
(1999) 10 OHC CK 0009

In the Orissa High Court

Case No : Misc. Appeal No. 198 and 296 of 1998 and Civil Revision No. 109/98

Orissa Mining Corporation Ltd. and Another

APPELLANT

Vs

J.C. Budharaja, Chairman
 J.C. Budharaja, Chairman

RESPONDENT

Vs Orissa Mining Corporation Ltd. and Another

Date of Decision : 15-10-1999

Acts Referred:

Arbitration Act, 1940 — Section 20, 37, 41A(5), 47, 8

Constitution of India, 1950 — Article 113, 137, 18

Limitation Act, 1963 — Section 18

Citation : (1999) 10 OHC CK 0009

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : C.S. Vaidyanathan, K. V. Viswanathan, Asoke Mukherji, Somadarsan Mohanty S. Mukherji P. Mukherji B. Misra and J. Rath, For M.A. No. 296/98, G. Rath and R.K. Rath, M.A. No. 198/98 and C.R. No. 109/98, for the Appellant; G. Rath and R.K. Rath, (M.A. No. 296/98), Asoke Mukherji, S. Mohanty, S. Mukherji, P. Mukherji, B. Misra and J. Rath, (M.A. No. 198/91 and C. R. No. 109/98), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Misc. Appeal No. 296/98 has been filed by the Orissa Mining Corporation (hereinafter called the "Corporation") against the judgment of the Civil Judge (Senior Division), Bhubaneswar, dismissing the application filed by the Corporation for setting aside the award. Misc. Appeal No. 198/98 and Civil Revision No. 109/98 have been filed by J.C. Budbaraja (hereinafter called the,"Contractor") with the prayer that the decretal dues should be paid with future interest. Since all the matters are directed against the common judgment, all have been heard together and shall be governed by this common judgment.

2. The facts giving rise to the two appeals and the Civil Revision are as follows: Agreement No. 30/F-2, dated 16-9-1967 was entered into between the Corporation and the Contractor for removal of 1.12 lakh cubic meter over burden

at Kaliapani near Kalarangi in the district of Cuttack. Three supplementary agreements were subsequently entered into between the Corporation and the Contractor on 2-8-1969, 7-3-1970 and 10-2-1972 for various works connected with the initial work. It is not disputed that the work was completed on 15-6-1975 and the final measurement was made on 16-6-1975. The final bill was prepared by the Corporation on 21-10-1976 and the said final bill was signed under protest by the Contractor on 14-4-1977. Dispute between the parties having arisen, the Contractor invoked the arbitration clause containing Clause-23 of the Contract in all the agreements. Justice B.K. Patra, a retired Judge of the Orissa High Court, was appointed as the Arbitrator on 6-10-1980 by the Subordinate Judge, Bhubaneswar (presently known as Civil Judge (Senior Division)). A claim application was filed before the Arbitrator. In Table-A of the said claim, the Contractor had claimed Rs. 95,96,616.17 as the outstanding dues after adjusting Rs. 1,49,88,566.90 as the amount received by the Contractor as indicated in third column of Table-A. Besides, he had claimed interest on the various amounts from the due dates.

Before the arbitration could be completed, the Arbitration Act underwent an amendment in Orissa by which Section 41-A was introduced transferring all the pending arbitration proceedings to the Arbitration Tribunal and subsequently by virtue of a further amendment, the matter was referred to a Special Arbitration Tribunal, as the claim involved more than rupees one crore, and that is how ultimately the matter was referred to Justice N.K. Das, a retired Judge of the Orissa High Court, by a Gazette notification. The Contractor filed a fresh claim application before the Special Arbitration Tribunal. In the said claim, in the third column of Table-A, the Contractor admitted to have received Rs. 1,49,88,566.90 paise and in the fourth column claimed a sum of Rs. 95,96,616/- as the outstanding amount due. Besides, he claimed interest to the tune of Rs. 2,45,45,424/- at the rate of 18% from the due date till 31-5-1986 and further interest at the rate of 18% from 1-6-1986 till date of payment.

The Corporation filed its objection denying the various claims. The Special Arbitration Tribunal by its Award dated 28-11-1986 passed an award directing payment of Rs. 1,02,66,901.36 paise with interest at the rate of 12% per annum on the same from 1-8-1977. It was further directed that the principal amount was to carry interest at the rate of 6% per annum after one month from the date of the Award till the date of the decree.

Thereafter, the Contractor filed O.S. No. 224 of 1986 for making the Award a rule of the Court and the Corporation filed Misc. Case No. 5 of 1987 for setting aside the award. Both the matters were taken up together by the Civil Judge (Senior Division), Bhubaneswar, who while dismissing the application filed by the Corporation for setting aside the Award, confirmed the Award and made it a rule of the Court. Misc. Appeal No. 296 of 1998 has been filed by the Corporation challenging the decision of the Civil Judge refusing to set aside the Award and making it rule of the Court. The connected Misc. Appeal No. 198/98 and Civil

Revision No. 109/98 have been filed by the Contractor claiming future interest from the date of the decree as the order of the Civil Judge is silent on the said aspect.

3. Shri C.S., Vaidyanathan, the learned Additional Solicitor General, appearing on behalf of the Corporation has challenged the Award as confirmed by the trial court on several grounds. It is contended that the claim before the Arbitrator was barred by limitation and the Arbitrator has committed an error of law apparent on the face of the Award by holding that the claim was not barred by limitation. It has been submitted that the Arbitrator has acted beyond jurisdiction by allowing the claims made by the Contractor which were not made earlier and, in any case, the Award had been made in excess of the claim of the Contractor himself. It has been further submitted that the Arbitrator has committed legal misconduct and acted beyond jurisdiction in allowing the claim of the Contractor relating to extra items of works allegedly undertaken by the Contractor. It is further submitted that in the absence of any provision containing escalation: clause, the Arbitrator had no jurisdiction to award any amount on that head. It is further submitted that in view of the specific provision contained in the Arbitration Act, the Arbitrator was required to state reasons, but a perusal of the Award indicates that the Arbitrator had not given any reason in respect of several heads of claim which had been allowed by the Arbitrator without any rhyme and reason. It is further submitted that the Arbitrator has committed legal misconduct in refusing to call for certain documents as per the prayer of the Corporation. It is further submitted that the final measurement having been accepted, there was no scope for any arbitration. It is further contended that the Arbitrator had no jurisdiction to grant interest on the amount awarded for the period prior to the date of reference to the Arbitrator.

4. Shri G. Rath, learned Senior Counsel, on behalf of the Contractor, has combated all the submissions made by the learned Counsel for the Corporation: and has further submitted that the trial court has committed an illegality in not granting future interest from the date of the decree till payment.

5. It is necessary at this stage to notice the specific provision in the Arbitration Act, 1940, as amended by the State Legislature in Orissa relating to arbitration by Arbitration Tribunal Section 41-A, as introduced by the Arbitration (Orissa Amendment) Act, 1982 (Orissa Act 3/83) and further amended by the Arbitration (Orissa Amendment) Act, 1984 (Orissa Act 17 of 1984), as far as relevant, is extracted hereunder:

"41- A. (1) Notwithstanding anything, contained in this Act or in any contract or any other instrument, but without prejudice to the provisions contained in Section 47, in all cases where the State Government, local or other authority controlled by the State Government, a statutory corporation or a Government Company is a party to the dispute all references to arbitration shall be made to the Arbitration Tribunal.

Provided that reference to arbitration of the disputes specified in Sub-section (1) Involving claims of rupees one crore or above may be made by the State Government to a Special Arbitration Tribunal comprising of one or more retired High Court Judges, as may be constituted by the State Government from time to time.

xxx xx xx xxx (5) The business of the Arbitration Tribunal or Special Arbitration Tribunal shall be conducted in such manner as the Tribunal may determine and awards made and signed shall be supported by reasons.

xx xx xx xx (7) All arbitration proceedings relating to a dispute of the nature specified in Sub-section (1) which are pending before any arbitrator on the date of commencement of the Arbitration (Orissa Amendment) Act 1982 and in which no award has been made by the said date shall Stand transferred to and disposed of by the Arbitration Tribunal:

Provided that the State Government may by order in writing direct that the arbitration proceedings relating to "disputes" and claims involving rupees one crore or above, pending before any Arbitrator or Board of Arbitrators on the date of commencement of the Arbitration (Orissa Amendment). Act, 1982 (Orissa Act 3 of 1983) shall be transferred to any Special Arbitration Tribunal Constituted under the proviso to Sub-section (1) for disposal in accordance with law."

The aforesaid provision makes is clear that the arbitration, is to be referred to an Arbitration Tribunal or Special Arbitration Tribunal, as the case may be, depending upon the extent of claim. It is further clear that such Arbitration Tribunal or Special Arbitration Tribunal has to furnish reasons in support of its award of conclusion.

6. Before proceeding to decide the matter, it would be convenient to notice the various decisions cited at the Bar regarding scope of interference by the Court in such matters. In the decision reported in Union of India (UOI) Vs. A.L. Rallia Ram, cited by the learned Counsel for the Corporation, the Supreme Court set aside the award relating to sum of Rs. 1,25,000/- awarded by" the Umpire towards incidental expenses on the ground that the said amount had been awarded on an erroneous assumption of law, which is on the face of it was erroneous. In the decision reported in Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, the" Supreme Court set aside the award on account of incorrect valuation of goodwill made on the basis of depreciation and appreciation of the property, dead-stock and dues to be recovered" on the ground that such method of calculation was contrary to the method of calculating the goodwill incorporated in the Contract itself. It was observed by the Supreme Court:

23. It is clear that the arbitrator has included in his valuation some amount which he was incompetent, by virtue of the limits placed upon his authority by the deed of reference, to include. This is not a case in which the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed

question submitted for his adjudication. It is a case of assumption of jurisdiction not possessed by him, and that renders the award, to the extent to which it is beyond the arbitrator's jurisdiction invalid....

The learned Counsel for the Corporation has also referred to subsequent decisions of the Supreme Court reported in *Associated Engineering Co. Vs. Government of Andhra Pradesh* and another, and *Tamil Nadu Electricity Board Vs. M/s. Bridge Tunnel Constructions and others*, in support of the proposition that the Court can interfere with the award where the Arbitrator has acted in excess of his jurisdiction and for the aforesaid purpose the Court can examine the terms of the contract.

On the other hand, the learned Counsel for the Contractor has placed reliance upon several decisions regarding scope and ambit of interference by the Court with the Award starting from the celebrated decision of the Privy Council reported in A.I.R 1923 PC 66 (*Champsey Bhara and Company v. Jivraj v. Balloo Spinning and Weaving Company Ltd.*) and has submitted that an Arbitrator is constituted the sole and final judge of all questions both of law and of fact and unless a legal proposition which formed the basis of the award is found to be erroneous, the award cannot be set aside. Apart from the decision of the Privy Council which forms the basis of almost all the subsequent decisions, the learned Counsel has cited the decisions reported in *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.*, ; *U.P. Hotels and Others Vs. U.P. State Electricity Board*, ; *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, ; *Hindustan Tea Co. Vs. K. Sashikant Co. and Another*, and *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI)*, New Delhi, . He has further submitted that even where reasons have been given by the Arbitrator in making the award, the Court cannot examine the reasonableness of the reasons assigned by the Arbitrator and the Court does not exercise jurisdiction as an appellate Court. In this context, he has placed reliance upon the decisions reported in *State of Rajasthan Vs. Puri Construction Co. Ltd. and Another*, and A.I.R 1998 SC 367 (*Ram Nath International Construction Pvt. Ltd. v. State of U.P.*).

7. The following proposition emerge from a careful perusal of the decisions cited at the Bar from both sides:

- (1) An Arbitrator is constituted the sole and final Judge of all questions both of law and of fact;
- (2) An Award can be set aside only when in the Award or any document incorporated with it, there is found some legal proposition which is the basis of the Award and which is erroneous;
- (3) Where reasons are not given by the Arbitrator, it is not for the court to fathom what was the possible reason for making the Award;
- (4) Merely because reasons are given by the Arbitrator in the Award, the Court does not become an appellate Court and cannot examine the reasonableness of

the reasons;

(5) Where, however, the Awards are without jurisdiction being beyond the contract/document of reference 1 as distinguished from mere erroneous decisions, the Court has jurisdiction to set aside such Awards or parts of the Award which are patently without jurisdiction;

(6) While considering the question as to whether the Arbitrator has acted beyond jurisdiction, the matter has to be decided by reference to the terms of the contract of reference.

8. In the above back-ground of the specific statutory provision and legal propositions, stage is now set to consider the rival contentions.

The first and the foremost submission of the counsel for the Corporation relates to question of limitation. It has been submitted that by virtue of the provisions contained in Section 37 of the Arbitration Act, the provisions of the " Limitation Act are also applicable to arbitration proceedings. It is further submitted that the question as to whether the application u/s 8, or Section 20 of the Arbitration Act is barred by Article 137 of the Limitation Act is slightly different from the question as to whether the claim before the Arbitrator is barred by limitation. Law is now well-settled that while the Court considering an application u/s 8, or Section 20 of the Arbitration Act, is entitled to consider to whether the application u/s 8, or Section 20, as the case may be, is barred by limitation, ordinarily the Court is not required to consider as to whether the claim itself is barred by limitation, as the said question is a matter for the Arbitrator to decide. Where, however, on the face of it, even the claim itself is barred by limitation, the Court may so opine and refuse to refer a matter to arbitration. Moreover, even if a matter is referred to arbitration by the Court, it is for the Arbitrator to decide as to whether the claim itself is barred by limitation under the provisions of the Limitation Act.

9. In the present case, the Corporation had specifically taken a plea in the Objection before the Arbitrator that the claim was barred by limitation and the Arbitrator had specifically framed Issue No. 4 relating to the question of limitation to the following effect:

4. If the claim is barred by limitation ?

In paragraph-15 of the Award, the Arbitrator has considered the question of limitation under Issue No. 4 and has ultimately held that the claim is not barred by limitation. Before considering the submissions made by the counsels for the Corporation and the Contractor, it is advisable to extract the relevant conclusions of the Arbitrator upon the point of limitation. After noticing the contention of the Corporation, it has been observed:

.....In support of his contention the learned Counsel for Respondent has cited some decisions. But this question is no longer res integra. Orissa High Court has settled this point at rest and it will be sufficient to refer to two decisions. In A.I.R

1981 Ori 175 the then Chief Justice R.N. Misra, J. after referring to several decisions of the Supreme Court and of Orissa High Court has held that when the work was completed earlier and the final measurement was not effected for many years and when the public officers took measurement which was not to the satisfaction of the contractor, dispute arose, and there can be no doubt that dispute would arise in these cases when final measurement was done and the contractor's claims went not admitted in o. In fact, the dispute arose in relation to the work done which was not being reflected in the final measurement. Also Justice Dr. B.N. Misra in Secretary to Government of Orissa, Irrigation Dept. and Others Vs. Raghunath Mohapatra, in para-6 of the judgment has held after referring to several decisions and has quoted from a portion of A.LR 1981 Del 293 which clarifies the position and shows the distinction between ordinary suits and disputes under Arbitration Act relating to accrual of cause of action. Accrual of cause of action in a suit is not the accrual of cause of action u/s s. 8 and 20 of the Arbitration Act which is different. It has been quoted with approval that a difference can arise long after some work has been done under a contract. There can be negotiations between the parties and all sorts of correspondences. But it is only when they come to the conclusion that they cannot resolve the dispute, then it can be said that a difference arises. A difference under the arbitration agreement is a claim made by one party which is refuted by the other party. At that stage, it is open to the parties to say-now let us go to arbitration to get this difference settled. It is at this stage that it is possible to say that a difference has arisen between them. In this sense, Section 20 of the Arbitration Act differs from the normal kind of claims that arise in suits. In the case of a suit, the date on which the cause of action arises is the date from which the limitation period starts. u/s 20, it is the date on which the right to apply accrues that determines the starting point. That starting point does not coincide with the date on which the cause of action for filing a suit arises. The same principle should apply to an application u/s 8 of the Act.

After referring to the aforesaid two decisions, the Arbitrator proceeded to observe:

...In the present case, from the records produced it appears that the dispute continues about the final bill which was not accepted by the contractor and payment was received admittedly under protest and these payments are ad hoc payments. All the payments so far made by the Respondent are admittedly ad hoc payments. There has been no finality. The claim is now as to what should be the real final bill basing on the documents produced. Under Clause-8 of the Agreement, the final bill is to be prepared by the Respondent but not the Claimant. Documents exhibited show that one final bill was prepared in 1977 and in the very same year another final bill was prepared containing differences from what was reflected in the first final bill. The Claimant signed the final bill on 14-4-77 (Ext. A/154) under protest. It is not correct to say that the Claimant accepted the final bill. Earlier running bills had also been objected to by the Claimant. Ext. A/29, the letter of the Claimant, shows that he has put forward

several claims and wants to clear up" the dues. In Ext. A/32. there are seven paragraphs besides the request made at the end. The Respondent lays stress on para-5 where the Claimant has stated that he has accepted the measurements taken from the final bill since 15-6-75. In fact no final bill was prepared then. Admittedly, final bill was prepared in 1977. Further, para-4 of that letter clearly shows that the Claimant has insisted on payment for additional work done referring to different letters. At the end, he has not only claimed his dues under the agreement but also adequate compensation. One portion of the letter cannot be considered dissociating the same from other portions of that very letter. Thus, it would be seen that at no point the Claimant has admitted every thing and was not raising any claims. It is well settled that in a notice for arbitration mention of qualification is not necessary. Non-acceptance by the contractor of what has been mentioned by the other side and making claims gives rise to dispute. Moreover, formation of a committee by the Respondent consisting of its own officers to scrutinise, shows that the claims of the Claimant had not been accepted. What the committee has ultimately said has been quoted in previous paragraphs. All these factors show that negotiation was going on and the matter was in a nebulous and fluid stage. The committee gave its report in December, 1979. In March, 1980, some portion out of the money said to have been found due by the committee was paid on ad hoc basis. Notice was given by the contractor on 14-6-80. So the dispute as to final bill still continues. Till the final bill is prepared and accepted by the contractor, limitation would not accrue. When the matter went to Court in 1980, it was not barred by limitation. The Respondent also did not take the stand of limitation at the time of appointment of arbitrator. (Late) Justice B.K. Patro was appointed as Arbitrator in 1980 on consent of both parties. Before him the proceeding continued for about two years when he fell ill and ultimately died. "Meanwhile the amendments were brought in the Arbitration Act about appointment of Special Arbitration Tribunal and accordingly the Tribunal has been appointed.

As regards the report of the committee, it may be said that it was an unilateral decision by officers of the Respondent and only on two occasions the Claimant was allowed to take part and subsequently the members took up their decision which they have said to be their opinion. Moreover, what the, Committee has confessed about the method the members have adopted was on visualisation without having full assistance of officers and papers.. Some statements submitted by Claimant were not exhaustive as appears from the letter of the Claimant. The committee has expressed in clear terms, that the measurement in the final bill can never be less than the running account bills, but it has relied on that because the officers of Respondent have done the same.

All these would show that the report of the committee cannot be accepted as correct and dependable and does not -reflect the correct state of "affairs.

In consideration of the above aspects, it is held that the claim is not barred by limitation,

(Emphasis added)

10. In the back-ground of the above conclusion of the Arbitrator, the learned Counsel for the Corporation has submitted that the Arbitrator has committed several errors of law and has posed wrong questions for decision and as such has committed error of law apparent on the face of award which ought to be set aside. It has" been submitted that if Article 18 of the Limitation Act is considered to be the appropriate Article, the work admittedly was completed on 15-6-1975 and the final measurement was taken on 16-6-1975 and as such; "the period of limitation must be taken to have expired after 15-6-1978. In the alternative, it is submitted that the final bill itself having been prepared on 21-10-1976, if the period of limitation of three years is counted from the said date, it" must be taken that the claim made after 20-10-1979 would stand barred. It is further submitted that since admittedly, the final bill was signed by the Contractor under protest on 14-4-1977, in no case the period of limitation can be taken to be beyond 13-4-1980. It is, therefore, submitted that whether Article 18, Article 113, or Article 137 is applied, the claim must be taken to be barred by limitation, in view of the - admitted fact that the final bill was signed under protest on 14-4-1977 and the notice invoking the arbitration clause was issued on 4-6-1980, admittedly beyond a period of more than three years from the date on which the final bill had been signed. It is further submitted that since the period of limitation must be taken to have started latest by 14-4-1977 and since there cannot be any stoppage of running of time, once the limitation had started to run, any intervening circumstance such as report of the Committee, or the representation of the Contractor, cannot have "the effect of saving limitation, as there is no acknowledgement of liability in writing.

11. The learned Counsel for the Corporation further submits that in this context the Arbitrator has committed several errors of law apparent on the face of record and has posed wrong questions for answer. It has been highlighted that the Arbitrator by observing:

...There has been no finality. The claim is now as to what should be the real final bill based on the documents produced.....

has misdirected himself and has posed the wrong question for being answered. If the final bill is accepted by the Contractor, and the payment as per the final bill is made, there would be no dispute at all and as such filing a claim before the Arbitrator for payment, or filing a suit, would not arise at all. In this context, the further observation of the Arbitrator to the effect:

...Till the final bill is prepared and accepted by the contractor, limitation would not accrue.....

is also equally misconceived. Even the two decisions of the Orissa High Court relied upon by the Arbitrator make it clear that the cause of action for raising a dispute arises on the preparation of the final bill. In the present case, admittedly, the final bill was signed under protest by the Contractor on 14-4-1977 and by no

stretch of imagination it can be said that the cause of action arose 011 a date beyond the date of signing of the final bill under protest by the Contractor himself. Further, the fact that the departmental committee was considering regarding the ten ability of the claims made by the contractor subsequent to the signing of the final bill under protest could not have the effect of saving limitation, unless there was an acknowledgment in writing, as contemplated in Section 18 of the Limitation Act. Even assuming that the report of the Committee recommending, payment of certain amount would be an acknowledgment of, liability in writing, such acknowledgment can have the effect of saving limitation in respect of the amount so acknowledged and not for any other amounts.

12. In every such case, be it under the Arbitration Act, or in a regular suit the question is always as to what amount is payable to the Contractor. If there is no dispute regarding the final bill and the payment is made, as per such undisputed final bill, the question of deciding a matter either by an arbitrator or in a Court of law would not arise. It is only when a final bill is not accepted by the Contractor, it can be said that a dispute has arisen. Since admittedly, the Contractor had signed the final bill under protest on 14-4-1977, by all account it must be taken that the cause of action for raising claim before arbitration arose on that date. Thus, by the time the notice invoking arbitration clause was issued on 4-6-1980, the claim was barred by limitation. The Arbitrator instead of addressing himself to this aspect appears to have side-tracked the question by referring to two decisions of the Orissa High Court which, are not at all applicable. As a matter of fact, even by applying the ratio of the aforesaid two decisions of the Orissa High Court, the notice invoking arbitration clause beyond period of three years from the date of signing of the final bill by the Contractor himself must be taken to be barred by limitation. The cases where it has been held that the cause of action for invoking "arbitration clause may not arise immediately on the completion of the work until final measurement is undertaken and final bill is prepared, are not at all applicable to the present case, as in the present case admittedly a final bill was prepared which was signed by the Contractor under protest on 14-4-1977 and applying the ratio of all such decisions, it must be taken that by the latest, the cause of action had arisen on the date on which the Contractor had signed the final bill under protest. It is, of course, true that in several decisions, such as reported in Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, , relied upon by the learned Senior Counsel for the Contractor, as well as the two decisions of the Orissa High Court, referred to by the Arbitrator, it has been held, that existence of dispute is essential for invoking the arbitration clause. Even applying the ratio of all these decisions, it must be taken that the cause of action for invoking the arbitration clause arose on the date on which the Contractor himself had signed the final bill under protest. A perusal of the decisions reported in Wazirchand Mahajan and Another Vs. Union of India (UOI), ; Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta, ; and State of Orissa and another etc. Vs. Sri Damodar Das, makes it clear that the provisions of the Limitation Act are applicable to arbitration proceeding by virtue of the provisions contained in

Section 37 of the Arbitration Act. In the present case, by virtue of the specific provisions contained in the Act. the Special Arbitration Tribunal: was required to give reasons and while considering Issue No. 4. the specific issue relating to limitation, the Arbitrator appears to have founded his conclusion on a misconception of law and on erroneous view of law which is apparent on the face of the Award.

13. Shri G. Rath, the learned Senior Counsel appearing for the Contractor, has submitted that the decision of the Arbitrator on the question of limitation is not available to be challenged and he is the sole authority to decide such question. He has placed reliance upon the decisions reported in *Wazirchand Mahajan and Another Vs. Union of India (UOI)*, ; *Union of India (UOI) and Another Vs. L.K. Ahuja and Co.*, and *A.I.R 1993 Del 78. M/s. Naraindas R. Israni v. Union of India*) in support of his contentions. The aforesaid decisions are clearly distinguishable and it is nowhere laid down in those decisions that even where the "Arbitrator is statutorily required to give reasons and the award on the face of it contains error of law on the question of limitation, the Court cannot correct such error of law.

The further submission of Shri Rath, the learned Senior Counsel for the Contractor, relying upon the decisions reported in *A.I.R 1923 PC 66 (supra)*; *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.*, and *Continental Construction Co. Ltd. Vs. State of Madhya Pradesh*, that the Arbitrator while noticing the facts and various dates relevant to the question of limitation has not incorporated any question of law which forms the basis of his conclusion and as such the Award is not open to challenge; is equally untenable as in the present case, it is apparent from the Award itself that the Arbitrator has based his Award on certain erroneous conclusions of law.

14. Thus in view of the aforesaid conclusions, it must be held that the claim of the Contractor was barred by limitation and the Award is liable to be set aside on this point alone.

15. Even though the appeal of the Corporation is to be allowed on the above point:alone, since other contentions have been raised, it would be advisable to take up such other points also.

16. The learned Counsel for the Corporation has vehemently challenged the jurisdiction of the Arbitrator to award huge amounts to the Contractor on the ground of compensation towards extra work and on the ground of escalation. So far as extra-works are concerned, the learned Counsel for the Corporation has particularly referred to claims under item Nos. 17, 18, 19, 25, 26 and 27 of the claim filed by the Contractor and considered as such separately by the Arbitrator in his Award. While challenging the Award on these items, it has been contended that the Arbitrator had no jurisdiction" to consider such claims in the teeth of specific clause contained in the agreement. It has been submitted that Clause-II of the Contract specifically relates to additional work and the Proviso to Clause-11 specifically contains certain prohibitions which have been totally

ignored by the Arbitrator. The Proviso to Clause-II reads as follows:

Provided always that the contractor shall not be entitled to any payment for any additional work done unless he, has received an order in writing from the Engineer-in-charge for the additional work, that the contractor shall be bound to submit his claim for any additional work done during any month on or before the 15th. day of the following month accompanied by a copy of the order in writing of the Engineer-in-charge for the additional work, and that the contractor shall not be entitled to any payment" in respect of such additional work if he fails to submit his claim within the aforesaid period.

In this context, it has been submitted that while claiming huge sums for alleged additional work, the Contractor has not relied upon a single order in writing from the Engineer-in-charge for the additional work, nor the Arbitrator has referred to any such order in writing; and it is further submitted that not a single claim has been made by the Contractor within the time stipulated in the said Clause. A mere perusal of the Award makes it clear that the Arbitrator has simply referred to some decisions of the Orissa High Court as well as Supreme Court laying down that claim for extra work is entertainable by the Arbitrator, without at all considering the scope of Clause-II, Proviso. In this context, it is submitted by the counsel for the Corporation that in teeth of the Proviso contained in Clause-II. the Arbitrator had no jurisdiction to grant any sum for the alleged additional/extra work without the pre-conditions as contemplated in the contract itself being satisfied. The decision of the Supreme Court reported in *Associated Engineering Co. Vs. Government of Andhra Pradesh* and another, supports such contention. Applying the ratio of the aforesaid decision to the facts of the case; it is apparent that the Arbitrator acted beyond his jurisdiction in granting huge amounts towards alleged additional/extra work, as there is nothing on record to indicate that the conditions contemplated in the Proviso to Clause-II had been satisfied. It is not a mere error committed by the Arbitrator within "jurisdiction, but it is a patent case of acting beyond jurisdiction.

17. In the aforesaid context, the second limb of the argument advanced by the learned Counsel for the Corporation need be noticed at this stage. It has been submitted that as per the provision contained in Section 41-A(5) of the Act. the Arbitrator was obliged to give reasons in support of his Award. It has been submitted that though the Arbitrator has given some reasons for some of the items and, on some of the Issues, the Arbitrator has not given reasons for coming to any particular conclusion while considering these items. While it is true that where Arbitrator gives reasons, the Court does not become an appellate authority to consider the reasonableness of the reasons, if the Arbitrator does not give reasons where he is statutorily required to give reasons, it must be taken that the Arbitrator has committed a legal misconduct, or the Award may be taken to be otherwise invalid. A perusal of the discussion of the Arbitrator on these aspects clearly indicates that the Arbitrator after merely noticing the contentions made on behalf of the Contractor and the Corporation has merely

jumped to the conclusion regarding payability of certain amounts on these heads.

18. To be more precise, while considering item No. 17, relating to extra head-load of 90 metres, the Arbitrator after noticing the rival contentions and without making any further analysis as to why the contention of one side is preferable to the contention of the other side, has merely concluded:

.....Considering the facts and circumstances and arguments of both parties, I find that the contention of the Claimant is acceptable. I decide that the Claimant is entitled to get Rs. 4.-00 per Cum. (2 extra. leads) for 71,525.67 Cum. under item-2 of the original agreement and for 108,525.00 Cum. under item-8 of the first supplementary agreement amounting to Rs. 7,20,202.68. The Claimant is further entitled to get Rs. 6-00 per Cum. (3 extra leads) for 2,88,306.70. Cum. under item-4 of the second supplementary agreement amounting to Rs. 17.29,840.20. Thus, in total the Claimant is entitled to get Rs. 24.50.042-88 under this item. This is connected with and is ancillary to the main work

This conclusion does not indicate any reason as to why the Arbitrator considered the contention of the Contractor as acceptable and as to how he has arrived at certain figures and had fixed certain rates which are even different from the amount claimed by the Contractor;

While considering item No. 18, similarly after noticing the contentions of both sides, the Arbitrator has jumped to the conclusion:

.....The stand of the Claimant is acceptable. I decide that the Claimant is entitled to get payment at the rate of Rs. 6.31 per Cum. for 8060 Cum. for disposing the re-excavated materials within a distance of 1 K.M. amounting to Rs. 50.858.60. This is ancillary to the main work done by the Claimant.

Similarly, while considering item No. 19, after noticing the contention and counter contention, the Arbitrator has merely concluded:

.....Taking into consideration all the facts and circumstances. I decide that the claimant is entitled to get payment for the unmeasured quantity of 18.992 Cum. I allow rate of Rs. 35.00 per Cum. i.e. the average rate of item-8 of first supplementary agreement and item-4 of second supplementary agreement. I do not allow any additional rate for extra, lead and lift. I decide that the Claimant is entitled to get payment for 18,922 Cum. at Rs. 35.00 per Cum. amounting to Rs. 6,64,720.00 under this item. This is also ancillary to main work done by the Contractor.

While considering item No. 25, after noticing the contentions on either side, it has been suddenly concluded:

".....On perusal of the documents, I find that the haul road was under construction during the period under reference and I decide that Claimant is entitled to the amount claimed and he should get payment for 32,813.70 Cum. at an average rate of Rs. 8.01 per Cum. amounting to Rs. 2,62,837.73. This is

also ancillary to the main work.

While considering item No. 26, after mechanically noticing the contentions of either side, it has been concluded:

...On perusal of the documents, I find that extra lift was involved in disposal of the excavated materials at the quarry edge. I allow three extra lifts for this extra work. I decide that the Contractor is entitled to get payment for 33,772.52 Cum. " Rs. 8.01 Per Cum. amounting to Rs. 2,70,517,88. This is ancillary and connected with the main work.

While considering item No. 27, similarly, after noticing the various contentions, the Arbitrator has concluded:

...On perusal of documents I agree with the contention of the Claimant. I decide that the Claimant should get payment for three extra lifts for 1,30,723.66 Cum. " Rs. 8.01 per Cum. amounting to Rs 10,47,096.50. This is ancillary and connected with the main work.

While considering these items and arriving at a particular amount as payable, the Arbitrator has not indicated any reason whatsoever as to why the contentions of the Contractor are acceptable and as to why certain amount at a particular rate is being paid or certain quantity is being fixed. It is worthwhile to notice that the conclusions arrived at by the Arbitrator regarding the quantum payable, that is to say, the quantity or the rate do not coincide with the claims made by the claimant Contractor himself. If the entire claim on these heads would have been allowed, possibly one could have said that the Arbitrator has accepted into all the contentions raised by the claimant-Contractor on these aspects, Since the amounts awarded on these heads are less (albeit, marginally so in many instances), there is no indication regarding the basis on which such figures have been arrived at.

19. Shri Rath, the learned Senior Counsel for the Contractor, has, relying upon the decisions reported in *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, ; *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another*, ; *State of Rajasthan Vs. Puri Construction Co. Ltd. and Another*, and *Uday Chand Dutt (Deceased) through his Lrs. Vs. Saibal Sen (Deceased) through his Lrs. and Another*, submitted that even where the Arbitrator is required to give reasons for his award, he is not required to write a detailed judgment like a Court and if it is apparent that the Arbitrator has applied his mind, the requirement for giving reasons must be taken to be complied with, and the Court is not entitled to test the reasonableness of the reasons.

20. I am unable to accept such submission of the learned Senior Counsel for the Contractor. In the present case, the question is not as to whether the reasons given by the Arbitrator are tenable, but the question is as to whether it can be said that the conclusions of the Arbitrator are at all supported by any reason. A perusal of the various decisions, particularly those reported in *A.I.R 1923 PC 66*.

(supra); Union of India (UOI) Vs. A.L. Rallia Ram, and Sudarsan Trading Co. Vs. Government of Kerala and Another, makes it clear that merely because the Arbitrator refers to the contentions of the parties and comes to a particular conclusion, it cannot be said that a reasoned award has been given by the Arbitrator. While considering these items, it is apparent that the Arbitrator has merely noticed the contentions of either party and thereafter jumped to his own conclusions without making any analysis whatsoever. In other words, it can be safely concluded that the conclusions of the Arbitrator On these items are not based on reasons. Since the Arbitrator was required to give reasons u/s 41-A(5) of the Act. the non-giving of any reason on these items amounts to legal misconduct and the awards relating to these item of claim cannot be sustained.

21. The learned Counsel for the Corporation has attacked the Award of the Arbitrator regarding escalation as contained in item No. 35. It is not disputed that the Contract including the three supplementary contracts did not contain any clause for escalation. The Arbitrator has awarded compensation at the rate of 32.6 per cent and directed payment of Rs. 17. 26,811/- on this score on the ground that the cost of labour and materials increased between the period 10-2-1972. the date of signing of the 3rd. supplementary agreement and 15-6-1975. the date of completion. The counsel for the Corporation further submitted that not only compensation for escalation was not contemplated in the Contract, but also it was specifically indicated in Exts. A/18 and A/21 that extension of time was being granted on the request of the Contractor without any liability to the Corporation. It is rightly submitted that grant of compensation on the ground of alleged escalation in the face of the prohibition contained in Exts. A/18 and A/21 was not within the jurisdiction of the Arbitrator. In this context, it is rightly pointed out further that the Arbitrator has arbitrarily fixed compensation as the rate of 32.6 per cent for all the years even though, the claimant himself had sought for, escalation at the rate of 25.5 per cent and 32 per cent for the year 1973-74 and 1974-75. This is clearly an instance of legal misconduct where the Arbitrator has even granted more than the amount claimed by claimant himself.. The Arbitrator in paragraph-IS of his Award had referred to some decisions and observed that compensation on the ground of escalation is payable without keeping in view as to whether there is any such clause in the Contract itself. While deciding item No. 35, the Arbitrator has simply referred to, the contentions of both the sides and without assigning any reason has granted compensation at the rate of 32.6 per cent for the alleged escalation of the cost on the value of the work done without noticing that there is no clause permitting escalation and without noticing the prohibition contained in Exts. A/18 and A/21, the two letters extending the time for completion. Non-consideration of such important documents can be considered to be a legal misconduct, as observed in the decision reported in K.P. Poulse Vs. State of Kerala and Another, .

22. In paragraph-29 of the Award, the Arbitrator has granted interest at the rate of 12 per cent from 1-8-1977 till the date of award. It is contended by the

counsel for the Corporation that whatever might have been the position of law earlier in view of the decision of the Supreme Court reported in *State of Orissa Vs. B.N. Agarwalla, etc.*, no interest is payable for pre-reference period. In this context, it is contended that no interest could have been awarded till 3-5-1986, when the present Arbitrator entered upon the reference. Alternatively, it" is submitted that in any case, no interest could have been awarded till 19-8-1981, that is the date when the Interest Act, 1978, came into force, in view of the decision of the Supreme Court afore-cited. In the present case, it appears that the matter was first referred to the arbitration of retired Justice B.K. Patra at a time when Interest Act had not been enforced. Subsequently, the matter was transferred to the Arbitration Tribunal and ultimately a Special Arbitration Tribunal was constituted when the matter was again referred to the present Arbitrator. Though a fresh claim application was filed before the present Arbitrator, it is not disputed that the said claim application contained the entire Claim made before retired Justice B.K. Patra and in addition, included claim for further interest for the subsequent period. In other words, the reference to the present Arbitrator is taken to be in continuation of the earlier reference and it should be taken that the matter had remained pending before the Arbitrator from the date of original reference. In view of the decision reported in *State of Orissa Vs. B.N. Agarwalla, etc.*, , there cannot be any dispute that the Arbitrator had no jurisdiction to grant pre-reference interest, that is to say, interest for a period prior to the date of reference. However, it is also well settled in view of the aforesaid decision of the Supreme Court that the Arbitrator has jurisdiction to grant pendente lite interest. As such interest was payable from the date when the matter was first referred to the earlier Arbitrator that is to say interest was payable with effect from 6-10-1980 and not for a period prior to that. The Award of the Arbitrator is required to be modified to this extent.

23. The learned Counsel for the Corporation has submitted and with some justification that a highly inflated claim was made before the Arbitrator. It is not disputed that after the final bill was signed under protest by the Contractor, possibly on the basis of letters already written by the Contractor a Committee had been appointed by the Corporation to look into the grievances of the Contractor. Before the said Committee, the Contractor had made a claim of Rs. 50.50.823.23. From the documents available on record, it is apparent that subsequently when the claim application was filed before the retired Justice B.K. Patra, out of the items relatable to the application filed before the Committee, the Contractor had made a claim in respect of some of the items amounting to Rs, 26,31,748/- and had abandoned claims amounting to more than Rs. 23 lakhs under other heads. While filing claim before the Arbitrator, apart from making such claim of Rs. 26.31.748/- which was a part of the original claim made before the Committee, the Contractor made a further claim of about Rs. 69.00,000/- on other heads of claim not indicated earlier and the claim before the Arbitrator was inflated to Rs 95 lakhs and odd. The aforesaid aspect was brought to the notice of the present Arbitrator stating that the claim was being inflated by the

Contractor from time to time without any justification. The Arbitrator, though held that question of estoppel was not applicable has not considered the question as to whether the items of claims which had not been made before the Committee were mere after-thoughts. The learned Counsel for the Contractor has, however, submitted that though claim relating to certain items had been made before the Committee, it had been indicated that the claims were not exhaustive. Even though the claims might not have been exhaustive, the inclusion of huge claims on new heads of claim not claimed at any earlier point of time prima facie justify the criticism levelled by the learned Counsel for the Corporation. Be that as it may, in view of the fact that the, entire Award is being set aside on the ground of limitation, it is unnecessary to delve further into this question.

24. The learned Counsel for the Corporation further submitted that the Arbitrator has awarded sum in excess of the amount claimed by the Contractor and though the Contractor had admitted to have received a sum of Rs. 1,49,88,566.90 paise as the payments already received in connection with the agreement, as evident from his claim applicator, subsequently, the Arbitrator has ruled that only a sum of Rs. 20, 01,695. 90 paise had been received towards the present contract merely on the basis of some calculation submitted the Contractor without the original claim having been amended. The learned Counsel appearing for the Contractor, on the other hand, submitted that, in fact, the claim had been amended and it had been clarified that certain amount paid by the Corporation had- been adjusted towards the dues of another contract between the parties. Whatever might have been the justification for the submission, the fact remains that the original claim application had not been amended and as such, the Arbitrator has committed an error of law apparent on the face of the Award by coming to a conclusion contrary to the own admission of the Contractor in the claim application itself. Since the claim application had not been amended, any submission or even evidence to the contrary could not have been accepted by the Arbitrator. Therefore, out of the amount found payable, a credit is to be given to sum of Rs. 1,49,88,566.90 paise as admitted by the claimant and the finding of the Arbitrator on this score has to be set aside. In this connection it has to be noticed that no material had been produced by the Contractor indicating that he had adjusted fifty per cent of the amounts under various cheques towards the dues under another contract. The very fact that the Contractor in his claim before the earlier Arbitrator as well as the Special Arbitration Tribunal had considered such payment's towards the dues under present contract is sufficient to belie the belated submission made before the Special Arbitration Tribunal.

25. The counsel for the Corporation has submitted that the claim made before the Arbitrator is disproportionately high compared to the claim made before the Committee and similarly the Award made by the arbitrator is also disproportionately high so as to shock the judicial conscience requiring judicial interference. In support of such contention, the learned Counsel has relied upon the decisions of the Supreme Court reported in Dandasi Sahu Vs. State of Orissa,

and State of Orissa Vs. Dandasi Sahu, . Though prima facie such submission appears to have some justification it is unnecessary to go into this aspect in view of the fact that the entire Award is liable to be set aside on the ground, of limitation.

26. The learned Counsel for the Corporation also submitted that Arbitrator has committed legal misconduct by not calling for certain relevant documents, such as profit and loss account and income tax records relating to the Contractor which specific application had been filed. It seems that the Arbitrator has recorded in the Award that though such application had been filed, it had not been passed by the Respondent (i.e. the Corporation). The learned Counsel for the Corporation vehemently contended that such recital in the Award itself is a legal misconduct as the application had definitely been filed with a view to call for the documents and not merely for the sake of filing such application. However, keeping in view the facts and circumstances of the case, I am unable to accept the contention in view of the recital of the Arbitrator in the Award which has not been proved to be manifestly incorrect.

27. In view of the above findings, in normal course, question would have arisen as to whether certain Issue or certain items of claim should be remitted to the very same Arbitrator or some other Arbitrator for disposal in accordance with law. However, in view of the finding, that the claim itself was barred by limitation it is necessary to remit part of the claims/issue for fresh consideration and the entire Award is set aside.

28. The connected Misc. Appeal No. 198/98 and Civil Revision No. 109/98 have been filed by the Contractor claiming future interest. The trial court while making the Award a rule of the Court has not given any direction regarding payment of future interest. However, this itself cannot be considered to be an Award and as such is not appealable. The appeal therefore, is not maintainable. As an abundant caution, the Contractor has also filed the connected Civil Revision. Since the trial court has not at all considered regarding the question of payment of future interest, and the question as to whether such future interest is to be paid or not is essentially a matter of discretion of the trial court, in normal course, I would have considered remanding this matter to the trial court for reconsideration. However, since the Award itself has been set aside, the question of future interest has become academic.

29. In the result, Misc. Appeal No. 296/98 filed by the Corporation is allowed and Misc. Appeal No. 198/98 and Civil Revision No. 109/98 filed by the Contractor are dismissed. There would be no order as to costs in any of the matters.

30. M.A. No. 296/98 allowed.

31. M.A. No. 198/98 & C.R. No. 109/98 dismissed.