

(1962) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 128 of 1958

National Electric Supply and Trading Corporation Private Ltd.	APPELLANT
Vs	
Punjab State and Another	RESPONDENT

Date of Decision : 01-05-1962

Acts Referred:

Arbitration Act, 1940 — Section 30
Electricity Act, 1910 — Section 52, 7, 7(1)

Citation : AIR 1963 P&H 56 : (1962) 2 ILR (P&H) 789

Hon'ble Judges : P.D. Sharma, J; Mehar Singh, J

Bench : Division Bench

Advocate : B.R. Tulli and S.S. Sodhi, for the Appellant; F.C. Mittal and A.R. Khosla, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, J.—The National Electric Supply and Trading corporation (Private) Limited was granted a licence on February 21, 1934, for a period of 15 years in the first instance for the generation and supply of electricity in the Moga town. The licence expired on February 20, 1949, on which date the undertaking was purchased by the State Government under Sub-section (2) of Section 7 of the Indian Electricity Act, 1910 (Act No. 9 of 1910), before Section 7 was substituted by the Indian Electricity (Amendment) Act, 1959 (Act No. 32 of 1959). On March 1, 1949, the licensee made a claim of Rs. ten lacs as the price of the undertaking. The State Government valued the undertaking at Rs. 1,88,640/- paying the amount to the licensee in instalments. So a dispute arose between the licensee and the State Government in regard to the value of the undertaking. Sub-section (1) of Section 7 of Act No. 9 of 1910, in case of such difference or dispute about valuation, provides for the determination of the same by arbitration. Sometime in 1951, the State Government suggested to the licensee the appointment of the Director of Central Water and Power Commission as arbitrator u/s 52 of the Act, but the licensee did not agree to that. On March 25, 1954, the State Government issued notification appointing Shri. D. D. Dhawan, a

former Judge of the Punjab High Court, to act as the sole arbitrator in the dispute between it and the licensee. A copy of it is Exhibit P. W. 3/6.

It appears from paragraph 2 of the notification that the licensee desired settlement of the dispute through arbitration. A letter of March 26, 1954 copy Exhibit P. W. 3/5, gives the terms of the arbitrator. The terms were (a) that the arbitrator was to be paid Rs. 5000/- by the State Government within one month from the date of his entering on the arbitration, (b) that the State Government was initially to bear the remuneration of Rupees 5,000/- which was in the end to be included in the costs of arbitration, leaving its apportionment among the parties to the arbitrator's decision as part of the award, and (c) that the remuneration of Rs. 5,000/- was to be Inclusive of all expenditure that was to be incurred by the arbitrator In connection with arbitration proceedings. There are other terms, but those are not material. Copies of the notification and of the letter Exhibit P. W. 3/5 were for-warded to the arbitrator as also the licence with the covering letter of which the copy is Exhibit P. W. 3/4.

On April 14, 1954, the licensee wrote a letter, copy Exhibit D. 1 to the Chief Engineer and Secretary to the State Government in the Electricity Branch of the Public Works Department saying that

"We have the honour to state that while we have full confidence in the sense of justice of Shri D. D. Dhawan but as already stated in our letters. . . . reiterate that the Government is a party to the dispute, therefore, any Government nominee appointed as a sole arbitrator is not acceptable to us and if at all thrust upon us, we shall attend the arbitration proceedings under Protest, but we reserve our right to move the High Court to contest the award if necessary."

In the last paragraph of this letter it is further stated that "the arbitration fee is too high as compared with the Job." The arbitrator entered on the reference on May 29, 1954. He was paid the remuneration of Rs. 5,000/- some time in July, 1954. On August 20, 1956, he made his award giving the licensee a sum of Rs. 45,360/- as the remaining unpaid purchase money for the undertaking with interest, an amount of Rs. 15,265-6-6 to the date of the award, making a total sum due to the licensee as Rupees 60,625-6-6. In addition, he decided that his remuneration of Rs. 5,000/- and the costs of stamp on the award shall be borne by the parties equally.

2. On November 16, 1956, the licensee made an application u/s 14 of the Arbitration Act, 1940 (Act No. 10 of 1940), for the filing of the award in Court. The award having been filed, the licensee raised a number of objections to the award, which objections have been resisted by the State Government. The learned trial Judge settled a number of issues arising out of the objections of the licensee but in the end by his order of December 2, 1957, made the award rule of the Court passing a decree in favour of the licensee in the amount awarded to it by the arbitrator of which the result was the dismissal of the objections of the licensee with costs.

It is against the decree of the learned trial Judge that this appeal has been filed by the licensee. A number of grounds have been taken against the decree in the grounds of appeal, but at the hearing the arguments for the parties have been confined only to seven grounds to which reference will presently be made. The appeal came up for hearing first before a learned Single Judge who by his order of August 2, 1961 referred it to a larger Bench on the ground that some rather important questions of law are involved in It for consideration and decision on such questions is likely to affect other similar case arising out of the State Government having purchased other similar undertakings. In the order of reference, the learned Judge has noted six such questions of law, but as stated, at hearing the learned counsel for the parties have canvassed seven grounds against the decree of the trial Court. It is in this manner that appeal has come before us.

3. The first contention of the licensee is that Section 52 of Act No. 9 of 1910 cannot apply to a dispute when the State Government having purchased an undertaking is a party to it. Section 52 provides-

"52. Arbitration. -- Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the State Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration Act, 1940."

It is said that this section envisages parties who can make an application to the State Government for nomination of an arbitrator but, as the State Government cannot make an application to itself for the purpose so it is not within the expression "either party" as used in this section. Reference is made to a number of provisions in this Act wherein most of the disputes are directed to be determined by arbitration and the list of such provisions is given at pp. 256 to 258 of Shiva Gopal's Law Relating to Electricity in India, 1950 Edition. Learned counsel for the licensee urges that in all those provisions the parties to the disputes are persons other than the State Government, and that being so the State Government has been given power u/s 52 to nominate an arbitrator to settle the dispute. The object, according to the learned counsel, of this section is settlement of the dispute where the State Government is not a party to any dispute. The reason which the learned counsel advances for this approach is that it is an accepted rule that a party cannot be a Judge in its own cause and the learned counsel says that that is why where the State Government is a party to a dispute under this Act, such a dispute is excluded from the scope of Section 52.

Sub-section (2) of Section 7 of this Act provides that where the local authority does not elect to purchase the undertaking the State Government shall have the like option of purchasing it upon the like terms and conditions, that is to say, on the same terms and conditions as the local authority can purchase. Sub-section (1) of this section provides that in case of difference or dispute about the

valuation of the undertaking, that is to be determined by arbitration. This applies to every case of purchase of an undertaking whether by a local authority or by the State Government. So that whenever an undertaking or like that of the licensee in this case is purchased u/s 7 of this Act, any dispute or difference about the price to be paid can only be settled by arbitration as provided by Sub-section (1) of Section 7. There is no other manner of settlement of such difference or dispute. The learned counsel for the licensee says that that being so and Section 52 of this Act not applying where the purchaser is the State Government, arbitration can only be had under Act No. 10 of 1940.

Whatever may be the position in regard to disputes referred to in other provisions of Act No. 9 of 1910, so far as any difference or dispute as referred to in Section 7 of this Act is concerned, that can be between the licensee and the State Government and the only way of settlement of the same is by arbitration. This is the express provision in this section. Section 52 of this Act makes an imperative provision giving power to the state Government to nominate an arbitrator on the application of either party whether any matter is, by or under this Act, directed to be determined by arbitration. So that it is an imperative provision of this section that whatever matter is to be determined by arbitration under any provision of Act No. 9 of 1910, In that the State Government alone has the power to nominate an arbitrator on the application of either party. This section covers all cases of arbitration under this Act and there is no case of arbitration under this Act which falls outside the scope of this section and can be considered under the provisions of Act No. 10 of 1940. So that it Is not correct that where the State Government is the purchaser of an undertaking u/s 7 of this Act, the arbitration in regard to the dispute as to the price of the undertaking with the licensee is not to be u/s 52 of this Act but under the provisions of Act No. 10 of 1940.

No doubt, the State Government cannot literally speaking make an application to itself u/s 52 of Act No. 9 of 1910, but the licensee can always make such an application and as it appears from the notification already referred to In this case In fact arbitrator was appointed on the desire of the licensee, in other words, on the application of the licensee. Section 52 of this Act gives statutory power to the State Government to appoint an arbitrator where the purchase of an undertaking is by itself or by a local authority. This section, therefore, applies to a case where the undertaking is purchased by the State Government. There is no substance in the argument that by nominating an arbitrator under this section, the State Government becomes a Judge in its own cause. The statute gives power to the State Government and no such consideration can prevail to deprive the State Government of the power. Even in ordinary contracts it is open to the parties to agree to an arbitration clause in which a nominee of one of the parties is accepted as arbitrator by both the parties. Here it is the statute which gives the power of nomination to the State Government.

Learned counsel then refers to a proviso added to Section 52 by Act No. 32 of

1959 which proviso runs-

"Provided that where the Government or a State Electricity Board is a party to a dispute, the dispute shall be referred to two arbitrators, one to be appointed by each party to the dispute;"

and contends that this subsequent addition to the section shows that before this addition Section 52 was not considered to apply to a case where the purchase of the undertaking was by the State Government. No such inference is available from this new concession which the Legislature has made in the particular cases dealt with by the proviso. The new proviso cannot be read to limit the plain meaning of the section as it stood before the addition of the proviso. So there is no substance in the first contention on behalf of the licensee that Section 52 of Act No. 9 of 1910 does not apply to the present case because it does not apply to an arbitration in which the State Government is concerned as a party.

4. The next argument on behalf of the licensee is that the award is vitiated by the fact that the arbitrator accepted fee from the State Government only before the award was actually made and to support this reliance is placed on *Shephard v. Brand* (1734) 2 BKB. 463, which has been relied upon in *The First National Bank Ltd., Ambala Vs. Beri Brothers and Others*, In the first of these cases, the arbitrator, one of the parties having refused to pay its share of the fee demanded by the arbitrator, accepted the whole of the fee from the opposite party and the Court thought that it might be something dangerous to suffer one side only to give money to arbitrator; accordingly, the award was set aside. Ever since that decision, this has been considered to be the settled rule and it was, therefore, followed in the other two cases referred to.

In the second of these three cases the arbitrator was paid his full fee by one of the parties and the learned Judge found that half of the fee which was paid as the fee of the opposite side was paid by way of accommodation to the opposite side which was not in a position to arrange for the payment of the same, that what was done by the solicitor acting on behalf of the party making the payment was not objected to by the opposite side, and that the whole matter of payment of the arbitrator's fee was one of mutual arrangement between the contending parties. On these considerations, the learned Judge was of the opinion that that case did not come within the ambit of the decision in (1734) 2 BKB 463. In the third, case, on facts the learned Judge found that the case did come within the ambit of the decision in that case, but the facts have no parallel to the present case, in the present case, for a number of years the licensee did not accept suggestions about the appointment of an arbitrator by the State Government though In 1951 the State Government suggested the name of an officer of high status as an arbitrator.

It appears from the notification appointing the arbitrator that the State Government appointed one at the desire of the licensee. The advance copies of the notification and the letter appointing the arbitrator with the terms and

conditions of the arbitrator were sent to the licensee, and in its letter Exhibit D. 1 objecting to the appointment of the arbitrator while the licensee objects to the remuneration of Rs. 5,000/- being excessive, it does not object to the State Government initially making the payment of the amount of the remuneration to the arbitrator subject to it being a matter of costs at the end of the arbitration. No other objection was raised to the payment of the fee to the arbitrator that the licensee did not accept such a payment by the State Government. If there was an objection to the payment of the fee and the manner in which it was to be paid, the licensee would most surely have taken objection in this respect in the letter of which the copy is Exhibit D-1. So that this is substantially a case in which the licensee accepted the position of initial payment of the remuneration by (sic) State Government to the arbitrator.

They did not offer to pay their share of the fee nor did they suggest any different figure for the fee of the arbitrator and offer their share of that figure. So this is a case by and large similar to 38 CWN 784, and to the facts of this case the decision in (1734) 2 BKB 463 is not attracted. No doubt, as pointed out by the learned Judge in 38 CWN 784 the arbitrator would have been wiser had he avoided this way of collecting his fee, but in the circumstances of the case and the licensee not having objected to the arbitrator accepting the fee in the manner in which it was stated by the State Government that he was withdrawing his fee, the acceptance of the fee by the arbitrator in this case does not vitiate the award and on this ground it cannot be set aside. No doubt, the rule upon which reliance is placed on the side of the licensee is well established but, as pointed out, it does not apply to the facts of the present case.

5. The third position urged on behalf of the licensee is that according to Sub-section (1) of Section 7 of Act No. 9 of 1910 the purchase of the undertaking is to be "on payment of the value of all lands, buildings, works, materials and plants of the licensee suitable to, and used by him for, the purposes of the undertaking, other than the generating station declared by the licence not to form part of the undertaking for the purpose of purchase and first proviso to this Sub-section says that "the value of such lands, buildings, works, materials and plants shall be deemed to be their fair market value at the time of purchase due regard being had to the nature and condition for the time being of such lands, buildings, works materials and plants, and to the state of repairs thereof and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purpose of the undertaking."

Learned counsel emphasises that for the arbitrator to arrive at the value of the undertaking in view of these statutory provisions it was imperative to value each one of these items separately as mentioned in these provisions, that is to say, he had to give valuation of lands, buildings, works, materials and plants of the undertaking and, further, to take into consideration the state of repairs of the same and to the circumstance that they were in such a position as to be ready for immediate working. The arbitrator has given one lump sum as value of the

undertaking. Learned counsel contends that his failure to give value of each one of the items as referred to above and as enumerated in the statutory provisions vitiates the whole of the award, and in this respect reliance is placed upon *Randall v. Randall* (1805) 8 R. R. 601, *Stone v. Phillips* (1837) 44 R. R. 645, *Wakefield v. Lanelly Rly. and Dock Co.* (1865) 142 R. R. 8, *Whitworth v. Hturse* (1866) 1 Ex 251, *Birks v. Trippet* [1666] 85 E R 32, *Samuel and Phillips v. Cooper and Levey* (1835) 111 ER 290, *Ross v. Boards* (1838) 112 E R 847, in re, *Corn Trade Association and Counsils and Volkart* ILR (1888) 209, In re *O'Connor and Whitlaw's Arbitration* (1919) 88 LJ KB 1242, *Ganes Narayan Singh v. Malida Koer* 10 Ind Cas 450 (Cal), *Mukand Ram Sukal v. Salig Ram Sukal* ILR Cal 590 (PC), and *Gaja Sinhva Rao v. Sujat Ali* AIR 1952 Guj 46.

Learned counsel for the licensee, However, Has conceded as much that none of these cases directly applies to the facts of the present case and he has not been able to refer to any case which is more or less an exact parallel. In all the cases referred to above, one settled principle has prevailed throughout that if arbitrator omits to decide one of distinct matters upon which he is called upon to arbitrate, the whole award Is vitiated. Section 7 of this Act only requires the arbitrator to arrive at a value of the undertaking and in arriving at such valuation he Is required to take into consideration certain defined matters given in the section. But it is nowhere provided in the section that the arbitrator is to arbitrate and give value for each such Item and the wording of Sub-section (1) and proviso to Sub-section, (1) of Section 7 do not support the argument of the learned counsel that a statutory duty is cast upon the "arbitrator to give separately value of each item which he is required to consider in arriving at the value of the undertaking. There is no justification for reading into the provision what is not to be found there.

If the argument of the learned counsel for the licensee was accepted, it would amount to saying that Section 7 of this Act provides that the arbitrator shall give value for each one of the items as detailed in that section, and the section says nothing of the sort. So that this argument Is not properly conceived because the cases relied upon though laying down a sound and accepted principle do not apply to the present case and the plain language of Section 7 of this Act does not justify reading into it a duty on the arbitrator to give decision on each one of the items separately that he is to take into consideration while arriving at the value of the undertaking. It has been pointed out by the learned counsel for the licensee that the arbitrator has completely omitted to take into consideration the circumstance that the undertaking in the present case when purchased in fact was in working order and ready for immediate working. This has never been the case of any party that the undertaking was not taken over as a running concern. The cases of the parties before the arbitrator have been that the undertaking was a running undertaking on the day it was taken over and has continued to be run thereafter by the purchaser. Mere repetition of these, words in the award would have no special effect so far as the validity of the award is concerned nor the omission of the same vitiates the award.

It has been said that without enumerating the matters which the arbitrator is enjoined by Section 7 of this Act to take into consideration in arriving at the valuation of the undertaking the Legislature could have straightway said "just value the undertaking" and as it has given de-tails of what is to be taken into consideration, its intention was that each item should be valued separately. The enumeration of the items which the arbitrator has to take into consideration in fixing the valuation is not evidence of the intention of the Legislature as Imputed to it by the learned counsel for the licensee. All that it means is that the Legislature has given guidance to the arbitrator in facilitating his work as arbitrator so as to arrive at the value of the undertaking. The arbitrator settled a number of issues while attending to the dispute between the parties, but the licensee did not seek an issue before the arbitrator that the latter should determine the value of each one of the items as detailed in Section 7 of this Act for the matter of arriving at the price to be payable to It. The section uses the word "value" obviously of the under taking and it does not choose the word "values" of the items that are to be considered by the arbitrator in arriving at the value of the undertaking. It was in the wake of this that probably issue on this aspect of the matter was not sought by the licensee and now that the award has gone not according to its wishes, some capital has been made out of the wording of the section, but there Is no support for this argument. It has been pointed out in (1866) 1 Ex. 251 that it is no objection to an award that the arbitrator has not found each matter referred to him separately, unless from the submission it is clear that the Intention of the parties was that he should so find. Now it is clear from the wording of Section 7 of this Act that there is no intention of the Legislature that the arbitrator Is to find value of each one of the items enumerated in Sub-Section (1) and proviso to Sub-section (1) of Section 7 of this Act. He has only to find value of the undertaking and not values of the items that he is required to consider in arriving at that value. The result is that there is no substance in this third argument on behalf of the licensee."

6. In the fourth place, it is contended on Behalf of the licensee that after the conclusion of the arbitration proceedings and the hearing of the arguments, the arbitrator obtained assistance of Shri S. L. Jain, an Assistant Engineer in the Electricity Department of the State Government, ostensibly to do some arithmetical calculations but in fact to help the arbitrator in reaching the decision in the case which matter has been prejudicial to the interest of the licensee, the assistance having been obtained Behind its back. The arbitrator has not been examined as 3 witness in the case. On July 2, 1956, the arbitrator wrote, copy of the letter Exhibit P. W. 3/9, to the Under Secretary In the Electricity Branch of the Public Works Department reminding him that he had promised to send an Assistant Engineer to assist him (the arbitrator) In making arithmetical calculations in accordance with his findings but that he had not done so. In reply the Under Secretary wrote, copy of his letter Exhibit P. W. 3/10, on July 5, 1956, that Shri S. L. Jain was ill and suggested whether his technical subordinate would do.

On July 25, 1956, the arbitrator again wrote, copy of the letter Exhibit P. W. 3/1, to the same Under Secretary that the latter should direct his Assistant Engineer to "come to Simla with all relevant papers pertaining to the arbitration cases to assist me in working out the correct figures for the purpose of incorporation in the awards". The arbitrator was not only attending to the case of the present licensee but some other similar cases as well. There is another letter, copy Exhibit P. W. 3/2, of July 31, 1956, by the arbitrator to the Under Secretary in which he asked for copies of certain letters from a the relating to Jullundur Electric Supply Company. It appears that the case of that company was also before the same arbitrator. This, however, does not concern the case of the present licensee. There is than another letter copy Exhibit P. W. 3/3, of 1-8-1956, by the Under Secretary to the Arbitrator saying that Shri S, L. Jain was coming to him on August 7, 1956, and was bringing with him "all relevant papers".

Shri S. L. Jain appeared as a witness for the State Government. He deposed "that he was sent by the State Government to assist the arbitrator and he was with the arbitrator between August 8 and 16, 1956. The nature of the assistance that he rendered was "making arithmetical calculations for him....." He then says that he made the calculations as required by the arbitrator and it was merely arithmetical work which did not involve his opinion or special knowledge. The arbitrator, he is definite in saying, never discussed with him any matters relating to the arbitration or invited his opinion in support thereof. He did not give any documentary or oral statement to the arbitrator during that time. He further says that he did not hand over any document or paper to the arbitrator though he had taken his records with him. Then he explains that he took with him records relating to enumeration and valuation of Moga, Abohar and Kamal undertakings and correspondence files relating to the same, but no other record was filed when he went to the arbitrator. Out of those records excepting correspondence files the rest of the record that he had taken with him was already on the file of the arbitrator. The witness says that the arbitrator used to give him figures only and he was able to do the calculation work.

On further questioning on behalf of the licensee he staled-

"I did not Work out depreciations while assisting the arbitrator. I also do not know what depreciation rates were adopted by the arbitrator nor did I know whether the arbitrator applied the straight line method or written down value method. So far as I recollect, there were no discussions regarding the method. But there were discussions regarding depreciations. I cannot say whether the arbitrator applied the scrap value for the engines."

This is about all the material upon which this argument on behalf of the licensee Is based and the learned counsel contends that this vitiates the whole of the award because (a) the witness was called and used at the back of the licensee, (b) the witness brought certain files which were utilised by the arbitrator in the absence of the licensee, and (c) there was discussion about depreciations between the witness and the arbitrator.

When the statement of Shri S. L. Jain is considered along with the letters referred to, it becomes clear that this witness brought certain records with him when he came to help the arbitrator in making calculations as the arbitrator wanted to have the same done. But it is further clear from the evidence that almost all the records or copies of the same were already on the file of the arbitrator and no use was made of any material which this witness brought with him. The witness says that there was discussion about depreciation and the passage cited from his statement shows that in fact the witness is not clear what he means by discussions about depreciations as he says that he did not work out the depreciations while assisting the arbitrator; if so there was no occasion for any discussion on the matter between the two. Then he repeatedly says that all that he did was ministerial kind of work of making calculations according to the directions of the arbitrator. So that it is not a fact that Shri S. L. Jain was used as a witness or as an aid in the matter of arbitration by the arbitrator. The most that has happened is that he was used for some ministerial work and this does not render the conduct of the arbitrator as judicial misconduct.

Learned counsel for the licensee refers to *Dobson v. Groves* (1844) 14 LJ QB 17, in which it has held that where an arbitrator questions a witness and receives statements from him in the absence and without the consent of one party to the reference, the Court will set aside the award, without taking into consideration the nature of the statements or the probability of their having influenced the decision. Somewhat similar are observations in *Cursetji Jahangir Khambhatta v. W. Crowder* ILR 18 Bom 299. But in the present case, the arbitrator has not questioned Shri S. L. Jain nor received any statements from him. All that the witness did was to make certain calculations for the arbitrator. There is reference then to 10 Ind Cas 450 (Cal), in which the learned Judges of Calcutta High Court held that in arbitration proceedings both sides must be heard and each in the presence of the other. However, in the present case this is exactly what the arbitrator did.

Learned counsel for the licensee makes reference to *Chouthmal Jivrajjea Poddar v. Ramchandra Jivarajjee Poddar* AIR 1955 Nag 126, also, but what the learned Judges held in that case was that where the arbitrators were putting up at the house of one of the parties to the arbitration which enabled them to enter into a private conference on an important topic with that party to the exclusion of the other, that constituted such misconduct as would entitle the Court to refuse to accept the award. No such thing has happened in the present case. In *Buta v. Municipal Committee of Lahore* ILR Cal 854, the Privy Council held that an award was not invalid by reason of one of the arbitrators having employed his son to take some of the measurements instead of taking them himself. It was pointed out that an arbitrator may delegate to a third person performance of acts of a ministerial character. This has been followed in *Shaikh Muhammad Khalil Vs. Shaikh Abdul Rahim and Another*, and *The Municipality of Ahmedabad Vs. Ravjibhai Bhailal Contractor*. It is apparent that in the present case the arbitrator had no more assistance from Shri S. L. Jain than of ministerial character in

making calculations according to the manner in which he was going to give decision in the arbitration between the parties. So this contention on behalf of the licensee cannot be accepted.

7. The fifth allegation against the arbitrator is that he had statement marked "Y" prepared by Shri S. L. Jain and used that statement in arriving at his decision when that statement contained wrong information and misstatements. At the hearing of this appeal, it has been admitted on both sides that either side was asked to prepare certain consolidated statements on different aspects of the case before the arbitrator. Statement marked T was prepared by Shri S. L. Jain. It was before the arbitrator at the time the arguments were heard. There are on it notes made by the arbitrator which obviously appear to have been made while arguments were addressed to him. At that stage there was no objection taken to the preparation and giving of this statement, marked "Y" to the arbitrator nor was any objection raised why the arbitrator was obtaining assistance from this statement while hearing the arguments. It appears clear that no objection was taken to the statement at the hearing before the arbitrator and it is only subsequently when the award has not been as favourable to the licensee as it expected that this matter is being used as a means to attack the conduct of the arbitrator.

Where a party in the case like the present has raised no objection at the proper stage and has in fact allowed the arbitrator to proceed with the case, it cannot be permitted subsequently to take objection and impute misconduct to the arbitrator in that regard. This statement was not taken by the arbitrator at the back of the parties. Apart from this, it is no more than a comparative statement prepared by Shri S. L. Jain and work done by him is of a ministerial character. It is a statement which might well have been prepared by any clerk subordinate to the arbitrator. If the parties to the arbitration took upon themselves to help the arbitrator in preparing comparative statements, one party cannot take exception to a statement prepared by the other party. This objection is without substance.

8. There is then the sixth objection on the side of the licensee that certain advantages were allowed to the State Government but corresponding advantages were not allowed by the arbitrator to the licensee. When arguments before the arbitrator were over, the licensee wrote a letter on January 14, 1956, in which, among other matters, it was alleged that

"during the course of our arguments your honour did not allow us to produce before your goodself any document or catalogue which is not on the file, but now your honour is being shown by the opposite party various documents which are not on the file."

In this letter the detail of the documents is not to be found. Somewhat similar vague allegations have been made in the objection petition also. At the hearing the argument has been confined to one magazine relating to Bombay market rates. It has been said that it was produced by the counsel for the State

Government at the stage of arguments before the arbitrator, it was seen by the arbitrator, but it was not shown to the licensee or its counsel.

The counsel representing the State Government has produced the magazine at the hearing and it appears that the magazine is some private publication which gives certain quotations in regard to prices of various commodities. It might well have been obtained by the licensee from Bombay, In any case, it has been accepted that most of what has been relied upon by the State Government from the magazine has already been on the record in the shape of copies from it. Learned counsel for the licensee had tried to refer to one or two items of which the copies are not on the record but that of course will not go to show that the arbitrator misconducted himself by looking at the magazine and that too during the course of the arguments. The arbitrator having looked at the magazine returned it during the course of arguments. Some of the documents filed by the State Government were admitted by the licensee or on its behalf and some others were not, but to verify whether the copies were correct the arbitrator looked at the magazine. This course is not any misconduct on his part. It has then been said that the arbitrator did not allow production of any such catalogue by the licensee, but it has not been shown that the licensee had filed any copies of the market rates from any catalogue on which the licensee subsequently wanted to rely. There are documents Exhibits Section 1, Section 2, Section 3, Section 4, Section 6, Section 7, Section 9, Section 12 and Section 18 which are extracts filed by the State Government but not admitted by the licensee, and the complaint of the licensee is that the arbitrator allowed those documents to be exhibited but dispensed with the proof of the same. But the matter of proof is a matter for the arbitrator and this cannot be a ground for interference with the award.

9. The next matter for consideration is the allegation that the arbitrator cut short the examination of Shri H. B. Gupta, Superintending Engineer (Projects), Electricity Branch of the Public Works Department, and Shri K. N. Nanda Sub-Divisional Officer of the Electricity Branch of the Public Works Department at Delhi, when the witnesses were examinee before him. Now it appears that Shri K. N. Nanda had been posted at Moga and he had made a report about the condition of the plant of the undertaking of the licensee purchased by the State Government. An attempt was made to question Shri H. B. Gupta in regard to the efficiency and honesty of Shri K. N. Nanda, but when the latter appeared in the witness-box no question was put to him to doubt his efficiency as also his honesty. It appears that some rambling cross-examination was directed against the witnesses not having substantial bearing on the matter in dispute because obviously if it was of consequence it would have been persisted with both the witnesses. The arbitrator in exercise of his discretion as a tribunal left out certain questions which he considered were not relevant to the matter and this, to my mind, is not a ground on the basis of which the award can be set aside and it can be held that there had been judicial misconduct in the conduct of the case by the arbitrator.

10. The last matter for consideration is the claim of interest by the licensee. The arbitrator has allowed interest at the rate of 4% to the licensee, but the licensee claims under second proviso to Section 4 of the Punjab Electricity Act, 1939 (Punjab Act No. 6 of 1939), interest at one per cent. above the Reserve Bank rate. But the Reserve Bank rate was not given to the arbitrator. After the close of the arguments some written arguments were put in and it is said that it was in those written arguments that reference to this claim was made. Learned counsel for the licensee has accepted that the arbitrator has correctly allowed the rate of interest from August 19, 1949, to November 14, 1951. His position is that the interest rate of the Reserve Bank increased from 3% to 3 1/2% from November 15, 1951 to May 15, 1957, so that for this period the licensee is entitled to one per cent, extra, which means that it is entitled to interest at the rate of Rs. 4 1/2%. According to this calculation an extra claim of Rs. 1,077/- is made by the licensee. This claim, however, cannot succeed because it was not a claim that was urged in this form before the arbitrator and the rate of the Reserve Bank was not duly proved before him and brought to his notice. So that this claim of the licensee cannot be accepted either.

11. The consequence is that this appeal of the licensee fails and is dismissed with costs.

P. D. Sharma, J.

12. I agree.