

(1993) 07 DEL CK 0015

In the Delhi High Court

Case No : Suit No. 2616A of 1988 and Interim Application No's. 22 and 465 of 1989

Patel Construction Co.

APPELLANT

Vs

Oil and Natural Gas Commission

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Citation : (1993) 3 AD 361 : (1994) 1 ARBLR 26 : (1993) 52 DLT 37 : (1993) 27 DRJ 26

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Y.P. Narulla, A.K. Sood and Rohit Verma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The sole Arbitrator Shri P.D.Upadhyaya filed the Award dated August 26, 1988, in the matter of the arbitration between M/s Patel Construction Co. and Oil & Natural Gas Commission in this Court. The Award and the proceedings were taken on record by an order dated October 28, 1988, and notice of filing of the same was issued to the parties. The Notice was served on the petitioner as well as respondent.

(2) The respondent M/s Oil & Natural Gas Commission is a statutory Corporation, established under the Oil and Natural Gas Commission Act, 1959, hereinafter referred to as "the Corporation", invited tenders for civil, structural and plumbing work for C.G.S. cum C.T.F. South Santhal near Mehsana (Gujarat), from approved class of contractors through their engineers, M/s Engineers India Ltd. M/s Patel Construction Company submitted the tender, which after negotiations was accepted vide letter No. 1603/G/08 (II) dated May 15, 1981. The value of the contract was Rs.75,76,519.50, as referred to in Clause I of the contract. The time of completion for the work was fixed to be 12 months reckoned from the date of issue of Telegram of Intent i.e. April 18, 1981. The Corporation has further contended that the works defined in the agreement were to be completed/

executed in a phased manner, so as to generate the work fronts to other agencies like tank fabrication, mechanical equipments, erection and piping etc. with a view to complete the project as a whole within the stipulated period.

(3) The Contractor, M/s Patel Construction Company, could not complete the works within the time stipulated because of slippages during the course of execution of the contract, on account of the various deficiencies and defaults on their part. The work lingered on till October 30, 1983, although it is submitted that the time was expressed to be the essence of the contract.

(4) It is further alleged that certain disputes were raised by the petitioner in their written communication and reference may be made in this regard to the letters dated January 30, 1984 and January 28, 1984 respectively. The letter of January 30, 1984 reads as follows:

"THE Site in charge M/s Engineers India Limited, Dsi Shed No.21 O.N.G.C. Mehsana Sub:- Extended stay compensation Dear Sir, We were awarded the Civil structural and plumbing work for CGS-cum- Ctf at South Santhal Project for Ongc near Mehsana vide telex of intent. 18.4.91 for an amount of Rs.79,72,262.62. The said work was to be completed within a period of 12 months reckoned with effect from 18.4.81. You are requested to kindly refer to our letter No.PCC/MSH/221 dated 28.1.84 requesting you for extension of time limit for completion of work without levying any penalty to us. As can we see from our letter under reference the reasons for delayed completion are not attributable to us. The completion of work has been extended beyond the contractual completion period that is for a period of about 22 months beyond the specified time and we had incurred heavy losses by keeping out men and machinery idle at site for no fault of ours. In spite of forceful mobilization in the beginning of the job utilisation of men and machinery could not be proper due to reasons as contained in our letter under reference. The loss suffered for the above work are very heavy and the main reasons for the same are late release of drawings, dispute between the land owners and owner, interrupted power supply, late supply of water etc. We feel that we are justified in asking to compensate for these losses due to extended stay for completing the job at the rate of Rs.20,000.00 per week for a period of 93 weeks which works out to be Rs.18,60,000.00 . The amount of Rs.20,000.00 per week has been arrived at by considering the payment for maintaining establishment of labour and equipment, escalation, for labour and material which were required to be maintained at Mehsana site. We would Therefore request you to kindly consider our case favorably and release the payment at an early date. Thanking you and assuring you of our best services always, we remain, Yours faithfully. For M/s Patel Const: Co. sd/- (R.S.Patel)"

(5) The earlier communication of January 28, 1984, referred to the time extension for completion of civil structural and plumbing work at the site and the petitioner brought to the notice of the respondent the reasons of non-completion of the work within the stipulated period and the said reasons were categorised as beyond the control of the petitioner and a request was made to the Corporation

to issue the completion certificate and grant time extension without levying any penalty as the reasons enumerated for the delayed completion were not attributable to the petitioner.

(6) The petitioner further addressed a communication dated February 10, 1987, to the respondent with regard to the extended stay claim and it was stated therein that the petitioner was willing to accept Rs.7,80,000.00 in full and final settlement of the claims. This communication is reproduced as follows:

"GENERAL Manager, (OP) O.N.G.C. Dehradun Sub:- Extended stay claim for civil & structural works of Ggs cum CTF-South Santhal. Sir, Reference discussions on the subject, I have to state that I am ready to accept Rs.7,80,000.00 (Rs. Seven lakhs eighty thousand only) in full and final settlement of my claims. Thanking you, Yours faithfully, sd/- For Patel Const. co."

(7) The disputes and differences, having obviously arisen between the parties, the same were referable to arbitration under clause 87 of the Contract, which read as follows:

"87.ARBITRATION; 87.1 Settlement of disputes by arbitration Except where otherwise provided in the contract any question, dispute or difference that shall arise between Ongc on the one hand and the Contractor on the other hand as to the construction, intent, meaning, or effect of the contract documents, designs, drawings, specifications, estimates or any one of them or as to any further drawings, specifications, estimates or any one of them to be prepared or as to the application of the schedule of rates to the measurements taken or as to the materials or the quality thereof or as to the workmanship employed or the execution of the failure to execute the same whether arising during the progress of work or within 12 months of completion or abandonment thereof or as to any other matter or thing, whether of the nature, aforesaid or otherwise, however, arising out of or in any way relating to or connected with the contract then every such question, dispute or difference (except where otherwise herein expressly provided) shall be referred to a sole arbitrator to be appointed by the parties by mutual consent within one month from the date of the notice of either party requiring an arbitrator to be appointed for resolving such disputes. In the event of the parties being unable to agree to a sole arbitrator within the specified time, the sole arbitrator shall be appointed by the Chairman or Managing Director of Oil & Natural Gas Commission. The Sole Arbitrator shall be appointed by the Chairman or Managing Director within one month from the date of request made to him in this behalf by either party. Such submission shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act 1940 or any statutory notification thereof. The award of the arbitrator or arbitrators or Umpire shall be final and binding upon the parties. Meanwhile in order to ensure the work being proceeded with continuity the contractor shall (in the case of any such question dispute or difference) act upon and give effect to the order of the Engineer-in-Charge pending the decision of the Arbitration being given and in any case act upon and give effect forthwith to any and every decision of

Engineer-in-Charge. Upon every such reference the costs incidental to the reference and award shall in the first instance be incurred by respective parties and the arbitrator at his discretion may determine the amount thereof and direct as to by when and to whom and in what manner, the same shall be finally borne and paid."

(8) In terms of the above said Clause, vide office order dated September 17, 1987, Shri P.D. Upadhyaya, Deputy General Manager (Civil), Oil & Natural Gas Commission, Bombay, was appointed as the sole Arbitrator to arbitrate upon the disputes between M/s Patel Construction Co. Baroda and O.N.G.C. for civil, structural and plumbing works for South Santhal Ggs cum Ctf at Mehsana, in terms of the provisions of the contract. The said Arbitrator entered upon the reference and invited the petitioner to submit the list of claims for further consideration. The petitioner filed a statement of claims and the same may be referred to as follows: Claim No. 1: Claim for Rs.23,36,100.00 due to infructuous overheads and loss of profit during extended stay. Claim No.2: Claim for Rs.19,50,000.00 due to increase in the cost of labour and materials in respect of work done during extended period. Claim No.3: Claim for Rs. 16 lakhs for 80 weeks at the rate of Rs.20,000.00 per week on account of idle labour and machineries. The claimants claimed Rs.2.16 lacs toward idle charges for road roller at the rate of Rs. 12000.00 per month for a period of 18 months Claim No.4: Claim for Rs.20,90,291.00 for increase in cost due to non-availability of approach roads. Claim No.5: Claim for Rs.4 lakhs for increase in cost due to introduction of security system. Claim No.6: Claim for Rs.2 lakhs on account of expenditure incurred in travel Claim No.7 Interest @ 24% per annum on (a) Late release of initial Security Deposit and Composite Bank Guarantee furnished towards mobilisation advance/ security deposit. (b) Delayed payments of mobilisation advance, running account bills and final bill. Claim No.8: Interest @ 24% per annum from due date of the claims till the date of reference to arbitration. Claim No.9: Interest pendente-lite. Claim No. 10: Interest on the award amount from the date of award till date of payment. Claim No. 11: Cost of arbitration.

(9) The petitioner accordingly claimed a principal amount of Rs.87,92,391.00 , referred to above along with interest at the rate of 18 per cent per annum from the due date of claim to the date of reference and pendente lite interest etc. The respondent Corporation filed reply and raised counter claims due to delayed completion of works for reasons attributable to the petitioner. The amount of Rs. 1428.65 lakhs was claimed under this head. The arbitrator in the Minutes of the meeting held on May 13,1988, has stated that the parties agreed to the list of disputes, to be referred "to the sole arbitrator as per appendix "A". The said Appendix only relates to the disputes and statement of claims, as raised by the petitioner and there is no reference to the counter claim, as made by the respondent corporation.

(10) The Arbitrator made and published his award on August 26,1988. The same

is non speaking and assigns no reasons in support thereto.

(11) The relevant portion of the Award reads as follows:-

"1.....2. I, P.D. Upadhyaya, Dy.General Manager(Civil), Oil & Natural Gas Commission, Bombay, was appointed Sole Arbitrator under ONGC's Office Order No. DDN/M(NG)/MSG/MISC/87 dated 17.9.1987 to adjudicate the disputes and differences in the above matter. 3. I entered upon a reference as Sole Arbitrator under letter No. BRBC/DGM(C)/PDU/ 87/748 dated 17.10.1987. 4 . The disputes referred to the Sole Arbitrator as mutually agreed upon by the Claimants and the Presenting Officer of Ongc in the meeting held on 13.5.1988 at Bombay are as under:- Statement Of Claim Claim No. 1:- Anfractuious overheads and loss of profit due to extended stay. Claim No. 2:- Escalation in cost of materials and labour during extended period. Claim No. 3:- Idle labour and machineries due to extended stay. Claim No. 4:- Non availability of approach roads. Claim No. 5:- Introduction of Security system during progress of work. Claim No. 6:- Expenditure incurred in travel etc. to settle the claim. Claim No. 7:- Interest @ 24% per annum on (a) Late release of ini

(12) The respondent filed his objections under Sections 30,33 and 16 of the Arbitration Act, 1940. The objections were taken on record and reply by the petitioner was filed to the same. The following issues were framed on 5.5.1989:

1. Whether for the reasons stated in the objection petition, the award is liable to be set aside or remitted? 2. Is the petitioner entitled to future interest in case the objections are dismissed? 3. Relief.

(13) The parties were directed to lead evidence by way of affidavits and the same as a consequence were filed.

(14) The contentions of the learned counsel for the respondent corporation can be summarised as follows:

1.The Arbitrator has not assigned reasons in his Award although the respondent sought a reasoned Award vide reply dated 11th May, 1988 and submitted on 13th May, 1988. 2. The Award is vitiated by an error of law, apparent on its face and also on the ground that the Award is even otherwise invalid within the 32 meaning of the term,as understood under the Arbitration Act. The Award is ex-facie perverse and vitiated as being contrary to the express provisions of the contract between the parties. The arbitrator has exceeded his jurisdiction and assumed to himself jurisdiction with respect to matters, which are expressly excluded from his purview by the terms of the Agreement/Arbitration clause. 3. The Arbitrator has misconducted himself by ignoring the express provisions of the contract in the face of which no reasonable person could have awarded the amount under any of the claims, preferred by the claimants/petitioner. Reference is made to clauses 2.2, 2.3, 18.2 to 18.4, 47,52(vi), 69.1,69.2, 69.3,69.6,69.7 and 87.1.of the General Conditions of Contract. 4. The amount awarded is grossly disproportionate when viewed in the context of the admissions of the

petitioner and the documents filed and relied upon by the petitioner. The arbitrator has failed to apply his mind to the material documents on record, including those filed by the petitioner, by which the claim was restricted to Rs.7,80,000.00 or at best to Rs.18,60,000.00 , as contained in the letters dated 10.2.1987 and 30.1.1984 respectively, which form part of the record of the arbitrator. 5. The arbitrator has awarded an amount of Rs.32,41,000.00 , under the contract, which is an item rate contract divided into five sections, A, and E and of total original value was Rs.75,76,519.50. The alleged claim of the petitioner u/s A of the contract was about Rs.56,13,159.50 and against this, the amount already paid to and admittedly received by the petitioner under the contract, including the sum paid for additional works is about Rs.81,00,000.00 . The amount now awarded to the petitioner is grossly disproportionate, perverse and is vitiated by non application of mind. 6. The alleged claims, assuming without admitting that any of these could be admitted by the petitioner against the Corporation, were clearly barred by time and could not be entertained by the arbitrator in terms of clause 87.1 whereunder only those disputes, which had arisen within 12 months of completion of the contract could be entertained by the Arbitrator. 7. The arbitrator has not considered the counter claims of the respondent and this is clearly evidenced by the records of the minutes of the proceedings of May 13, 1988, maintained by the Arbitrator himself.

(15) The learned counsel for the petitioner, on the other hand, has contended that the arbitrator was not liable to give speaking or reasoned award, in view of the settled law by Supreme Court of India. Petitioner had nowhere conceded that the arbitrator must give reasoned award and there was, therefore, no mandate given by both the parties in the arbitration agreement or otherwise to state reasons. The arbitrator could not accordingly act on the mandate of one of the parties, (see Food Corporation of India and Another Vs. Great Eastern Shipping Co. Ltd.,). It is well settled that in the absence of any reasons for making the award, it is not open to the Court to interfere with the same. Further-more, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged and appraisal of evidence by the arbitrator is never the matter, which the Court questions and considers. It was never contended before the Arbitrator that the counter claim are not being considered and it is indicative from the Award itself that the claims and counter claims have been duly considered by the arbitrator and no fault can be found in respect of the same. The arbitrator has given the Award, fully conscious of the disputes, which the parties had raised before him and it will be wrong to say that the counter claims of the respondent were not considered. There is Therefore, no question of any misconduct or impropriety, committed by the arbitrator. The Arbitrator is further entitled to give a lump sum award in view of the judgment of the Supreme Court as reported in State of Orissa and Others Vs. Lall Brothers, , and this ground is not available to the respondent. The objection that the award is in contravention of the General Conditions of Contract, especially clauses 69.2, 22.0 and 23.0, as the arbitrator could not award any amount on account of delay, is not sustainable

for the reasons (a) that no such objection was taken (b) the contract has not been incorporated in the award and, Therefore, it cannot be looked into. It is also not clear, as to what amount has been awarded by the arbitrator against his claim. The claim is by way of liquidated damages and the delay was on account of the respondent as per the correspondence of the Engineers India Ltd. with the respondent. The provisions of clause 69.2 were varied in the Letter of Intent and escalation was provided. The objection petition of the respondent has no force and it was prayed that the same be dismissed accordingly.

(16) The position of law with regard to the reasoned award is well settled by the Hon"ble Supreme Court and it has been held that the arbitrator is not obliged to give reasons unless both the parties have asked for the same.

(17) In AIR 1990 1426 (SC) ,the Supreme Court has categorically held that the award need not be remitted or set aside in the absence of reasons. Reference is made to paragraph 19 of the said judgment, which reads as follows:

"IT is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in- it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made u/s 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."

(18) The learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, , to the effect that when the arbitrator has given no reasons for award nor there is any legal proposition as basis of award, the plea of error of law on the face of award must be rejected. 19. The judgment in State of Orissa and others v.M/s Lall Brothers (supra) also reiterates the proposition that the fact that there is an unreasoned award is no ground to set aside the same and lump sum award is not bad per se, as such. Reference may be made to paragraph 7 of the said judgment, which read as under:

"IN our opinion, the High Court was right in refusing to accept the challenge to the award. The fact that there is an unreasoned award is no ground to set aside an award. Lump sum award is not bad per se, as such. An award is conclusive as a judgment between the parties and the court is entitled to set aside an award only if the arbitrator has misconducted himself in the proceedings or when the

award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid u/s 30 of the Act. An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion."

(20) The Court, however, can set aside the Award on the ground of error on the face of the Award, if such a conclusion is possible from reading of the Award.

(21) The proposition of law in *Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir*, may also be noticed. Paragraph 7 of the judgment reads as under- in our opinion, there is great force in the contentions urged by learned counsel. The High Court has set aside the award on the above terms on the ground that there is an error apparent on the face of the award. This is clearly incorrect. The award is a non speaking one and contains no reasoning which can be declared to be faulty. The scope of the court's jurisdiction in interfering with a non speaking award on the above ground is extremely limited. The rule of limitation in this respect was enunciated by the Judicial Committee almost seven decades ago in AIR 1923 66 (Privy Council) , in words which have been consistently and uniformly followed and applied in all subsequent decisions. Lord Dunedin said, after noting with disapproval certain attempts to extend the area of the court's interference with such an award:

"AN error in law on the face of the award means, in their Lordship's view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned judges have arrived at finding what the mistake was is by saying: "inasmuch as the arbitrators awarded so and so, and inasmuch as the letter shows that the buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Rule 52." But they were entitled to give their own interpretation to Rule 52 or any other article, and the award will stand unless, on the face of it, they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound."

(22) In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, it has been held that "in the absence of any reasons for making the award, it is not open to the Court to interfere with the Award. Furthermore in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter, which the Court questions and

considers". The interpretation of the contract is also a matter for the arbitrator and on which Court cannot substitute its own decision. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the Court.

(23) Reliance is also placed on the Division Bench judgment of this Court in All India Institute of Medical Sciences Vs. American Refrigeration Co. Ltd., to support the proposition that "the Court is entitled, while examining an award, to look at documents accompanying and forming part of the award. Thus, in an arbitration arising out of a contract, if the arbitrator refers specifically to any term of the contract in the award, then it can be said that he has incorporated the contract into the award. Then, the Court will be entitled to look at the contract. The mere fact that the contract is referred to in the award, especially, if it is referred to in a recital to the award, does not make that contract a document which is incorporated in the award so that the Court can look at that for the purposes of seeing whether there is any error of law. But, if the arbitrator goes further and sets out one at least of the material clauses it becomes permissible to look at the contract as the same was not incorporated in the award. Thus, it is argued that the Court is precluded from looking at the contract to determine, whether, there is any error of law in the Award.

(24) The counsel for the petitioner has further contended that the award of high amount, which was alleged to be disproportionately high and the award was per se bad on that score alone, has no basis in facts or in law. The proposition of law has been clearly stated in the case of State of Orissa Vs. Dandasi Sahu, ,on which reliance has been placed.

(25) The law is now well settled that "the fact that there is an unreasoned award, is no ground to set aside an Award. It is also not in dispute that the lump sum Award is not bad per se, as such. An Award is conclusive as a judgment between the parties and the Court is entitled to set aside an Award only, if the arbitrator has misconducted himself in the proceedings or when the Award has been made after the issue of an order by the Court, superseding the arbitration or after arbitration proceedings have become invalid u/s 25 of the Arbitration Act or where an Award has been improperly procured or is otherwise invalid u/s 30 of the Act. The Award may be set aside by the Court on the ground of error on the face of the Award, but the Award is not invalid merely because by a process of inference and argument, which may be demonstrated that the Arbitrator has committed some mistake in arriving at his conclusion. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusion. The fact that a lump sum award has been given is no ground to declare the award bad.

(26) I may now proceed to deal with the objections, raised by the counsel for respondent. It has been stressed that the Award is vitiated for being arbitrary, irrational and discloses none application of mind. The same is patently

inconsistent qua the evidence and the record and is contrary to the provisions of the contract, which the arbitrator was obliged in law to apply and interpret. The amount awarded is not intelligible, inasmuch as it is not ex-facie clear, as to which claim has been decided and which has been rejected. The amount is also grossly disproportionate considering the value of the contract and the same obviously shocks the conscience of the Court. The counsel has referred to the affidavit, filed by Mr. S. Prasad, Chief Engineer, Oil & Natural Gas Commission, who had been dealing with the case before the Arbitrator as representative Officer of the respondent. The said officer has reiterated that the petitioner company, vide their letter dated February 10, 1987, had specifically offered to accept a sum of Rs. 7.801 lakhs in full and final settlement of all its alleged claims and at no stage, prior to the filing of the claims before the Arbitrator, the petitioner raised the various claims which were illegally considered by the Arbitrator and the same were not supported by any evidence on the record. It has further been reiterated that the disputes, which were referred to in the minutes of May 13, 1988, did not include the counter claims of the respondent and the arbitrator committed grave error of fact and law in stating that the disputes, as in appendix "A", had been mutually agreed on the date mentioned above. In any case, the arbitrator having settled the disputes in the meeting held on May 13, 1988, which did not include the counterclaims of the respondent could not have mechanically stated in the Award that the amount has been awarded in full and final settlement of all the claims and counter claims of both the parties against each other. There is, Therefore, error apparent on the face of the award and there is total non-application of mind by the arbitrator.

(27) The petitioner company had filed "no claim certificate" stating that no claims/ disputes survive or exist between the parties, except the alleged claim on account of extended Stay which was also denied by the respondent.

(28) There is no doubt that an Award, which does not give reasons, cannot be easily set aside. The Court, however, is not precluded to examine the correctness of the award and to find out, whether, the Arbitrator has proceeded according to law. "The proceedings before the arbitrators are quasi judicial proceedings. They must be conducted in accordance with the principles of natural justice. The parties to the submission may be in the dark as regards the personal knowledge of the arbitrator. There may be misconceptions and wrong assumptions in the mind of the arbitrator. If the parties are not given opportunity to correct those misconceptions or wrong assumptions, grave injustice may result". (Dewan Singh Vs. Champat Singh and Others,). The arbitrator accordingly has to act reasonably and rationally. The question of import of the principles of natural justice in proceedings before the arbitrator and the limits of the power of the Court have also been referred to in the judgment of the Supreme Court in Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, . The following paragraph may be reproduced :-

"IN this case, there was no violation of any principles of natural justice. It is not

a case where the arbitrator has refused cogent and material factors to be taken into consideration. The award cannot be said to be vitiated by non-reception of material or non consideration of the relevant aspects of the matter. Appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice. The Arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator."

(29) The powers of the Court to examine the scope and extent of examination of the award have been exhaustively discussed by the Supreme Court in *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another*, . It will be relevant to make reference to the following passage:-

".....EVEN, however, if it be held that it is obligatory for the arbitrator to state reasons, it is not obligatory to give any detailed judgment. An award of arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof. Short intelligible indications of the grounds should be discernible to find out the mind of the arbitrator for his action even if it be enjoined that in all cases of award by an arbitrator reasons have to be stated. The reasons should not only be intelligible but should also deal either expressly or impliedly with the substantial points that have been raised. Even in a case where the arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and the circumstances of the case. The Court, however, does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous. See the observations of this Court in *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, ."

(30) The grievance of the respondent is that the arbitrator committed a grave and obvious error of fact and law in first stating that the disputes referred to the sole arbitrator have been mutually agreed on May 13, 1988 and the same did not include the counter claims of the respondent. The arbitrator further misconducted himself by not specifying the counter claims along with statement of claims of the petitioner in the award but in the final analysis awarded as follows:-

"(1) In full and final settlement of all the claims and counterclaims of both the parties against each other, referred to me, the respondents M/s Oil & Natural Gas Commission, shall pay to the claimants M/s Patel Construction Co., a sum of Rs-32,41,000.00 (Rupees Thirty two Lakhs and Forty one thousand only)."

(31) The above, accordingly, is an error apparent on the face of the award, as the arbitrator has misconduted himself by mechanically referring to the counter claims of the respondent and not dealing with the same. This is clearly against law and vocative of the principles of natural justice. It is open for the Court to consider, whether, the arbitrator has refused "cogent and material factors" which he was required to take into consideration. " Whether, the award was in accordance with law and the principles of natural justice, is also within the jurisdiction of the Court for appropriate consideration. The Court can look into all the surrounding circumstances and examine the award, although the award may not specify any reasons, so that no injustice is done. The arbitrator obviously did not consider the counter claims of the respondent and the same could not have been done and he has confined his jurisdiction to the claims, as raised by the petitioner. In case, the arbitrator had concluded that the counter claims were given up by the respondent as the disputes referred to him to be mutually agreed between the parties in a meeting of May 13,1988,did not include the same, he could record so and there was no need for him to state that he had considered both the claims as well as the counter claims. The arbitrator has also reiterated in para 4 of the award that the disputes, as mutually agreed by the parties, were those which were specified in a meeting held on May 13, 1988.

(32) It may be relevant to refer to the judgment of the Supreme Court in K.V. George Vs. Secretary to Government, Water and Power Department, Trivandrum and Another, , where the arbitrator had made an Award on the basis of claim of one party and kept the counter claim of another party for consideration subsequently. It was held in that case that the arbitrator had misconduted himself, as it was his duty to consider, both claims and counter claims before making the award. The facts in the present case may be slightly different, as the arbitrator herein has specified in his award that he has considered the claims, as well as, the counter claims of the parties. The same is, however, not borne out from the proceedings of the meeting held on May 13, 1988, as referred above, where the Arbitrator confined his jurisdiction only to the claims of the petitioner. Reference to the counter claims in the Award is obviously meaningless and amounts to none consideration of the same. In this manner, the Arbitrator has misconduted himself, as it was his duty to consider,both claims as well as counter claims before making the award. There is an obvious "non-consideration of the relevant aspects of the matter" indicating an error apparent on the face of the award. The respondent/objector has suffered prejudice for non-consideration of the counter claims.

(33) The counsel for the respondent has next contended that the arbitrator could not have acted independent of the contract and he has failed to consider material documents in this regard. In case, he has considered the contract and the claims, he could not have arrived at the conclusions and awarded the huge amount in favor of the petitioner. He has referred to clause 69.7, which states that the schedule of rates could not be altered. He has further reiterated that the extended period for completion of works was solely due to the lapse of the

petitioner and the petitioner had been asking for waiver of penalty and for extension from time to time. It will not be necessary for this Court to pass any judgment on this count, as the interpretation of the terms of the contract, is clearly within the jurisdiction of the arbitrator and he is entitled to take a legal view in this regard. It is not also permissible for Court to look into the contract, when the contract is not incorporated in the award as the facts of the present case indicate.

(34) Reference is made to the communications dated January 30, 1984 and February 18, 1987, wherein the petitioner had claimed compensation for losses due to extended stay for completing the job for the amount of Rs.18,60,000.00 which was subsequently reduced to Rs.7,80,000.00 . It is difficult to discern from reading of the Award any reasonable basis of the lump sum amount awarded in favor of the petitioner for the sum of Rs.32,41,000.00 .The arbitrator has obviously not considered the material documents and has chosen to give non speaking award. He seems to have ignored the basic proposition that the proceedings before him were quasi-judicial and he was expected to proceed according to law. In this situation, the Court is not precluded to examine the correctness of the award and to find out, whether, the arbitrator has acted within the domain of his jurisdiction. The Supreme Court in Gujarat Water Supply & Sewerage Board (supra) has clearly held that an Award of Arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof. "Short intelligible indication of the grounds should be discernible to find out the mind of the arbitrator for his action, even if it be enjoined that in all cases of award by an arbitrator, reasons have to be stated". There is no doubt that an Arbitrator is not obliged to give reasons, as the position of law stand today. The Court can, however, refer to the arbitration proceedings, which may reveal the procedure adopted by the arbitrator. The Award in the present case, is not intelligible not because it is a non speaking award but because of other various factors, which have been indicated above, such as, non reference of the counter claims of the respondent in the matters, which were alleged to be mutually settled between the parties for reference and the mentioning of the counter claims in the final Award. This amounts to non-consideration of the same. There is an "error apparent on the face of the award" and the arbitrator has exceeded his jurisdiction. Reference may be made to the judgment of the Supreme Court in Hindustan Construction Co. Ltd. vs. State of Jammu & Kashmir (supra), which had relied upon an earlier judgment of the Court. Paragraph 10 reads as follows:-

"THERE is, however, apart from the existence of an "error apparent on the face of the award", another angle from which a non-speaking award can be considered by the Court and, if necessary, interfered with. This ground for impeaching a non-speaking award and its limitations have been explained by this Court in the Sudarsan Trading Co. case earlier referred to Subyasachi Mukherjee J. Sudarsan Trading Co. Vs. Government of Kerala and Another, enunciated the rule and its limitation thus: "An award may be remitted or set aside on the ground that the arbitrator in making it, had exceeded his jurisdiction and

evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has to be determined outside the award-whatever might be said about it in the award or by the arbitrator. See in this-connection, the observations of Russell on The Law of Arbitration, 20 Ed.,427.Also see the observations of *Christopher Brown Ltd. v.Ganossenschaft Oesterreichischer*, (1954) 1 QB8 10 and *Dalmia Dairy Industries Ltd.v. National Bank of Pakistan*, (1978) 2 LR. 223. It has to be reiterated that an arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award. In Halsbury's Laws of England (4th "Edn., vol. 2, para 622) one of the misconducts enumerated is the decision by the arbitrators on a matter which is not included in the agreement or reference. But in such a case one has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. See the observations in *Anisminic Ltd.v. Foreign Compensation Commission*, (1969)2 Ac 147 and *Regina v. Nosedo, Field, Knight & Fitzpatrick*, (1958) 1 Wlr 793. But, in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator,but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do,namely,substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained,was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. It has to be determined that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised...."

The learned Judge further proceeds to point out that Courts are sometime persuaded to rely on this ground to set aside an award when, actually, what they were embarking upon was an interpretation of the contract and a criticism of the arbitrator's approach thereto. It is clear that this is what has happened in the present case also. We have already mentioned that the High Court has not rested its decision on any question of the arbitrator having exceeded his jurisdiction or travelled beyond the contract; it has clearly held it to be a case of "error apparent on the face of the award". In our view, the case cannot be brought within the scope of the "excess of jurisdiction" rule either."

(35) For the aforesaid reasons, I hold that the arbitrator has committed an error, apparent on the face of the award. The question now arises,whether, the award can be remitted to him for reconsideration. The provisions of Section 16 of the Arbitration Act - clearly provide that the Court may, from time to time, remit the award for reconsideration upon such terms, as it thinks fit (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter,not referred to arbitration, and such matter cannot be

separated without affecting the determination of the matters referred; or (b) where an objection to the legality of the award is apparent on the face of it. The award, in the present case, does not indicate that the arbitrator has considered the counter claim of. the respondent/objector, although he mentions that he has taken into account the claims, as well as, the counter claims. There is no indication of any basis for the lump sum amount awarded in favor of the petitioner, which is discernible from the reading of the award. The circumstances of the present case, would justify that the award is remitted to the arbitrator for reconsideration, in the light of what has been observed in this judgment, after providing opportunity to both the parties in this regard. The arbitrator shall give his award within a period of four months from the date of receipt of this order.

(36) The petition is disposed of in the above terms.