and the Managing Director referred those two claims under two heads to Sri R. K. Goel. It is also admitted that in each of the claims the present petitioner raised counter claim and the Managing Director also subsequently referred the same to Sri R. K. Goel for arbitration. For removal of Sri R. K. Goel in respect of these four references four applications Under Sections 5, 11, 12 and 33 of the Arbitration Act was filed by the present petitioner before this Court and they were registered as Matter Nos. 1917, 1918, 1919 and 1920 of 1986. All those petitions were disposed of by consent of parties by Sri S. K.

Hazari, J. on 9th September, 1987 and in all these cases the authority of Sri R. K. Goel was revoked and Sri R. K. Bhatnagar the present respondent no. 2 has been appointed as Sole Arbitrator in his place and stead.

13. Let me now examine the points raised in these four petitions. Even though in the Affidavit-in-Opposition it is contended that when S. K. Hazari, J by his order dated 9th September, 1987 directed Sri R. K. Bhatnagar to enter into the reference and to adjudicate the disputes and differences arising out of an agreement dated 16th February, 1984, yet law is clear on the point that when an Arbitrator is removed by the Court on the prayer of the party and a fresh Arbitrator is appointed in his place then in view of Sub-Section (3) of Section 12 of the Arbitration Act the person so appointed shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the Arbitration agreement. In view of this clear provision it cannot be argued on behalf of the respondent that before Mr. Bhatnagar, the respondent no. 1 was entitled to submit an additional claim over above the claims referred by the Managing Director to Sri R. K. Goel. On behalf of the respondent no. 1 Mr. Bachawat and Mr. Mitra concede that it is correct that when an Arbitrator is removed and another Arbitrator is appointed in his place he has to adjudicate on the reference that was originally made before the Arbitrator so removed and neither the claimant had the right to extend the term of reference nor had the Arbitrator any jurisdiction to go beyond the reference. Therefore, the position of law is very much clear that before Sri R. K. Bhatnagar, the respondent no. 1 could not extend the term of reference as originally made by the Managing Director by making claims under different heads or by making claims of higher amounts. There is no doubt that in each of the cases in the statement of claim filed before Sri R. K. Bhatnagar, the respondent no. 1 made additional claims which were far excess to the claims that were referred by the Managing Director to Mr. R. K. Goel. Mr. Bachawat also conceded that he accepts the proposition of law that the Arbitrator cannot go beyond the references, and if he does it then he commits misconduct and the Award made and published by him is liable to be set aside. He however, submits that the Arbitrator has not yet considered any of the statements of claim of these cases and has not also given any indication as is reflected from the minutes of the meetings so far held that he was going to assume jurisdiction in respect of the matters which was beyond the references. So far as the refusal by the Arbitrator in refusing to frame an additional issue, namely, in Matter No. 1918 of 1986 it is submission of Mr. Bachawat that only because the arbitrator refused to frame an additional issue sought to be raised on a particular date it cannot be said that he has committed misconduct or that the petitioner has any apprehension of bias against himself by the Arbitrator. He also submits that so far as the other matters are concerned the time was not yet ripe for framing any issue and the Arbitrator could frame all the issues including the issue which the petitioner wanted to be framed in respect of the Arbitration regarding the previous matter No. 1918 of 1986.

14. As regards the other grounds taken by the petitioner it is submitted by Mr.

Bachawat that none of those grounds has any legs to stand upon. It is contended that by consent of parties the dispute regarding the matter being Matter No. 1918 of 1986 was being taken up by the Arbitrator in the first instance but regarding other matters also in the meantime the parties were directed to complete the pleadings and the minutes of the Arbitrator would not show that he had any intention to drag the matters-unnecessarily and the Arbitrator was proceeding in the Arbitration of all these matters legally regard being had to the convenience of both the parties.

15. Mr. Banerjee, appearing for the petitioners, has urged that when in all these four cases the respondent no. 1 in their statement of claim before Sri R. K. Bhatnagar sought to extend the term of reference and when at least in one case the arbitrator has misconducted himself and in the proceedings by his blunt refusal to frame the issue which was very much vital in the facts of the present case then arbitrator, who is an officer of the respondent no. 1, should not continue to act as arbitrator and it is a case in which there is a genuine apprehension of the petitioners that they would not get justice from an arbitrator who is a senior officer of the Indian Airlines and the petitioner having lost confidence in the arbitrator as he has at least in one case demonstrated that he is not going to accept the contention of the petitioners that the respondent No. 1 in their statement of claim before him had exceeded the term of reference, then it is a fit case in which not only the reference in respect of the case where the issues had already been framed but also in respect of other cases in which similar issues would be involved he should not continue any further and the petitioner has produced before this court the sufficient materials to judge that the petitioners have genuine ground to apprehend that he would not get justice from Sri R. K. Bhatnagar and there is a strong case for an impartial person preferably a retired judge of this court for being appointed as arbitrator in all these four cases.

16. On behalf of the respondent it is strenuously argued that when in these cases the petitioner himself gave the consent to the appointment of Sri R. K. Bhatnagar then he is estopped from making a prayer to remove the arbitrator who should be deemed to have been appointed by him and there is also nothing on record to show that the arbitrator had either misconducted himself or had shown bias against the petitioner and in favour of the respondent No. 1. In support, Supreme Court decision of International Airports Authority of India Vs. K.D. Bali and Anr, has been referred to on behalf of the respondent.

17. Mr. Banerjee submits that the facts of that case are entirely different. There the International Airport Authority itself appointed Sri K. D. Bali as the Sole Arbitrator and as Sri K. D. Bali even though appointed by the said authority was not proceeding to their request the Authority sought for his removal before the High Court. The High Court having refused the matter came up before the Supreme Court and the Supreme Court affirmed the order of the High Court on the clear finding on the basis of the facts disclosed in that decision that there

was no genuine and reasonable ground of any suspicion in the mind of a reasonable man of bias of the arbitrator. The Supreme Court found that it was the petitioner who was resorting to delaying tactics to frustrate the arbitration and when that did not ultimately succeed it sought for his removal.

18. I have considered the above decision of Supreme Court carefully. The facts of that case are entirely different from this case. Mr. S. K. Hazari, J, desired that when the present petitioners had grievances against the original arbitrator, Sri R. K. Goel some other officer of the Indian Airlines might be appointed as arbitrator and the suggestion of the Indian Airlines to appoint Sri R. K. Bhataagar was consented to by the petitioner. The petitioner also participated before the arbitrator regularly and only after Sri Bhatnagar's refusal to frame a very relevant issue the petitioner came up before this court by filing these petition in all the four cases which are all connected cases. I am of the view that even though the petitioner originally agreed to the appointment of Sri R. K. Bhatnagar but if subsequent to such appointment some situation and circumstances arose which might give rise in the mind of the petitioner that he would not get justice from the said arbitrator, then only because Sri Bhatnagar have been appointed with the consent of the petitioner, he cannot be estopped from making the prayer in future that his authority may be revoked.

19. Regarding the contentions raised by the petitioner that the arbitrator was not conducting the arbitration speedily and had taken up one of the four matters only and deferred the hearing of the three other matters and this delayed the arbitration, I am of the view that the said contention does not have much force. By consent of the parties, the disputes in respect of the matter No. 1918 of 1986 have been taken up first as the disputes in those matters involved higher amount and the minutes disclosed before this court would clearly show that regarding other matters also the Arbitrator had also taken steps for the completion of pleadings and after the completion of the pleadings he could have taken up those matter also, had not these four applications been filed. The parties consented to the above procedure and extended the time to complete the reference for a period of six months from 11th February, 1988. Thereafter, the Matter No. 1918 of 1986 was taken up in right earnest in which issues have already been, the documents have been marked exhibits, formal proof being waived, and the matter was set down for oral evidence of the parties. Therefore, so far as the Matter No. 1918 of 1986 is concerned the same had made a considerable progress. There is also no indication that the arbitrator would not simultaneously take up the other matter also when they would get ready. Therefore, I am unable to accept the contention of the petitioner that the arbitrator was delaying the matter and was not proceeding with the arbitration in a proper manner.

20. As regards an allegation of a short notice being issued on a particular date of hearing I find that even though in that respect there may be some truth in the contention of the petitioner yet on that particular date of hearing as the petitioner was absent the arbitrator did not transact any business and adjourned

the matter to a later date. Therefore, by said act the petitioner has not at all been prejudiced and even if the respondent no. 1 does not accept the contention of the petitioner in this respect that the notice was issued short, yet even if the contention of the petitioner is true that would not amount to any misconduct on the part of the arbitrator so that he can be removed.

21. Mr. Banerjee, however, strongly submits that he has genuine apprehension that he would not get proper justice from an Arbitrator who is vitally interested in the case of Indian Airlines being one of its Senior Officers. It is submitted that in all these few cases the Managing Director made the reference regarding the claims of the Respondent No. 1 under two heads and in the Statements of Claim in each of the four cases made before Mr. Bhatnagar the Respondent No. 1 enlarged the scope of reference by making higher claims but the Arbitrator did not take any step whatsoever to direct the Respondent to conform to the term of reference. It is further submitted that when after the issues were framed on 23rd June, 1988, the petitioner having found that the most vital issue, namely, as to whether the Respondent No. 1 was entitled to enlarge the scope of reference by making additional claims was not included in the issues, he sought for addition of the said issue, the Arbitrator rejected it simply on the ground that on the previous day no such issue was sought for and when the issues were framed on 23rd May, 1988 no objection with regard to the issues framed was raised by the present petitioners.

22. Both Mr. Bachwat and Mr. Mitra appearing for the Respondent No. 1 in these cases conceded that the Arbitrator could have framed that additional issue, if sought to be raised by a party, because even Wore a Court of Law a party can draw the attention of the Court to the fact that a vital issue had not been framed and could pray before the Court to frame such relevant additional issue. But, it is submitted that even if such rejection was there on that date, the Arbitrator would consider the objection of the petitioners that the Respondent No. 1 had sought to enlarge the scope of the reference by raising claims more than that was originally claimed and referred to by the Managing Director and the Arbitrator had to decide that question before making the Award in each of these cases. Therefore, according to term when the matter has not yet been finally decided and specially, when in three other matters no issue had yet been framed, the petitioner cannot have any genuine apprehension that it will not get any proper justice from the Arbitrator.

23. It is also submitted that the Supreme Court in the case of International Airports Authority of India Vs. K.D. Bali and Anr, has clearly held that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person.

24. Mr. Banerjee submits that all the 4 matters are inter-related that in all the 4 matters the respondent no. 1 enhanced the quantum of the claim which

amounted to exceeding the term of reference ; that the Arbitrator failed to appreciate the gravity of the allegations made by the petitioner and has demonstrated his bias in favour of the Respondent No. 1 and against the petitioner by rejecting the latter's prayer for framing a very relevant and most vital issue for determination, namely, whether the Respondent No. 1 exceeded the terms of reference. It is also submitted that if ultimately the Arbitrator ignored the submission of the petitioner and passed an Award regarding the matters which was beyond his scope of reference, then there is every likelihood of the Award being set aside and the petitioner being harassed. He, therefore, submits that by peremptorily rejecting the prayer for framing a vital issue only on the ground that on the day when the issues were framed, the petitioners did not raise any objection, the Arbitrator's act could raise genuine fear that he would not get proper justice and that the Arbitrator would not deal with the matter impartially and strictly in terms of the reference and that the apprehension of the petitioner cannot be regarded as fanciful apprehension. Mr. Banerjee further submits that his apprehension is absolutely genuine and the learned Arbitrator by his conduct has demonstrated that the petitioners cannot have any further confidence in the impartiality of the arbitrator.

25. My attention has also been drawn to the English decisions referred to in Supreme Court's judgment, reported in *Ranjit Thakur Vs. Union of India (UOI) and Others*, The first such decision is "*Allinson v. General Council of Medical Education and Registration*" (1894) 1 QB 750 at p. 758 where Lord Esher has said as follows :-

"The question is not, whether in fact he was or was not biased. The Court cannot inquire into that.....In the administration of justice, whether by a recognised legal court or by person who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration any person who is to take part in it should not be in such a position that he might be suspected of being biased."

Another decision referred to in the above Supreme Court's decision to which my attention has also been drawn is, "*Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* (1969) 1 QB 577 at p. 599 where Lord Denning M.R. has observed as follows :

".....in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right-minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit...."

In "*Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon*" Lord Denning M.R. has

also observed at another place that before an authority of an Arbitrator may be revoked, it is necessary for the court to consider as to whether the Arbitrator has done something which would give the impression that the parties or anyone of them cannot have any further confidence in his impartiality.

26. Having considered the Supreme Court decision, reported in International Airports Authority of India Vs. K.D. Bali and Anr, and the above two English decisions, I have no doubt in my mind that if the conduct of the Arbitrator is such that a party may reasonably apprehend that he would not get proper justice from him and thus, loses confidence in him, then the Court should intervene to revoke his authority. In my view, Sri Bhatnagar ought to have realised that regard being had to the fact that the Respondent No. 1 in each of these 4 cases sought to enlarge the term of the reference, the additional issue sought to be framed was a very vital issue and refusal to frame such issue may raise genuine apprehension in the mind of the petitioner that the Arbitrator would also during the hearing refuse to entertain such objection and would make an award on the basis of the Statement of Claim made in each of these 4 cases in which there is no doubt that the Respondent No. 1 had claimed amounts more than those claimed in the original letters to the Managing Director and the claims that were referred to the original Arbitrator, Mr. R. K. Goel. I am unable to hold that regard being had to the conduct of the Arbitrator, such apprehension is not genuine. It is true that if ultimately the Arbitrator exceeds the term of reference and makes an Award on the basis of the additional claim, made in the Statements of Claim of the Respondent No. 1, the Court in a proper proceeding u/s 30 of the Arbitration Act, 1940 may have to set aside such Award. But, that might cause harassment not only to the petitioner but also to the Respondent No. 1.

27. In that view of the matter, even if the petitioner agreed to the appointment of Mr. R. K. Bhatnagar before S. K. Hazari J., I am of the view that the subsequent conduct of Mr. Bhatnagar has rendered himself unfit to proceed with any of these four arbitrations.

28. In the circumstances, all these four applications are allowed. The authority of the Sole Arbitrator, Mr. R. K. Bhatnagar, Respondent No. 2, as an Arbitrator is hereby revoked, and he is removed from acting as an Arbitrator any further in any of these four arbitrations. In his place and stead Mr. Chandan Kumar Banerji, a Retired Judge of this Hon'ble Court, is appointed Sole Arbitrator.

29. The outgoing Arbitrator is directed to hand over all the papers and documents relating to these four arbitrations to the incoming Arbitrator within 15 days from the date of service of the signed copy of the operative part of this judgment and order upon him.

30. The incoming Arbitrator, Mr. Banerji, shall within 15 days from the date of receipt of the papers and documents relating to these 4 cases from the outgoing Arbitrator enter upon the Reference and shall proceed with the Arbitration of these 4 cases from the stage at which the outgoing Arbitrator has left strictly in

accordance with the provisions of the Arbitration Act, 1940. The incoming Arbitrator shall complete the Reference and shall make and publish the Award within a period of 6 months from the date on which he enters upon the Reference.

31. The incoming Arbitrator shall be at liberty to appoint a Stenographer and a Clerk to assist him in these arbitration proceedings.

32. The incoming Arbitrator shall be entitled to a remuneration of 100 G.Ms, per sitting.

All the costs of these 4 arbitration proceedings including the remuneration of the incoming Arbitrator and the remunerations of the Stenographer and the Clerk, to be appointed by the incoming Arbitrator, shall be borne equally by the petitioner and the respondent no. 1.

This judgment shall govern all the four cases. I direct the parties to bear their respective costs of these proceedings themselves.

All parties concerned including the outgoing Arbitrator and the incoming Arbitrator are to act on a signed copy of the operative part of this judgment and order on the usual undertaking.

33. Mr. Sankar Mitra, Advocate appearing for the respondent No. 1, Union of India prays for stay of operation of the Judgment and order passed on 4.12.90.

The prayer for stay is refused.