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**(1994) 08 P&H CK 0007**

**In the Punjab And Haryana At Chandigarh**

**Case No : First Appeal From Order No. 1020 of 1988**

Punjab State

APPELLANT

Vs

Amar Nath Aggarwal Const. (Pvt.) Ltd. and Another

RESPONDENT

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**Date of Decision : 08-08-1994**

**Acts Referred:**

Arbitration Act, 1940 — Section 29, 30, 33  
Civil Procedure Code, 1908 (CPC) — Section 34  
Evidence Act, 1872 — Section 1

**Citation : (1994) 108 PLR 674**

**Hon'ble Judges : A.P. Chowdhri, J**

**Bench : Single Bench**

**Advocate : G.K. Chatrath, AGP and A.K. Walia, AAG, for the Appellant; Hemant Kumar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

A.P. Chowdhri, J.—This is first appeal against the order of the Senior Subordinate Judge, Ropar, dated August 17, 1988, making award of the arbitrator rule of the Court and dismissing objections filed by the State.

2. Brief facts of the case are that Amar Nath Aggarwal Constructions Private Limited (hereinafter referred to as "the contractor") entered into an agreement with the State of Punjab for the construction of a siphon across Sangrao Nadi at RD 29.660 KM of Sutlej Yamuna Link Canal (SYL canal for short). Certain disputes and differences having arisen, the contractor wrote to the Chief Engineer to refer the matter to arbitrator in terms of the arbitration clause. By order dated April 24, 1987, the Chief Engineer appointed Mr. S.S. Sandhu, Superintending Engineer, Construction Circle - III, SYL Canal Project, as the sole arbitrator to adjudicate the disputes. The contractor submitted statement of claims, to which written statement was filed on behalf of the State. Replication and rejoinder thereto were also filed. Both the parties filed documents on which they relied and the arbitrator, after hearing both the parties gave his award

dated August, 17, 1987. The arbitrator awarded a sum of Rs. 29,40,775/- besides future interest at the rate of 12% per annum in favour of the contractor and against the State. The contractor made an application to the Court for having the award filed in the Court and to make the same rule of the Court. The State filed objections under Sections 30 and 33 of the Arbitration Act. The Senior Subordinate Judge, Ropar, disposed of the objections and made the award rule of the Court. A decree was drawn up on the basis of the order. Aggrieved, the State has preferred this appeal.

3. I have heard Mr. G.K. Chatrath, learned Advocate-General, Punjab, for the appellant-State and Mr. Hemant Kumar for the respondent-contractor and have perused the record with their assistance.

4. It will be convenient to deal with certain contentions raised in this appeal before dealing with claims under different heads.

#### VIS MAJOR

In order to deal with this ground, the following facts are relevant.

6. The agreement was signed on September 26, 1985. In pursuance of the agreement work actually commenced at site on October 15, 1985. There was an agitation by the farmers led by Bhartiya Kisan Union (BKU, for short) that work could not be started without first acquiring the land. Admittedly, the work remained suspended from October 22, 1985 to September 15, 1986 account of the agitation. The basis for the claim of the contractor was that they had mobilised their resources and had started the work and they were prevented from executing the work on account of the agitation. This agitation was entirely preventable if the Government had got the work, started at site after taking possession of the land according to law in proceedings for land acquisition. This had resulted in loss to the contractor and they were entitled to be compensated. On behalf of the State, a two-fold contention was raised. Firstly it was stated that the case was covered under Clause 59 (force majeure) of the agreement. Secondly, that there was no stipulation in the agreement that the State would be liable to pay compensation in such a situation and it was, therefore, not permissible for the arbitrator to award any compensation against the State on this ground. Reliance was placed on Associated Engineering Co. Vs. Government of Andhra Pradesh and another,

Clause 59 relating to force majeure reads :-

"Neither party shall be liable to the order for any loss or damage occasioned by or arising out of acts of God, such as unprecedented flood, volcanic eruption, earthquake or other convulsion of nature, and other acts such as but not restricted to invasion, the act of foreign countries, hostilities or warlike operations before or after declaration of war, rebellion, military or usurped power which prevent performance of the contract and which could not have been foreseen or avoided by a prudent person."

7. The above clause consists of two parts. Under the first part are grounds, which have been called "acts of God". Illustrations given are unprecedented floods, volcanic eruptions; earth quakes or other convulsions of nature. The second part was on account of "other acts". The illustrative instances of "other acts" mentioned in the Clause are invasion, act of foreign countries, hostilities of war like operation before or after declaration of war, rebellion, military or usurped power which prevent performance of work. It is significant to note that there was an over-riding condition stated in Clause 59 itself, namely, that the "other acts" spoken of in the clause must be such as could not have been "foreseen or avoided by a prudent person". There can be no dispute that starting of work without acquiring the land could be easily foreseen and avoided by a reasonable and prudent person. In this connection there is on the record a letter dated June 30, 1986, from the Executive Engineer to the contractor, admitting that possession of the land was taken by the Land Acquisition Collector on June 29, 1986. The department, therefore, was responsible for having the work started on October 15, 1985, even though possession of the land was taken under the acquisition proceedings on June 29, 1986. The correspondence on record shows that the contractor had time and again written to the department with regard to non-acquisition of land. Reference in this connection be made to letters written by the contractor on August 25, 1985, and September 15, 1985.

8. The contention of Mr. Chatrath is that delay in handing over the site only obliged the Government to grant extension of time under Clause 62. By necessary implication, It is contended, no action for damages could be grounded on the basis of delay.

Clause 62 of the General Conditions reads :-

"62. EXTENTION OF TIME :

Time shall be considered as the essence of the contract. If, however, the failure of the contractor to complete the work as per the stipulated dates referred to above arises from delays on the part of Government in supplying the materials or equipment it has undertaken to supply under the contract or from delays in handing over sites, or from increase in the quantity of work to be done under the contract, or force Majeure an appropriate extension of time will be given. The Contractor shall request such extension within one month of cause of such delay and in any case before expiry of the contract period. The Superintending Engineer shall if in his opinion (which shall be final) on reasonable grounds being shown, there for authorise such extension of time if any, as may in his opinion be necessary or proper."

9. In my view, there is nothing in Clause 62 to exclude liability of the Government in so far as a claim for compensation is concerned. Clause 62 contains a limited provision for extension of time in cases where the delay in the execution of the work is on account of reasons attributable to the Government or those which are not attributable to the contractor. This has been provided so that

the Government does not press into service penal provisions against the contractor, even in cases where the delay is on account of the Government itself. In other words, there is no stipulation in Clause 62, which excludes the liability of the Government if it can be attracted otherwise.

10. To conclude, (i) the work which had commenced remained suspended for almost one year (ii) the cause for suspension was agitation by the farmers that work had been started on their lands without payment of compensation (iii) the reason for suspension was such which could be foreseen and avoided (iv) Clause 59 relating to extension of time did not relieve the Government of its liability to compensate the contractor for loss suffered on account of suspension of work under various heads.

11. The next contention is based on the provisions of Clause 63, which reads:

"62. SETTLEMENT OF DISPUTES:

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any drawings, record or ruling of the Executive Engineer on any matter in connection with or arising out of the contract or the carrying out of work to be unacceptable, he shall promptly ask the Executive Engineer in writing, for written instructions or decision. There upon the Executive Engineer shall give his written instructions or decision within a period of thirty days of such request.

Upon receipt of the written instructions or decision the Contractor shall promptly proceed without delay to comply with such instructions or decision.

If the Executive Engineer fails to give his instructions or decision in writing within a period of thirty days after being requested, or if the Contractor is dissatisfied with the instructions or decision of the Executive Engineer, the Contractor may within thirty days after receiving the instructions or decision appeal to Superintending Engineer who shall afford an opportunity to the Contractor to be heard and to offer evidence in support of his appeal. This officer shall give a decision within a period of sixty days after the contractor has given the said evidence in support of his appeal.

If the Contractor is dissatisfied with this decision, the Contractor within a period of thirty days from receipt of the decision shall indicate his intention to refer the dispute to arbitration, failing which, the said decision shall be final and conclusive."

Clause 63 provides a mechanism in which the contractor has to make a reference to the Executive Engineer and obtain his instructions in writing in certain situations. If he feels dissatisfied with the decision of the Executive Engineer, he can file an appeal to the Superintending Engineer. If he is still dissatisfied with the decision of the Superintending Engineer, it is open to him to have the matter referred to arbitration. The grievance of the appellant is that the present reference to arbitration was made without resorting to the mechanism referred to

in the aforesaid clause. In my view, there is no substance in this objection. Reference to the order of the Chief Engineer conveyed by the Executive Engineer vide letter dated April 21, 1987, shows that it was the Chief Engineer who had appointed the arbitrator. It was perfectly open to the Chief Engineer to inform the contractor to have his remedy in terms of Clause 63 by making a reference to the Executive Engineer in the first instance and then file an appeal to the Superintending Engineer, this was not done evidently for the reason that ultimately if the contractor felt dissatisfied with the decision of the Superintending Engineer, it was well within his right to have the matter referred for adjudication to the arbitrator, which he did and which was agreed to by the Chief Engineer and accordingly an arbitrator was appointed and reference was made to him.

12. The next objection is based on Clause 64 relating to appointment of arbitrator. Clause 64 inter alia provided that the Chief Engineer shall send to the contractor a list of three officers of the rank of Superintending Engineer or higher "who have not been connected with the work under this contract". The present objection is that Mr. S.S. Sandhu was connected with the proceedings for inviting tenders. He attended Pre-tender conference. He invited tenders, opened the same and made recommendations to the Chief Engineer as he was holding charge of Circle No. II at the relevant time. Relying on the aforesaid provision of Clause 64, the objection is that Mr. Sandhu could not be appointed arbitrator in this case.

13. There is no merit in this contention. In terms of Clause 64, Mr. Sandhu was never connected with the work under the contract. It was only at the pre-agreement stage that Mr. Sandhu was connected with the preparatory work. The fact that Mr. Sandhu was connected in the above capacity was well known to the Chief Engineer and in spite of that knowledge he appointed Mr. Sandhu as arbitrator. Moreover, the department submitted to his jurisdiction and took part in the arbitration proceedings. The objection is, therefore, untenable.

14. The next contention is that the award purports to adjudicate not only for the work already executed upto the relevant date but also work which was yet to be executed. The further contention is that as the arbitrator failed to ascertain the actual quantity of work which had been executed by recording evidence, the disputes had not been finally disposed of. On this ground the award could not be made a rule of the Court.

15. The above contention is based on the following note occurring towards the concluding part of the award :-

"The above awarded amount has been worked out the basis of contract quantities and contract amount. In case the quantities actually executed at site are more or less than quantities mentioned in the contract, then the amount would be payable on all the quantities finally involved in this work. The above amount against claim No.1(i), 1(ii), 1(v) and 3 be paid immediately. Amounts of

claim against item 2(i), 2(ii), 5, 6, 7, 8, 12, 13 will be payable in the running bills as per the quantities actually executed. Amount payable on quantities already paid after the announcement of this award and balance in every running bills, regularly."

16. A careful reading of the above note shows that it is merely clarificatory in nature. There can be no dispute that the arbitrator was required to and has, in fact, taken into consideration the rates occurring in Schedule -1 of the NTT. Reference to the Schedule- I further shows that "approximate quantity" of various items of work was mentioned therein. The clarification rendered in the note by the arbitrator is that he had kept those quantities in view as the working basis but in the items where quantity of work actually executed was relevant, payment was to be made only on the work actually executed. This must have been so even without saying it. The arbitrator has said it only by way of abundant caution.

17. It will be noticed that there is a clear distinction between two categories of items. One, those which did not depend on the quantity of work actually executed, such as items dealt with by the arbitrator as 1(i), 1(ii), 1(v) and 3. It was directed that payment under those items be made immediately. The other category comprises items in which quantity of work actually executed was relevant. These are items No. 2(i), 2(ii), 5, 6, 7, 8, 12 and 13. The arbitrator directed payment to be made on the basis of quantity of work actually executed in the next running bill after the announcement of the award and "balance in every running bill regularly". The last mentioned portion extracted within commas can possibly mean that for work which was still unexecuted also the arbitrator gave the direction to pay at the rates, adjudicated in some of the specified items. This portion is easily severable from the rest on the basis of measurement books, running bills etc. This cannot affect the validity of the award. It may be added that the parties may have no dispute regarding the portion of work which was executed after the material date. If that is so, no problem arises. If there is dispute, the mechanism provided is through arbitration and the direction of the arbitrator interpreting the same as assumed above cannot stand in the way. For these reasons, I find this contention to be wholly untenable.

18. The next contention of Mr. Chatrath is that the award in question must be set aside as it was not a speaking award. A Constitution Bench of the Supreme Court in Raipur Development Authority etc. etc. v. Chokhamal Contractors etc. etc. AIR 1990 S.C. 1426 held that an award which is not supported by reasons is neither liable to be remitted nor set aside on that ground. At the same time, it was further held by the Bench that when parties to the dispute insist upon reasons being given, the arbitrator is under an obligation to give reasons, (vide Raipur Development Authority's case (Supra) at page 1444). There is no dispute that in the present case Clause 64 of the General Conditions inter alia provided that all awards shall be in writing and in case of awards amounting to Rs. 1 lakh and

above, such awards shall state the reasons for the amount awarded. The question remains - what is the precise scope of a speaking award or a reasoned award and whether in the instant case the award satisfies that condition. In *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, their Lordships quoted decision of the Court of Appeal in England in *Bremer Handelsgesellschaft v. Westzucker* (1981) 2 LLR 130. In the aforesaid decision, Lord Conaldson, speaking for the Court at pages 132 and 133 of the report observed as follows :-

".. All that is necessary is that the arbitrators should set out what, on their view of the evidence, did or did not happen and should explain succinctly why, in the light of what happened, they have reached their decision and what that decision is. This is all that is meant by a "reasoned award".

Keeping the aforementioned test in view, their Lordships laid down the law on the point in the following words :-

"... It was a possible view to take. It could not be urged that it was an impossible view to take. The arbitrator has made his mind known on the basis of which he had acted; that, in our opinion, is sufficient to meet the requirements even if it be reasons should be stated in the award. It is one thing to say that reasons should be stated and another thing to state that a detailed judgment be given in support of an award. Even if it be held that it is obligatory to state the reasons, it is not obligatory to give a detailed judgment."

19. Reference may now be made to another decision of the Supreme Court reported in *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, . In para 5 of the report at page 2319 it was emphasised that Section 1 of the Evidence Act, 1872, in its rigour is not intended to apply to proceedings before an arbitrator. It was laid down :

"... Appraisalment 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 appraisalment of the evidence.

... .. 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."

The conclusion was set down in para 2 of the report in the following words:-

" The arbitrator gave reasons in support of the award. The question is whether reasonableness of the reasons in a speaking award is justifiable under Article 136 of the Constitution. We are of the opinion that such reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a proceeding like the present."

20. Reference may also be made to *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another*, . In that case the arbitrator

had rest contented by saying that he had heard the parties on the point of arbitrability of the claim and the counter claim. He had further stated that after "considering all the above aspects" and "the question of arbitrability or non-arbitrability" he had made the award on certain aspects. (vide para 10 of the report at page 977). The above award was not set aside on the ground that it was not a speaking award. On the contrary it was observed vide para 9 that even in a case where the arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and circumstances of the case. It was further observed that the Court 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.

21. On the basis of the above quoted recent decisions of the apex Court, the following propositions may be taken as settled law :-

(1) The general rule is that omission to give reasons is not fatal to the award by an arbitrator.

(2) The parties to the contract can agree that reasons shall be given. In that case it is obligatory for the arbitrator to give reasons.

(3) Clause 64 of the agreement, in question, made it obligatory for the arbitrator to give reasons where the amount awarded was Rs. 1 lac or above.

(4) It is a sufficient compliance if the arbitrator indicates the basis on which his mind has worked in arriving at a conclusion. He is not required to write a judgment.

(5) Where the arbitrator is required to state the reasons, the question as to the sufficiency of the reasons would depend on the facts of each case. It is not open to the Court to review the reasons.

22. The proceedings recorded by the arbitrator on May 30, 1987, show that after the parties had placed on record the documents on which they relied, as many as 40 issues were framed. A perusal of these issues reveals that most of the angles from which the various points in issue could be viewed from the points of view of the parties were reduced to the form of propositions. The record further shows that the arbitrator obtained detailed comments of both parties on every one of the 40 issues.

23. The arbitrator also heard oral arguments, concluding the same on June 27, 1987.

24. The question of reasons would also be adverted to at the appropriate stage while dealing with individual items of claim and award of arbitrator thereon.

25. This brings me to the various heads under which the arbitrator gave his award.

## I - SUSPENSION OF WORK:

The contractor claimed compensation of Rs. 49.20 lacs. The arbitrator dealt with this claim under five sub-head. Under sub-head (i) relating to loss of turnover for full working season, he awarded a sum of Rs.80,000/-. The board justification for this award as mentioned in the award itself is that work was suspended on account of farmers agitation, due to which losses were suffered by the claimants i.e. the contractor and, therefore, awarded amounts mentioned therein. The contention of the State regarding compensation on account of suspension of work for reasons not attributable to the contractor and not being covered as vis major have been discussed in the earlier part of this judgment and it is sufficient to point out that there is nothing in the agreement between the parties which debars such a claim being entertained or adjudicated upon. With regard to further reasons, it is sufficient to point out that the amount awarded being less than Rs. 1 lac, reasons were not required to be stated.

Under sub-head (ii), the arbitrator allowed 33 per cent of the cost of the new tippers on account of the fact that the tippers remained idle from the date of purchase to September 15, 1986, when the work was resumed. The cost of each tipper was Rs.2,60,000/- and 33 per cent depreciation on account of 4 tippers worked out to Rs.2,86,000/-, The arbitrator made it clear that no award was being made on account of other machinery which was rendered idle. The working of the mind of the arbitrator is apparent from the award and the award under this head satisfies the requirement of being a reasoned award.

The arbitrator awarded "nil" amount on account of two other sub-heads i.e. (iii) loss due to supervisory, technical staff rendered idle during the period, and (iv) loss of advance payments to the labour and their transportation to the site of work.

Under sub-head (v) the arbitrator awarded waiving off interest on the advance payments made to the contractor for mobilisation of labour and all the equipments and machinery. The amount of mobilisation advance appears to be to the tune of Rs. 13,37,000/-. The contractor was liable to pay 15 per cent interest on the said advance. The arbitrator under this sub-head waived off the said interest for the advance. The main contention of Mr. Chatrath, learned counsel for the State, is that the arbitrator had given double benefit to the contractor, inasmuch as on the one hand interest on the mobilisation advance had been waived, and on the other hand depreciation on the investment of the tippers had also been allowed. On careful consideration, I find that, waiving of interest is different from allowing depreciating on the tippers. The first one is on account of investment having remained idle and the second one is on account of the aforesaid machinery having depreciation on account of work remaining at a standstill for almost one year from October 1985 .to September 1986. This very matter may be put in different words. The interest was waived because the amount remained idle and depreciation was allowed because the price of a tipper depreciated during the aforesaid period of about one year. No case for

interference is made out.

## 2-ESCALATION CHARGES :

The contractor claimed compensation amounting to Rs. 10.71 lacs on the ground that the work was delayed and was executed in 1986-87. It was further claimed that due to the aforesaid delay, rates increased and the contractor was entitled to 100 per cent neutralisation besides escalation in terms of Clause 41 of the contract. This item was dealt with by the arbitrator under two categories. It will be convenient to refer to the second category first.

It was held that during the execution of the work i.e. 1986-87, the contractor be paid escalation as per contract formula given in Clause 41 of the General Conditions of the Agreement. Over and above that escalation, the arbitrator allowed a further 8 per cent escalation in the prices over the prices quoted when the work had to be suspended and was restarted in September 1986 instead of October 1985. In rejoinder to the reply filed on behalf of the department, the contractor gave detailed justification that they were entitled to increase at the rate of 8.4 per cent on account of escalation in the cost of labour and material for the period during which the work remained suspended. In the further rejoinder, the contractor gave the following justification based on RBI Bulletins in support of their claim for 8.4 per cent escalation:

"The increase in the labour and material can be well established from RBI bulletins:

Labour: Price index in July 1985 615 (Opening of tender) Price index in Sept. 1986 676 (At restart of work) Increase in Labour Index 10% Material Rates: Wholesale price index for all commodities 361.60 Price Index in Sept. 1986 i.e. at restart of work 381.00 Therefore in material component 6% Taking 60% of labour and 40% material components, total increase is therefore: 1. Labour:  $10\% \times 60 = 6.00$  2. Material:  $6.1 \times 40 = 2.40$  ----- 8.40 ----- Therefore total increase in the period for labour and material is 8.4%. For the rise in labour and material for the suspended work in claim 100% neutralisation as prices are rising during this period."

In other words, the escalation of Rs.7.14 lacs has been awarded for the delayed start of work meaning thereby had the contractor been asked to tender the same . work a year later when he restarted he would have initially tendered Rs.7.14 lacs over and above the tendered amount which he offered an year earlier.

In Associated Engineering Co. Vs. Government of Andhra Pradesh and another, the escalation provision in the contract related to labour, diesel oil, tyres and tubes as provided in item 35 thereof. There was no escalation provision in the contract as far as NEPA slabs were concerned. The price of these slabs had been determined in the contract at Rs. 4.25 per square metre and there was no provision for increase or decrease of that price. It was further provided in the

contract that "no claims for price adjustment other than those provided herein, shall be entertained". This authority has been relied on by the learned counsel for the State for the contention that there was a similar provision in Clause 41 of the General Conditions of the contract and it was not open to the arbitrator to have awarded compensation on account of escalation over and above the formula given in Clause 41. A careful perusal of the above decision shows that the agreement therein further specifically provided "the contractor shall have to make his own arrangement to obtain NEPA slabs as per standard specifications. The department does not accept any responsibility either in handing over the quarries or procuring the NEPA slabs or any other facilities. The contractor will not be entitled to any extra rate due to change in location of quarries as above." Thus, there was a specific prohibition against price adjustment for award of escalation cost in respect of any matter falling outside item No. 35. In the present case, there are two distinguishing features. First, the escalation in question relates to the period during which the work remained suspended. Clause 41 applies only to escalation during the execution of the work. The escalation in question, on the other hand, relates to the period when the work was not in progress but remained suspended. Secondly, there was no express prohibitions in Associated Engineering Company's case in the agreement;

### 3 - FREE ELECTRIC SUPPLY :

The contractor claimed Rs.5 lacs on account of the department's failure to supply electric power as per the contract. The arbitrator allowed Rs.1 lac to the contractor on the ground that the contractor had to purchase diesel equipments like pumps, mixers, vibrators etc. instead of electrically operated equipment. It may be added that under Clause 19 of the General Conditions, the contractor was required to quote rates for the work on the basis of free electric supply. It will be seen that the arbitrator had given the justification for awarding Rs.1 lac, the same being that the contractor was obliged to purchase diesel operated equipments for want of electrically operated equipments.

### 4 - EXTRA DEWATERING

The contractor claimed Rs.3 lacs on this account and the claim was negated by the arbitrator.

### 5 - PVC WATER STOP

Regarding this item, there is no dispute in the rate stated in item No. 18 of the Schedule -I of the NIT. The rate quoted is Rs.277/- and the arbitrator has maintained that rate. What was disputed before the arbitrator was whether the rate was payable per "sqm" as written against that item in the schedule or per running meter. The arbitrator held that the words "sqm" were a typing mistake and payment be made per running meter. What is contended is not that PVC seal (water stop) can be measured in square meters, the emphasis is that "sqm" is what is stated against this item in the schedule. The arbitrator being technically qualified is supposed to have used his knowledge and experience in holding that

mention of "sqm" was a typing error. Possibly it made no sense. Incidentally there is on record letter No. 1679/2 Const/SYL/85 (Tangauri Drg. X-ing) dated 16.5.1985 relating to another contract in SYL project conveying approval of the Chief Engineer to tendered rates for various items mentioned therein. Item No. 40 therein relates to "Providing and fixing PVC water stop seal as per specification." There the unit of measurement mentioned is "mtr" implying per running meter. No exception can, therefore, be taken to the decision of the arbitrator regarding this item.

#### 6 - COST AND CARRIAGE OF BOUNDER STONE:

The contractor claimed Rs.11.40 lacs on account of increase in the cost and extra carriage of boulder stone from longer distances on account of the delay in the execution of the work by one year. The arbitrator observed that extra carriage was involved in the carriage of boulder stones and the claimants were entitled to be paid at the rate of Rs.20/- per cum. He, therefore, worked out the quantity of boulder stone at the said rate and the amount worked out to Rs.3,04,000/-.

The contention of the learned counsel for the contractor is that the claim pertains to item No. 11 of Schedule -I of the Contract. At the time of submission of tender in July 1985, the department had provided supply of carriage of stone from Sirsa quarry as stone of requisite specification at that time was available at that site. Due to suspension of work for about one year the stone of requisite specification was removed by other agencies and no stone of the requisite specification was left at the site and as such there was no alternative but to carry stone from longer leads and on account of difference in the cost of carriage the contractor had to pay Rs.75/- per cum as mentioned in their claim. These facts were duly mentioned by the contractor in their various letters, which were referred to on their behalf. Suspension of work was thus directly responsible for extra cost of carriage. The view taken by the arbitrator was certainly a possible view.

#### 7 - VIBRATION OF CONCRETE:

The contractor claimed Rs.5.36 lacs on account of vibration of PCC and RCC because the relevant items of the Schedule did not include the same. The arbitrator held that the rate of PCC/RCC tendered by the contractor did not include payment on account of use of vibrator in RCC and the contractor was allowed payment at the rate of Rs.40/- per cum and the amount awarded was Rs.5,36,000/-. This item has been assailed on two grounds. The first ground is that there is an obvious arithmetical mistake in calculation because 40 x 13 x 400 as mentioned by the arbitrator does not work out to Rs. 5,36,000/- but it works out to Rs.2,08,000/-. The second ground is that as per items (2) to (5) of Schedule - I of NIT the rate of PCC/RCC work was inclusive of the use of vibrator and, therefore, no separate payment could be made on account of use of vibrator. The arbitrator, in other words, had travelled beyond the terms of the agreement and had awarded the aforesaid amount.

In so far as the contention of the State regarding arithmetical error is concerned,

there is no substance. The items relating to PCC and RCC are items 2,3,4 and 5 of Schedule -I of NIT. The approximate quantity of work mentioned against these items add upto 13400. That was thus the approximate quantity of work and applying the rate of Rs.40/- per cum, the amount correctly works out to Rs.5,36,000/-It is evident that instead of writing the figure 13400 (representing quantity of RCC work) due to typographical error it was typed as 13 x 400. If the figures are read with this correction, there is no mistake in calculation.

Items of Schedule -I of NTT which are relevant for use of vibrator are serial numbers 2,3,4 and 5. None of them mentions about use of vibrator. All that is mentioned is "machine mixed". The drawing with the NTT, in so far as relevant for the present purpose, mentions about "Batching, mixing, transportation, placing and curing etc. of concrete shall be done as per cement cone. spec 3 SYD." It will be noticed that use of vibrator is conspicuous by its absence. Entry serial No. 1 of Schedule-II lays down that for extra items/other item, implying other than those mentioned in Schedule-I, rates payable would be worked out a per Punjab Common Schedule of Rates plus sanctioned premium. The notes given in the beginning of Chapter 10 relating to "concrete" in the Pb. C.S.R. make it clear that different rates are provided depending upon, inter alia, how concrete is mixed. Note No. (v) reads :-

"(v) The rates given below are for non-vibrated concrete. In case vibrator is used for compacting the concrete, the corresponding through rates for concrete shall be increased by Rs.20.00 per cum."

The premium allowed on this item for the relevant year was 122%. The arbitrator allowed the rate of Rs.40/- per cum i.e. Rs.20/- cum mentioned in Pb. C.S.R. and premium of 100% i.e. another Rs.20/-cum.

The contentions raised are (i) that while quoting the contractor should have sought clarification under Clause 17 of the General Conditions whether the rate was inclusive of vibrator, (ii) the rate quoted was as per drawing and specification and (iii) this was also a case of typing error. The grievance being that while benefit of typing error was given to the contractor in respect of item No. 5 the benefit had been denied to the State in respect of this item.

There is no merit in any of these contentions. Regarding (i) and (iii) it is sufficient to say that this was not a case of error. The Pb. C.S.R. referred to above show substantial difference in rates where vibrator is used and where it is not. NIT is supposed to be prepared by qualified and experienced persons. Unless the context otherwise compels (such as in case of item No. 5) it cannot be readily accepted that omission to use of vibrator was a typing error. If that view is taken, writing will lose all meaning. The contention (ii) based on specification was dealt with above. It remains to be added that there is a distinction between work as per specification on the one hand and rate as per specification on the other hand. The item No. 2, 3, 4 or 5 of Schedule no where stated that the rates were of concrete compacted by vibrator. Clause 10 of the General Conditions lays

down the "purpose of drawings and specifications and conformance thereto." That clause nowhere provides that the rates of various items of Schedule-I shall be as per specifications mentioned in the drawings. The findings on this item calls for no interference.

The next item relates to increase in cost and carriage of aggregates. Against claims of Rs. 5 lacs made by the contractor, the arbitrator allowed Rs.3,50,000/- being Rs. 25/cum on the total quantity of 13400 cum.

It will be seen that this item consists of (a) increase in cost of aggregates, and (b) increase in rates of carriage of aggregates. It will further be seen that the increase under (a) and (b) having not been disputed a fact, the arbitrator held that rates of fine and coarse aggregates had "considerably" gone up and hence the award. This was thus the reason for allowing the amount mentioned in the award under this item.

Issue No. 30 framed by the arbitrator and comments of the Department read:-

"30. Whether the enhancement The agreement incorporate a of rates of coarse and fine clause for working out any aggregates approved by the increase or decrease in the Zonal Committee consisting of rate of labour and materials. Superintending Engineers is This is governed by clause authentic and if so, whether 41 page GC-24 of the agreement, the same is applicable to the No other rates are applicable claimant especially for the in the present case. As per period before the restart of Clause 41 page GC-24 "no claims work in 10/86 when the usage for the price adjustment other of these aggregates was actually than those provided herein shall started at the site of work be entertained."

It follows that before the arbitrator it was not disputed that rates had gone up and that a Zonal Committee consisting of Superintending Engineers/had approved enhancement of rates and those rates were applicable for the period in question. It also follows that aggregates were used at site in October, 1986 and the increase in rates had been allowed before that date.

The only question remains whether Clause 41 of the General Conditions debars such a claim. The arbitrator evidently took the view that Clause 41 was no bar. This view finds support from the significant fact that the formula given in Clause 41 relating to price adjustment relates to the work during the period of contract and not when on account of the work being suspended for reasons attributable to the Government.

The contention of the appellant regarding this item must, therefore, fail.

ITEMS 9,10 and 11:

The claim of the contractor under these items was disallowed and the same calls for no discussion.

12 - CARRIAGE OF CEMENT FROM STORES TO SITE OF WORK :

The contractor claimed Rs.3 lacs. The arbitrator felt that cement and steel were to be supplied free of cost by the Government. There was a clear mention regarding carriage of steel in item No. 6 of the NIT. It was further pointed out by the arbitrator that while there is mention of the carriage of steel, there is no mention of the carriage of cement. Accordingly, he held that the contractor was entitled to be paid on account of carriage of cement and he allowed payment at the rate of Rs.2/- per bag and the amount allowed was Rs.1,60,000/- for carriage of 80,000 bags.

Reference to item No. 6 of the Schedule shows that where as cost of carriage of steel from stores to site is mentioned, there is no such provision with regard to cost of carriage from stores to site. It is not disputed that the stores from where cement had to be carried to the site of work was 6 to 7 KMs away.

### 13 - CURING OF CONCRETE:

The contractor claimed Rs.1.52 lacs on account of curing of concrete. The arbitrator held that Clause 68 of the General Conditions did not cover curing. It was confined to making arrangement for bringing water for curing. The distinction between arranging for water for any purpose including curing on the one hand and use of water for curing on the other hand were treated as two separate things. It was held that Clause 68 provided for only liability of the contractor to arrange for water and not for curing. He allowed amount on account of curing at the rate of Rs.10/- per cum on the total quantity of 13400 cum. He thus allowed a sum of Rs.1,34,000/-.

No fault can be found with the line of thinking of the arbitrator because the sub-heading of Clause 68 itself furnishes a key to that clause. It reads "Arrangement for water". A reading of Clause 68 also shows that the contractor was liable to make arrangement for water, whether required for drinking or for carrying out works including curing. This does not seem to include expenses incurred on curing, which, apart from the cost of water, includes labour. The view taken by the arbitrator is a possible view and cannot be interfered with in these proceedings.

### INTEREST:

In this case the arbitrator awarded 12 per cent interest if payment of the amount awarded by him was not made within 30 days of the date of the award, which is dated August 7, 1987. By making the award rule of the Court and preparing a decree in accordance therewith, the learned Senior Subordinate Judge affirmed the aforesaid direction of the arbitrator. It thus follows that interest was awarded in this case after 30 days from the date of the award.

The question of interest can possibly arise in respect of three periods i.e. (1) From the date of cause of action till reference to the arbitrator, (2) pendente lite interest i.e. from the date the arbitrator enters upon the reference till the date he makes the award and (3) from the date of award or date of the decree till

date of payment. In the instant case, since the arbitrator and the Court did not award interest either for the pre-reference period or the pendente lite interest, no dispute arises on that account. The only interest awarded is from 30 days after the award till date of payment i.e. future interest. This aspect is squarely covered by a decision of the Supreme Court in Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, ). On a consideration of the provisions of Section 29 of the Arbitration Act, Section 34 of the CPC and the Interest Act, 1978, their Lordships held that the Court was empowered to award interest from the date of the award to the date of the decree. Section 29 further empowers the Court to award interest from the date of the decree till payment.

For the foregoing reasons, the appeal fails and the same is accordingly dismissed. No costs.