
(1995) 03 AP CK 0040

In the Andhra Pradesh High Court

Case No : Appeal Against Order No's. 1003 and 1007, 1026, 1029 of 1988

Managing Director, The Nagarjuna Co-operative Sugars
Limited

APPELLANT

Vs

T.K. Mohan Rao, Retd. Chief Engineer and another

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(1), 17, 21, 30

Citation : AIR 1995 AP 365 : (1995) 2 ALT 348 : (1995) 2 APLJ 88

Hon'ble Judges : P.L.N. Sarma, J;B.S. Raikote, J

Bench : Division Bench

Advocate : N. Subba Reddy, for the Appellant; Mr. E. Manohar, for the Respondent

Judgement

1. These C.M.As. and C.R.Ps. arise out of common proceedings in relation to Two Awards passed by the Arbitrators in respect of two contracts entered into between the Nagarjuna Co-operative Sugars Ltd., Gurajala, Guntur district, hereinafter referred to as "the employer", and Sri Venkateswara Construction and Agencies, Engineers and Contractors, Banjara Hills, Hyderabad, hereinafter referred to as "the contractor".

2. Contract No. 1 related to the construction of civil works (excluding structural steel fabrication and roofing) pertaining to sugar factory part work for cane carrier, Mill House, Boiler House and work shop etc., including machine foundations and other connected works at Gurajala under Agreement No. Part I/81-82, dated 25-2-1982, hereinafter referred to as "Contract Part-7".

3. The Second contract also was in regard to construction of civil works (excluding structural steel fabrication and roofing) pertaining to sugar factory part work for Boiling House, Power House, etc., including machine foundations and other connected works at Gurajala under Agreement No. Part-II/81-82, dated 25-2-1982, hereinafter referred to as "Contract Part II."

4. Since a dispute arose between the employer and the contractor under Clause-78 of general conditions of contracts, the matter was referred to two arbitrators. The contractor nominated Sri T. K. Mohana Rao, Retired Chief Engineer, Hyderabad, as arbitrator, and the employer nominated Sri. E. Ramaiah, Chartered Engineer, Vice Principal, Government Polytechnic, Vijayawada, as arbitrator, hereinafter together referred to as "arbitrator".

5. The arbitrator decided both Contracts Parts 1 and 2 separately. Certain claims made by the contractor were allowed and certain other claims were rejected in terms of the Award. The counter claims made by the employer in both the contracts were rejected, (hereinafter referred to as Award No. 1 and Award No. 2). To pass a decree in terms of Award No. 1 in relation to Contract No. 1, the contractor filed O.S. No. 218/86 in the Court of Prl. Subordinate Judge, Narasaraopet, and the arbitrator filed O.P. No. 285 of 1986 in the same court for making the Award No. 1 rule of Court. The employer also filed O.P. No. 385/86 in the said court to set aside the said Award. By a common Judgment dated 21-4-1988, the learned Subordinate Judge decreed the suit with costs and the award regarding Contract No. 1 was made rule of Court with interest at 6% p.a. from the date of decree till the date of realisation. O.P. No. 285/86 filed by the Arbitrator make Award No. 1 rule of Court is also allowed with costs. O.P. No. 385/86 filed by the employer to set aside the Award No. 1 is dismissed with costs. It is, in these circumstances, the employer filed C.R.P. No. 1839/88 against the judgment and decree 2M-1988 in O.S. No. 218/86; C.M.A. No. 1003/88 against the judgment in O.P. No. 285 of 1986 making the Award No. 1 rule of Court and C.M.A. No. 1026/88 against the Judgment rejecting the O.P. No. 385/86.

6. To pass a decree in terms of Award No. 2 in relation to Contract Part 2, the contractor filed O.S. No. 219/86 in the Court of Prl. Subordinate Judge, Narasaraopet. The arbitrator filed O.P. No. 286/86 for making the said award rule of Court and the employer filed O.P. No. 384/86 to set aside the Award No. 2 passed by the Arbitrator. "All these matters were disposed of by a common judgment dated 21-4-1988, by which the suit was decreed with costs and the Award No, 2 dated 7-6-1986 regarding Contract No. 2, was made rule of Court with interest at 6% p.a.-from the date of decree till the date of realisation. O.P. No. 285/86 filed by the arbitrator to make the Award No, 2 rule of Court is also allowed with costs. O.P. No. 384/ 86 filed by the employer to set asides the Award No. 2 is dismissed with costs. It is, in these circumstances, the employer filed C.R.P. No. 1838/88 against the judgment and decree in O.S. No, 219/86, dated 21-4-1988; C.M.A. No. 1007 of 1988 against the judgment order passed in O.P. No. 286/86 making the Award No. 2 rule of Court; and C.M.A. No. 1029 of 1988 against the judgment rejecting the O.P. No. 384/1986.

7. All these C.M.As. and CR.Ps. are filed by the employer. Mr. N. Subba Reddy, the learned counsel appearing for the employer, argued all these cases and Sri E. Manohar, the learned senior counsel appearing for the contractor, argued in all

these cases.

8. All these cases raise common questions of facts and Law. Therefore, we propose to dispose of them by this common Judgment.

Both the contracts have two stages. First, the contract was entered into on 25-2-1982 between the employer and the contractor, under which the work was to be completed within a period of four months with two months grace period. In other words, from 25-2-1982, the first four months comes to an end by 24-6-1982 and the grace period of two months comes to an end by 24-8-1982. It, appears that due to the non-completion of the work within the stipulated time, the matter appears to have been referred to a Committee and on the recommendation of the committee, a supplemental L.S. agreement was entered into on 20-11-1982, by which the entire work should be completed by 31-12-1982 without fail, at any rate, not later than 31st March, 1983. By clauses-9 and 10 of supplemental agreement, revised rates were adopted, based on calculations made by the committee in the meeting held at the office of Director of Sugar Offices, Hyderabad, on 21-10-1982. It is admitted by both sides that such escalation was granted at the rate of 16.43%. The two relevant special conditions of the supplemental L.S. agreement are as under:--

"(1) The entire work should be completed by 31-12-1982 without fail provided the society fulfils required necessities and that the contractor will not ask for escalation even if the work is prolonged till 31-3-1983.

2) The revised rates concluded in this agreement will come -into force from 25-6- 1982."

9. It is admitted by both sides that the entire work, in fact, was completed by the contractor by 15-12-1984. The contractor on the alleged ground that the delay, was due to the default on the part of the employer in not giving mark out oh the site and in not supplying the materials in time, made two claims separately before the Arbitrator in support of both the Contracts Parts 1 and 2. The estimated cost of Contract No. 1 was Rs. 16,60,943.10 and the estimated cost of Contract No. 2 was Rs. 21,86,406/-.

10. The arbitrator allowed claims regarding number of items, but the employer questioned the Award No. 1 in relation to Item Nos. 1(A) and 1(B); 2(A) and 2(B); 8(A) and 8(B) of Contract Part 1. Likewise, Items 1 (A) and 1(B); 2(A) and 2(B); 8(A) and 8(B) of Contract Part II were questioned by the employer in Award No. 2. From the statements filed in the case regarding these items what was claimed and what was awarded could be extracted as under:--

Claim No. Details of particulars of claim Contractor SVC claim amount Awarded amount

1 2 3 4

Rs. Rs.

CONTRACT NO. 1:?

1(A)

Payment increased cost of execution for the works done beyond the agreement period

4,81,698.00 83,753.00

1(B)

Payment of towards consequent damages up to the date of reference.

1,41,029.00 6,621.00

2(A)

Payment towards extra expenditure incurred due to restricted blasting

1,64,622.00 49,628.00

2(B)

Payment towards consequent damages up to the date of reference.

83,545.00 3,923.00

8(A)

Payment towards reimbursement of extra expenditure for over heads

2,48,160.00 1,42,600.00

8(B)

Payment of towards consequent damages up to the date of reference.

88,028.00 11,273.00

CONTRACT No. 2

1(A)

Payment increased cost of execution for the works done beyond the agreement period.

6,63,780.00 1,65,164.00

1(B)

Payment of towards consequent damages up to the date of reference.

1,94,338.00 13,056.00

2(A)

Payment towards extra expenditure incurred due to restricted blasting

1,28,900.00. 56,393.00

2(B)

Payment towards consequent damages up to the date of reference.

65,416.00 4,458.00

8(A)

Payment towards reimbursement of extra expenditure for over heads.

2,48,160.00 1,42,600.00

8(B)

Payment of towards consequent damages up to the date of reference

88,028.00 11,273.00

11. With reference to these items of claims, the learned counsel appearing for the employer strenuously contended that the impugned awards passed by the arbitrator in relation to Contracts Parts I and II are illegal and without jurisdiction and the same are liable to be set aside. He urged number of points in support of his contention.

12. The first point urged by the learned counsel appearing for the employer is that the arbitrator was in error in passing an unreasoned awards. Alternatively, he contended that in view of the Arbitration (Andhra Pradesh Amendment) Act, 1990 (Acts I of 1990), hereinafter referred to as the A.P. Amendment Act, this Court may remand the Awards to the arbitrator for giving reasons. He submitted that by this amendment, Sections 14 and 17 of the Arbitration Act, 1940, (hereinafter referred to as "the Central Act") have been amended and by this amendment, in Section 14 to sub-section (1), a proviso has been inserted to the effect that:--

"Provided that the arbitrators or umpire shall give reasons for any award made under this section and no award shall be valid unless reasons therefore are given as aforesaid."

Likewise, Section 17 of the Central Act has been amended by adding a proviso to that section as under:--

"Provided that where an award is pending in the court at the commencement of the Arbitration (Andhra Pradesh Amendment) Act, 1990 or an award filed in the court thereafter does not contain reasons therefore as required by the proviso to sub-section (1) of Section 14 the Court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or the umpire for giving reasons therefore as required by the said proviso and thereupon the arbitrators or umpire shall within 30 days from the date of remittance of the award to them by the Court give reasons for the award and file

the same in the Court.

... ..

13. Thus, on the basis of the amendments, Mr. Subba Reddy, learned counsel appearing for the employer, submitted that in terms of these provisos, it is a fit case for remitting the awards to the arbitrator for giving reasons. He submitted that for the purpose of the A. P. Amendment Act, the award shall be deemed to be pending and, therefore, the A. P. Amendment Act applies even to the awards pending in these appeals and revision petitions.

14. On the other hand, Sri E. Manohar, the learned senior counsel appearing for the contractor submitted that this point is already covered by the division bench judgment of this Court in the The Superintending Engineer Vs. Gayatri Engineers Company, Engineers and Contractors, , and, therefore, the point now urged on behalf of the employer cannot be accepted.

15. To appreciate the rival contentions on this point, it is necessary to note the date of the awards and the date when the A. P. Amendment Act came into force.

16. The impugned awards were passed on 7-6-1986 and the same were made rule of Court on 21-4-1988. It is not in dispute that A. P. Amendment Act i.e., Act I of 1990, has come into force with effect from 13-2-1990. On this basis, the learned counsel for the respondent-contractor contended that the awards in question being already made rule of Court much prior to the A. P. Amendment Act came into force and against these decrees only, the appeals and revisions are pending, it cannot be said that the awards are pending in terms of the A. P. Amendment Act, 1990. On the other hand, the learned counsel appearing for the employer contended that the appeal is nothing but continuation of the proceedings and, therefore, the award shall be deemed to be pending in these appeals and revisions. In this context, he referred to the decision of the Supreme Court in Ct. A. Ct. Nachiappa Chettiar and Others Vs. Ct. A. Ct. Subramaniam Chettiar, . We are afraid that the contention of the teamed counsel appearing for the employer cannot be accepted. The Supreme Court in the above decision was considering the general principles regarding the word "Court" found in Sec. 21 of the Arbitration Act for the purpose of reference of the dispute to an arbitration. u/s 21 of the Central Act, if a Court having original jurisdiction to try the suits could refer the matter to the arbitrator, the same also could be done by the appellate Court in an appeal filed under the CPC by exercising the power conferred on the Court u/S. 21 of the Central Act. Under the Code of Civil Procedure, the appellate Court has the same jurisdiction as that of the trial Court and it may pass any appropriate decree having regard to the material on record and it exercises all the jurisdiction vested in the trial Court. It is only in that context the word "Court" has been explained by the Supreme Court in the said decision. Therefore, this decision is not applicable to the facts of this case.

17. According to the A. P. Amendment Act, 1990, in the cases, where the award is pending in the Court at the commencement of the A. P. Amendment Act, which

came into force with effect from 13th February, 1990, the Court shall not make the said award a rule of Court and pass a decree in terms of the award, but shall remit the award to the arbitrator. Therefore, the arbitrator or umpire shall give reasons. Section 3 of the A. P. Amendment Act, 1990 deals with the situation where an award has been submitted by the arbitrator and the same is awaiting the rule of the Court. It also contemplates a situation where the award was passed by the arbitrator subsequent to the amendment Act, 1990 but with no reasons, then also it may remit the matter to the arbitrator for giving reasons. From this fact, it is clear that the A. P. Amendment Act, 1990 deals with the contingency wherein award is passed by the arbitrator without reasons and it is yet to be made rule of the Court. Therefore, the A. P. Amendment Act does not apply to the awards already passed which were made rule of Court by passing decrees prior to the amendment. Now, what is pending before us in these revisions and appeals is the decrees passed by the Court, before the amendment. The awards have already merged into decrees and those decrees are pending before us but not the awards. In these circumstances, it is not possible to accede to the contention of the learned counsel appearing for the appellants-employer that these awards are still pending in these revisions and appeals. In other words, the impugned judgments and decrees are the judgments and decrees already passed by the Court u/S. 17 of the Central Act; and as per the said section, "no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award". Therefore, even to consider such decrees, we are sitting as appellate Court with a restricted appellate jurisdiction only with a limited question to find out whether such decree was in excess of the award or whether it is not in accordance with the award.

18. Even u/S. 39 of the Central Act, appeal is provided to the appellate Court from the original decrees of the Court passing certain orders like setting aside or refusing to set aside the award. U/s. 30 of the Central Act, an award shall not be set aside except on one or more grounds slated therein that an arbitrator or umpire misconduct himself of the proceedings; that an award has been passed after the issue of an order by the Court superseding the arbitration or an award has been improperly procured or is otherwise invalid. From all these circumstances, it is clear that the contention of the learned counsel appearing for the employer, by placing reliance on the decision of the Supreme Court in *Ct. A. Ct. Nachiappa Chettiar v. Ct. A. Ct. Subramaniam Chettiar* supra, that this appeal is nothing but a continuation of the suit cannot be accepted in respect of the applicability of Act I of 1990. Moreover, by the judgment of the Division Bench of this Court reported in *The Superintending Engineer, N. S. Left Canals Circle, Miryalaguda v. M/s. Gayatri Engineers Company, Hyderabad* supra, this point is squarely covered. In the said decision, the Division Bench of this Court held as under:--

"In our view, the proviso added to Section 17 by amending Act I of 1990 applies only to cases where the awards are pending and not made a rule or decree of the

Court. Section 14 contemplates that after passing of the award by the arbitrators, the same shall be filed into Court and after giving notice to the parties; the Court shall pronounce its opinion. Section 17 provides that where the Court does not see any cause to remit or set aside the award shall proceed to pronounce the judgment according to the award and upon the judgment so pronounced a decree shall follow."

"Now the expression used in the proviso added by the amending Act is "an award pending in the Court". Obviously, this can refer only to cases where awards are filed and pending in the Court of the first instance and not to cases where decrees are already passed; In fact, no appeal is provided against the decree except on a limited ground namely, that the decree is in excess of the award or not in accordance with the award."

"The expression "Court" as defined under Sec. 2(c) means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court. The expression "Court" used in Section 21 may include an Appellate Court as Section 21 deals with arbitration in suits. But the same has no application to proceedings under Sections 14 and 17. On the language of the proviso introduced by the amending Act, we have no hesitation in holding that the proviso is prospective and does not apply to cases where the award is made a rule of the Court and a decree was passed. In fact, there is no appeal against the decree in the present case. As the appeal is limited to only two questions, it is only a C.R.P. that is filed against the decree. The appeal is against the, Order refusing to set aside the award. It is a stated proposition of law that no Act can be held to be retrospective unless it is expressly stated so or it follows by necessary implication. It cannot be the intention of the Legislature to reopen all matters even where decrees have been passed. If that were so, it would have been specifically mentioned that awards pending and decrees passed. The Legislature was aware that some matters are pending in appeal and they would have expressly mentioned if they intended the provision to apply to appeals also."

... .. "We, therefore, hold that Act 1 of 1990 has no application to this case as the award was made a rule of the Court in 1983. In fact this position has not been seriously disputed by the respondent."

19. In the light of the above decision of the division bench of this Court, it is clear that the first point urged by the learned counsel appearing for the appellant-employer merits only for rejection.

20. The other contentions raised by the learned counsel for the employer relate to the merits of the case. Admittedly, the amounts awarded by the arbitrator were by a non-speaking or unreasoned awards. In such circumstances, it is difficult for the employer to challenge the awards on the basis of "error apparent on the face of the record". As per the Central Act, it is not necessary for the

arbitrator to give reasons. It is only after the A."P. Amendment Act, 1990, by which the Central Act was amended it has become obligatory on the part of the arbitrator to give reasons. As we have already stated above, the awards have been passed very much prior to the commencement of the A. P. Amendment Act. While dealing with the first point, we have held that the A. P. Amendment Act has not been given any retrospective effect either expressly or impliedly. In these circumstances, we have to consider the awards as they are passed as per law as it stood at the time of passing of the awards and the awards made the rule of Court.

21. The Supreme Court in more than one decision has held that this Court would be in a position to consider the validity of the award on the principle of "error apparent on the face of the record" only, when reasons are given and not otherwise. For instance, in Raipur Development Authority v. M/s. Chokhamal Contractors, AIR 1990 SC 1426, the Supreme Court held as under at page 1444:--

"The question which arises for consideration in these cases is whether it is appropriate for this Court to take the view that any award passed under the Act, that is, the Arbitration Act, 1940 is liable to be remitted or set aside solely on the ground that the arbitrator has not given reasons thus virtually introducing by a judicial verdict an amendment to the Act when it has not been the law for nearly 7/8 decades. The people in India as in other parts of the world such as England, U.S.A., and Australia have become accustomed to the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards for a long time. They have attached more importance to the element of finality of the awards than their legality. Of course, when reasons are given in support of the awards and those reasons disclose any error apparent on the face of the record people have not refrained from questioning such awards before the Courts. It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where the reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of the submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside."

22. To the same effect also is the latest judgment of the Supreme Court in

Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others, . The relevant portion of the judgment reads as under at page 2573 of AIR:--

"We would now proceed to deal with the question as to whether (he High Court was right in setting aside the award made by the arbitrator, As regards an award made by an arbitrator under the Act the law is well settled that the arbitrator's award is generally considered binding between the parties since he is the tribunal selected by the parties. The power of the Court to set aside an award is restricted to the grounds set out in Section 30 of the Act, namely, (a) where the arbitrator has misconducted himself or the proceedings; (b) where the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35; and (c) where the award has been improperly procured or is otherwise invalid. The Court can set aside the award under clause (c) of Section 30 if it suffers from an error on the face of the award. An award might be set aside on the ground of an error on the face of it when the reasons given by the decision, either in the award or in any document incorporated with it, are based upon a legal proposition which is erroneous. In the absence of any reasons for making the award, it is not open to the Court to interfere with the award. The Court cannot probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. An award is not, invalid merely because by a process of interference and argument it may be demonstrated that the arbitrator has committed grave mistake in arriving at his conclusion. The arbitrator is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or deed of settlement he is required to give such reasons. If the arbitrator or umpire chooses to give reasons in support of his decision, it would be open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the basis of the recording of such reasons. The reasonableness of the reasons given by the arbitrator cannot, however, be challenged. The arbitrator is the sole Judge of the quality as well as the quantity of the evidence and it will not be for the Court to take upon itself the task of being a Judge of the evidence before the arbitrator. The 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 *Champser Bhara and Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.* (LR 50 1A 324, 331 : AIR 1923 PC 66); *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, ; *Sudarsan Trading Co. Vs. Government of Kerala and Another*, ; *Raipur Development Authority Vs. M/s. Chokhamal Contractors etc. etc.*, : AIR 1990 1426 (SC) and *Smt. Santa Sila Devi and Another Vs. Dharendra Nath Sen and Others*, ."

... .. "We would first examine the matter of valuation of immovable properties by the arbitrator. This raises the question whether the award is a speaking award containing reasons or a non-speaking one. If it is a non-speaking award, it is not open to challenge on the ground of error apparent on the face of the award. The

High Court has proceeded on the basis that the award is not totally non-speaking and in so far as the mode valuation of these properties is concerned, it very much speaks to the extent that the arbitrator discloses two things, namely-

(i) his factual assertion that such and such is the annual letting value of the property as assessed by the Municipal Corporation; and

(ii) his view that the market value should be 20 times the assessed annual letting value."

"We find it difficult to agree with the said view of the High Court. There is nothing in the award to indicate the process of reasoning adopted by the arbitrator to arrive at the market value of immovable properties. Merely because the arbitrator has mentioned the municipal annual rental value of the property before indicating the market value of the same does not mean that the value is fixed on the basis of the rental value and the award is a reasoned award justifying the Court to examine whether the award suffers from an error. It is settled law that it is not open to the Court to deduce reasons in the award or in the record accompanying the award and proceed to examine whether those reasons were right or erroneous. This is what appears to have been done by the High Court in the present case. This was impermissible. We are, therefore, of the opinion that the High Court was in error in going into the question of valuation of immovable properties by the arbitrator in the award."

23. However, the learned counsel Mr. N. Subba Reddy appearing for the employer contended that the three items of claims awarded by the arbitrator, which the employer is challenging, are sued items of claims which could not have been granted. He submitted that the arbitrator has gone outside the contacts in granting these items of claims. He Submitted that the arbitrator while passing the award cannot travel outside the contract and his sole function was to arbitrate in terms of the contract. In support of this contention, he relied upon the decision of the Supreme Court in Associated Engineering Co. Vs. Government of Andhra Pradesh and another, . Paragraph 26 of the said decision reads as under at page 239:--

"The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bonds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it."

24. In the above case, the Hon"ble Supreme Court was considering an award in which number of reasons were given by the arbitrator, and from the material on record in that case, the Supreme Court found that the arbitrator had passed an award with regard to certain items which were not provided in the contract. In the instant case, it is a non-speaking award. No reasons are given by the

arbitrator. As held by the Supreme Court in Bijendranath Srivastava's case *supra*, in the absence of any reasons for making the award, it is not open to the Court to interfere with the award. The Court cannot probe into the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator as to what impelled the arbitrator to arrive at his conclusion. An award is not invalid merely because by a process of inference and argument it may be demonstrated that an arbitrator has committed grave mistake in arriving at his conclusion. In the instant case also, since the arbitrator has passed an unreasoned award, it is not possible for us to find out whether items 1, 2 and 8 of claims awarded by the arbitrator are within the parameters of the contract or outside the parameters of the contract. The arbitration clause referred to by both the counsel is wide enough to cover items 1, 2 and 8 of the claims in both the contracts, which are extracted above. For the sake of convenience, we are also extracting hereunder the arbitration clause 78 of the general conditions of the contract:--

"Arbitration:-- In the event of any question or dispute arising under these conditions or any special conditions of contract or in connection with this contract, (except as to any matters the decision of which is specially provided for by these conditions), whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of contract, the same shall be referred to the award of an Arbitrator to be nominated by the Employer and an Arbitrator to be nominated by the Contractor, or in case of the said Arbitrators not agreeing then to the award of an Umpire to be appointed by the arbitrators in writing before proceeding on the reference and the decision of the Arbitrators, or in the event of their not agreeing, of the Umpire appointed by them shall be final and conclusive and the provisions of the Indian Arbitration Act, 1940, and of the Rules thereunder and any statutory modification thereof shall be deemed to apply to and be incorporated in this contract."

25. From the above clause, it is clear that any dispute arising under the conditions of the contract or in connection with the contract, whether during the progress of the work or after their completion or breach of contract, the same could be referred to an arbitrator for passing an award.

26. As we have already noted above, the items Nos. 1, 2 and 8 of the claims awarded by the arbitrator in both the contracts, are contested and argued by the learned counsel for the employer under three different headings. The Item No. 1 of the claims related to the granting of increased costs of the execution of the contract works. The learned counsel on both sides have invited our attention to Claim No. 1 in the Claim Petition. In the preamble of the claim petition, it is stated that on the part of the employer there was delay in execution of the work even beyond the contract period, due to the fact that the employer did not give the mark out, in time, and the site handed over to the contractor, covered with jungle, which had to be cleared first. The site allotted consisted of both soft and

rocky area and the rocky area required drilling and blasting. There was also delay in supplying the drawings and there were changes made in the drawings. There was also delay in the supply of necessary materials, etc. However, these allegations made in the claim petition are denied by the employer in its counter. Considering the detailed case put forth by both sides in the claim petition as well as in the counter, the arbitrator has passed an unreasoned award. As stated above, it is very difficult for us to unearth the mental process of the arbitrator. However, the learned Counsel for the employer contended that the contractor is not entitled to escalated cost of the execution of the work done, beyond the agreement period and he was also not entitled for damages till the date of reference.

27. It is not in dispute that as per the first phase of the agreement, the entire work was to be executed on or before 24-6-1982. The claimant/contractor in Para. 8 under Claim No. 1 claimed escalated cost beyond the agreement period i.e., beyond 24-6-1982. It is not in dispute that the execution of the work was completed only by 15-12-1984. To note the substance of Claim No. 1 of the contractor, paragraph 8 of the Claim No. 1 may be extracted hereunder:--

"In view of the above, the claimants are entitled to be reimbursed for all the extra expenditure amounting to Rs. 4,81,698/-(over and above the amount already realised), which they were forced to incur, due to increase in the market rates for materials, labour, transport, etc., in executing the work beyond the agreement period i.e., 24-6-1982."

28. The learned counsel for the contractor strenuously submitted that, no doubt, the escalation was claimed by the contractor was for the period beyond -24-6-1982, but the arbitrator has granted only up to 31-12-1982 or 31-3-1983, up to which date the contract was extended by mutual agreement by supplemental agreement. The claim made by the contractor beyond 31-3-1983 has not been granted. To buttress his argument, he invited our attention to the amounts claimed by the contractor and ultimately the amounts awarded by the arbitrator regarding Claim No. 1. He contended that under Claim No. 1, the contractor/claimant has claimed Rupees 4,81,698/- towards escalated cost of the material, but what is awarded by the arbitrator is only Rs. 83,753/-. Likewise, towards damage resulting from such escalated cost due to delayed execution of the work, for the default of the employer, he claimed at Rs. 1,41,029/- but that is awarded in Rupees 6,629/-. He further submitted that the escalated rates were already provided by the contract under supplemental agreement, dated 20-11-1982. The conditions of the supplemental agreement were already extracted above. According to this supplemental L. S. agreement, the entire work should be completed by 31-12-1982, at any rate not beyond 31-3-1983. Under condition No. 2, the revised rates towards escalation of cost was to come into force from 25-6-1982. The learned counsel for the contractor contended that it is according to this rate only under claim No. 1, the escalated cost has been awarded and not more than that. To this argument, the learned counsel for the

employer argued that the same cannot be ascertained from the award. Whatever it may be, one thing is certain that by supplemental L.S. agreement escalation of rate was provided by the contract and it is on that basis," the arbitrator ultimately awarded increased cost under claim No. 1 in favour of the contractor. Since it is a non-speaking award, it is not possible for us to disaffair the intention of the arbitrator. A guess could be possible that presumably the arbitrator granted the escalated cost within the extended period by supplemental L.S. agreement i.e., 31-3-1983. Since it is an unreasoned award, it is not possible to accept the argument of the learned counsel for the employer in this behalf.

29. It is not the case of the employer that the contractor was not entitled to escalate costs. Even in the counter, the employer simply disputed the rates Claimed by the contractor. Presumably, the arbitrator awarded the costs suggested by the employer only. Moreover, as per the law declared by the Supreme Court in Hyderabad Municipal Corporation Vs. M. Krishnaswami Mudaliar and Mudaliar and Another, , such escalated costs a contractor would be entitled to both in equity and law. The Supreme Court, in the above case, has held as under:--

"After considering the correspondence exchanged between the parties and the other material on record the High Court has taken the view that the Government was liable to make extra payment for the work done as there was no dispute that the rates of material, etc., had increased during the extended period of two years and plaintiff was entitled to such extra payment. After considering the relevant material on record, we are of the view that both in equity and in law the plaintiff contractor is entitled to receive extra payment and the High Court was right in deciding the question in respondent-plaintiffs favour"

Assuming for the sake of argument that the escalated cost claimed by the contractor was beyond 31-3-1983 to the date of the completion of the work on 15-12-1984, in view of the judgment of the Supreme Court extracted above, as there was default on the part of the employer, the contractor would be, prima facie, entitled to the escalation costs till that date. However, it is not demonstrated before us by the learned counsel for the employer that the escalated costs, beyond 31-12-1982 or 31-3-1983 has been awarded in the instant case. Whatever it may be, the award being non-speaking award, it is not possible for us to find out whether there is any error apparent on the face of the record. Accordingly, we reject the contention of the learned counsel for the employer.

30. The second item of claim challenged by the employer is one relating to the claim by the contractor towards the extra expenditure incurred by him due to the restricted blasting. The learned counsel for the contractor submitted that the restricted or muffled blasting was adopted for excavation of the rocky area on the basis of the instructions given by the employer. In claim No. 2 of the claim petition, the letter dated 16-4-1982 issued by the employer is extracted. From the counter of the employer relating to claim No. 2, it is clear that the blasting

work commenced from 2-3-1982 itself and it was completed by 3rd or 4th week of April, 1982. In the counter, the employer has admitted the letter dated 16-4-1982 having written to the contractor. For the sake of convenience, the said letter is extracted as under:--

"....You are requested to resort to blasting in confirmed conditions taking proper precautions duly covering the area of blasting with suitable covering material and necessary super imposed load over that sufficient to prevent the blasting splinters from flying in all directions and thereby endangering the environments. You are also requested to consult people skilled in blasting operations in built up areas as to how best the work can be carried out without detriment to the neighbourhood."

31. Under Clause 5 of the general specifications appended to the general conditions of the contract marked as Ex. B-3, excavation has to be done according to the drawings supplied and excavating the rock by blasting could be carried on as per the written consent. In the instant case, the letter referred to above itself directs the contractor to adopt blasting in confined conditions. In other words, it directs the contractor to adopt restricted blasting. From these circumstances, it is clear that the contractor was entitled to extra expenditure incurred by him for adopting the blasting in confined conditions. Therefore, even this claim No. 2 is in relation to the term in the contract. Having regard to these circumstances, it is clear that the arbitrator has awarded this claim also in favour of the contractor. Even in awarding this claim, it cannot be said that there is anything outside the contract. Therefore, the contention of the learned counsel for the employer urged in this behalf is hereby rejected.

32. The last item No. 3 of the claims pertains to claim No. 8 claiming reimbursement of expenditure incurred by him for overhead charges. The claim of the contractor in this behalf is that due to the delay or default on the part of the employer, he has to complete the execution of the work only on 15-12-1984. Otherwise, he would have completed it much earlier than the contractual period. He contends that he, unnecessarily, had to maintain the establishment for execution of the contract work and, therefore, the employer was liable to pay these overhead charges. Even if it is taken as a general damage, still it is permissible. This item also relates to the contract only. If the arbitrator came to the conclusion that there was delay or default or breach of contract on the part of the employer either in supplying the materials or in supplying the drawings or giving the mark out, etc., the claimant would be entitled to such damages for the delay in execution of the contract work. The learned counsel for the contractor contended that awarding overhead charges towards the maintenance of the establishment beyond the contractual period until the execution of the contract work is permissible within the contract. He submitted that this related to the contract.

33. On the other hand, the learned counsel for the employer contended that the awarding of this amount under over-head charges amounts to double payment,

in the sense that the contractor has already got escalated cost under claim No. 1 and awarding overhead charges amounts to double payment. As against this, the learned counsel for the contractor submitted, that what was awarded under claim No. 1 was actuals having regard to the increased costs of the materials required for the execution of the contract work only and what is claimed under this claim is that in addition to the incurring escalated costs, the contractor had to maintain the establishment unnecessarily beyond the period of agreement till the completion of execution of the work, for which the contractor would be entitled to. He further submitted that all this is incidental to the contract. In this contract, he invited our attention to the decision of the Supreme Court in *Renusagar Power Co. Ltd. Vs. General Electric Co.*, of the said decision, the Supreme Court held as under at page 897 of AIR:--

"This objection relates to award of compensatory damages under item No. 4. The submission of Shri Venugopai is that since the contract did not provide for payment of interest for the period subsequent to the date of maturity, the delinquent interest that has been awarded under item No. 3 is in the nature of damages and the award of compensatory damages under item No. 4 amounts to award of damages on damages which is impermissible and is contrary to public policy, of India. In support of this submission, Shri Venugopal has placed reliance on the decision of this Court in *Trojan and Co. Ltd. v. Nagapra Chettiar*, 1953 SCR 789; wherein interest had been allowed on damages and it was contended before this Court that the said interest could not be allowed on damages because it would amount to awarding damages on damages which is opposed to precedent and principle. The Court rejected the said contention and held that interest is allowed by Court of equity in the case of money obtained or retained by fraud and in that case, the plaintiff had paid the money to defendants on account of fraudulent practices by the defendants on the plaintiffs.

34. From the principles enunciated by the Supreme Court in this case, it is clear that such general damages could be awarded under both in common law and equity and the same is not opposed to public policy. The arbitration clause, which we have extracted above, contemplates disputes arising of the contract and also referred to in relation to the contracts. The learned counsel for the employer also was not in a position to demonstrate any illegality in this behalf, since the award is a non-speaking award.

35. However, the learned counsel appearing for the employer relied upon an unreported judgment of a Division Bench of this Court in *The Superintending Engineer N.S Rights Canal Circle, Pellur, Ongole v. Ch. Ramalinga Reddy*, (A.A.O. No. 1148 of 1986), dated 27-4-1989. In the said Judgment, this Court held:--

"But it may be noted that under this claim, interest at the rate of 18% by way of Compensation was awarded even on Rupees 2,78,496/- said to be the amounts of FST and EMD. Anyhow when from out of the final bill, some amounts were transferred to EST and EMD and when compensation was paid separately on the said amount, it will be a case of double payment if such compensation is paid on

the final bill amount before deduction. Thus, there is error apparent on the face of the record."

36. The facts of the above case are entirely different from the instant case, and the said observations of the Division Bench of this Court do not apply to the facts of this case. Claim No. 3 in question in the instant case is not one claiming interest on interest. but it is one which the contractor pleaded that he had to maintain establishment beyond the contractual period until the execution of the contract work, due to the default and delay on the part of the employer. This was the general plea regarding all the items of claims and the arbitrator has accepted it. Even otherwise, in the light of the decision of the Supreme Court reported in Renusagar Power Co. Ltd.'s case (supra), according to which interest on interest could be awarded as general damages, and having regard to the facts of the case, we do not think that the judgment of a Division Bench of this Court in A.A.O. No. 1148 of 1986 supports the case of the employer in any manner. Hence, the third contention of the employer is hereby rejected.

37. One another important aspect we have to notice, before we part of with the case is that the points now raised before us with regard to claims Nos. 1, 2 and 8 awarded by the arbitrator have not been specifically raised by the employer before the lower court in his petitions for setting aside the Awards. The learned Subordinate Judge, Narasaraopet, while considering the petitions filed by the employer for setting aside the awards, noticed the contentions raised by the employer. From the contentions raised by the employer before the lower court, it is clear that it was argued before him that the awards of the arbitrator were unjust and opposed to the general principles of Law; the arbitrator has not given reasons, he has not considered the counters and documents; various amounts awarded under different claims in favour of the contractor is without any basis; though the suger factory suffered loss, its claim has been unnecessarily rejected, and the procedure followed by the arbitrator was not in accordance with the Arbitration Act. The points formulated before us under the three items of claims have not been specifically urged before the lower court. Had these points were urged before the lower court in the manner that has been done before us, the learned Subordinate Judge would have considered the same. In these circumstances and having regard to the fact that the awards in question are non-speaking awards, it is not possible for us to find out whether there is any error apparent on the face of the record. Therefore, we do not see any merits in these C.M. As. and revisions filed by the employer.

38. For the reasons stated above, we hereby dismiss the C.M.As. and the revision petitions filed by the employer, but in the circumstances of the cases, without costs.

39. Petitions dismissed.