
(1962) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 56 and 57 of 1959

Ramsahai Sheduram

APPELLANT

Vs

Harishchandra Dullchandji and Another

RESPONDENT

Date of Decision : 26-03-1962

Acts Referred:

Arbitration Act, 1940 — Section 12, 14, 30, 34, 37(1)
Limitation Act, 1963 — Section 19

Citation : AIR 1963 MP 143 : (1962) JLJ 1099

Hon'ble Judges : S.B. Sen, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : D.C. Bharucha and S.R. Joshi, for the Appellant; W.Y. Pandey and H.C. Dhanda, for the Respondent

Final Decision : Dismissed

Judgement

Krishna, J.—These appeals are by a building contractor from the District Judge's decree based on two awards in arbitration on his claims and the owner's counter claim in respect of two building works carried out by him for the owners. When the awards were filed, the appellant objected on various grounds, to be set out presently; but the District Judge has rejected them.

2. in one case, the building is the "Lantern Hotel" in North Tukoganj of which Capt. Dhanda is the owner and respondent in Appeal 56 of 1959. In the other, the building is the "Viram Lodge" and the owners are the other members of his family (respondents in Misc. Appeal No. 57 of 1959) on whose behalf he had been acting. The contractor and the arbitrator are the same and the questions that arise are identical. The District judge, therefore, consolidated them into one suit and delivered one judgment; the same procedure can be conveniently adopted here as well.

3. The parties have during argument covered practically the entire field of the law of arbitration but more immediately the questions that arise were :

(i) Whether in view of the past relations between Capt. Dhanda on the one hand who occupied some position of importance in the Government of the erstwhile State of Indore and the arbitrator Shri joglekar on the other, who was a servant of that Government in the Engineering Department, partiality on his part could be presumed?

(ii) Whether the procedure adopted by the arbitrator and his failure to record in extenso the reasoning leading to his award, amount to judicial misconduct in the arbitration?

(iii) Whether in respect of any item mentioned in the award he has exceeded the jurisdiction given by the reference which is actually a clause in the building contract?

(iv) (a) Whether on being noticed on behalf of the contractor that he proposed to move the Civil Court for revocation of the reference, the arbitrator lost jurisdiction, and the award made by him after it is invalid?

(b) Alternatively, whether by not waiting till an application for revocation could be filed in the civil Court the arbitrator is guilty of indecent haste amounting to misconduct?

(v) finally, whether the award was given in contravention of Paragraph (3) of the First Schedule after the lapse of four months from the date of the arbitrator's entry on the reference and if so, whether there is any letter or request by either party which would give another term of four months?

4. Though the mutual dealings between the parties have been long and complicated, the following summary is sufficient for our purposes. Some time in 1948, Capt. Dhanda and his family proposed to put up two buildings, one called the "Lantern Hotel" in North Tukoganj and the other called the "Viram Lodge" in South Tukoganj. The former was to be in his own name and the latter, in the name of his wife and children, though he has been throughout acting as the properly empowered agent on their behalf. There were two agreements between the Dhanda group, who may be called the "owners", and Ramsahay, the appellant, who will be called for convenience the "contractor". Among the various conditions, these alone are relevant for our purposes.

"(3) Muntazim Bahadur P. G. Joglekar Superintending Engineer will be the consulting engineer for this building.

(4) The contractor agrees to receive interim payment for the work from time to time according to the decision of the consulting engineer.

(5) The contractor agrees to proceed with the work with due diligence..... In the event of failure to complete the work as agreed to by the contractor, he shall be liable to pay such reasonable compensation as the Consulting Engineer may fix. On the other hand, the owner agrees to pay to the contractor a further sum not exceeding Rs. 3500/-, if the consulting engineer is satisfied with the quality and

speed of work of the contractor on completion.

(6) The contractor also agrees that in all matters of dispute, if any, regarding this work between him and the owner, the decision of the consulting engineer shall be final and legally binding."

5. Without setting out any figures, it is sufficient to observe that the work could not be completed either within the specified period or within the price limit fixed by contract. From time to time, modifications and additional work were introduced; and there were also controversies at different stage as to the collection and removal of materials brought on the building site, the availability of controlled materials and the like. The work in North Tukoganj--the Lantern Hotel--progressed more quickly than the one in the South Tukoganj which remained incomplete were after the completion of the former. As usual, the contractor, for his part, was complaining of the unreasonableness of the owners and the owners, not to be beaten in this regard by the contractor, charged him with purposely holding up the work, so as to screw out more money from the owners, under virtual threat of putting them to avoidable loss. From time to time, there were fresh claims by the builders which were denied by the owners. This of course is the usual pattern of such differences; but the peculiarity of this controversy is that the different statements were being filed while the additional work was in progress, on a small scale on the Lantern Hotel, and a much larger scale at the Viram Lodge. Naturally each successive statement by the contractor was for a larger amount than the earlier one; while on the side of the owners, the variation was not significant as they always stuck to the position that after a particular state most of the additional items were imaginary or very highly priced.

6. Some time in March, 1951, what was called "an interim award" was given by Joglekar but it was in no sense a decision of the controversy; it was rather a modus operandi suggested by him for the completion of the work still in hand, and the ultimate disposal of building material brought on the premises of one or the other of the sites. At about the same time, another complication was introduced by the parties agreeing to leave certain amounts in the hands of Late Shri Samvatsar, a well known lawyer of Indore, and obviously a mutual friend. He was to deal sums out of this pool for progress of the work on the Viram Lodge, subject obviously to the technical advice by Joglekar, who, at about that time had been transferred from Indore to a station about 100 miles. He used to come from time to time, but could not give day-to-day attention to the work. This was supervised on behalf of the contractor by an engineer called Puranik, and on behalf of the owners by an overseer called Tillo. It is of interest for our purpose that the contractor informed Joglekar that Puranik had full authority on his behalf to make requests and submit statements.

7. Between March 1951 and January 1952, the parties were filing statements of their claims but none of them of a final nature. It appears that in August 1951, the statements of that time were examined and discussed before the Superintending Engineer but there was no decision. During this interval, the

parties had by turns been requesting the arbitrator to complete the arbitration and give the award. The contractor was giving progressive statements, and requesting that the award might be given only after he completed the work or abandoned the part that remained unfinished. The final statement from his side was filed before the arbitrator on the 28th January 1952 (the 25th seems to be a misprint in some cases); it was for an additional payment of Rs. 2,48,000/- in round figures while the last statement was for Rs. 1,46,000/-. The owners for their part, had been giving counter statements with small variations; none of them was of the magnitude found in the statements of the contractor.

8. By that time, each and everyone of the items had already been examined and discussed by the arbitrator who in fact had been throughout closely associated with the work. But he, for his part, made a separate memorandum setting out the different units of controversy in regard to which the assessment of the parties in terms of money were materially discrepant. Nothing particular seems to have happened till about the middle of March, when there was a quantity of correspondence between the arbitrator and the parties out of which those from the contractor dated the 12th and 18th (respectively Exs. D/3 and D/7) are relevant for our purposes.

In the "former, he writes-

"The work of Lantern is complete long before and handed over to the owner. The work of Viram is also completed except for items which have been abandoned for want of materials. Now, as the works are terminated, I request your favour of giving your final award early and also to allow me to remove immediately the surplus materials and tools and plants from the site of the works."

On the 18th March, the contractor introduces one new item in controversy involving an amount of Rs. 13832/- which is to go into the account of the Viram Lodge construction. We are not concerned with the merits but this is the time at which according to directions already given by the contractor, it was appropriate for the arbitrator to give his final award.

9. In April and May, the dispute between the parties regarding the removal and disposal of materials collected at the building sites was disposed of by the decision of the arbitrator that the contractors should take away such materials on the sites as were not usable in these buildings, while the owner should have the rest, in other words, those which could be used in them. This is of significance only for showing that part of the arbitrator's decision was accepted by both the parties, who removed the materials in accordance with it. But the claim which was by far the most important part of the controversy, was still undisposed of.

10. By the end of May, or the beginning of June, the contractor began to have new ideas. At the earlier stages, both parties were keen except that he has requested the award should come after his completing the work or definitely abandoning part of it. In March, he was quite keen that the award should come without any further delay. In April and May, he was not averse to any action

being taken by the arbitrator and in fact implemented the modus operandi for the disposal of materials. What-even the reasons, on 1st June, he sprang a surprise by his notice served through a lawyer (Ex. D/18)-

"After you entered on the reference more than four months have elapsed. The authority to give an award has therefore come to an end under the Arbitration Act. Besides this, from the inquiries made from client by you regarding price of materials, it appeared that you are dealing with matters beyond the scope of the reference. My client also desires to take proceedings in District Court Indore to have your authority, if subsisting revoked after the civil courts reopen. You are, therefore, requested to desist from giving your award to enable my client to move in these matters."

Whether or not a vacation civil court was available for petitions of an urgent nature, the civil courts did actually reopen on 16-6-1952. No petition for revocation of authority was filed. Nine days later, the contractor wrote a letter (Ex D/10) to the arbitrator-

"You must be aware that my counsel Shri V. R. Newaskar has been appointed a Judge of the Madhya Bharat High Court and now I have to engage another counsel to take steps in furtherance of my notice through him to you. The dispute..... being of a complicated nature, it will take some time to instruct another counsel. In these circumstances, you are requested not to proceed with the arbitration for some time during which I shall make arrangement for conduct of the case stated above."

It is significant that while in the letter of the 1st June, time was specifically wanted till the opening of the courts, that is, the 16th June, now time is wanted indefinitely. Factually, it is not in controversy that at about the time presumably, on the date of the reopening itself, the counsel who issued the notice of the 1st June, was appointed a Judge of the High Court. But it is a matter for judicial notice that legal assistance of good quality is abundant at Indore.

11. The next crucial date is the date of the award which was the 3rd July, 1952. The award regarding materials had already been accepted by the parties. This was regarding the money claims and gave the contractor much less than he demanded. In time, the award was filed in the court and the owners wanted a decree in its terms while the contractor's objections on these allegations were rejected.

12. Ground No. 1.-- A considerable part of the argument before this Court relates to the allegation, that the award has been given, well after the four months period from the arbitrator's entry on the reference, and there is neither a proper request by one of the parties that he should act, nor an order by the Court, on the strength of which the term could have been enlarged. The chronological sequence of events has already been set out at some length. But the appellant's contentions in this regard have varied somewhat. In the notice served on the arbitrator on 1-6-1952, the line seems to have been that he entered on the

reference on the 25th or the 28th of January 1952, when he gave him his "final statement" of claim. If this is correct all we have to see is, whether, for one thing, the arbitrator did enter upon the reference on that date, and for another, any of the letters of the appellant dated the 12th March, 1952, 18th March 1952, or 17th May, 1952, is a notice calling upon the arbitrator to act. However, in the arguments before us, the alternative line taken by the appellant was that the arbitrator had entered on the reference much earlier, may be, on the 1st August 1951 or sometime in March itself of that year when he suggested the *modus operandi* which he has called the interim award.

On that basis we have to see whether there are a series of notice between that date and the 3rd July 1952, either party calling upon the arbitrator to act, every one of which is within four months from the one immediately previous, the first of them within the same period after entry, and the last before the 4th March 1952. The answer given by the owner-respondent is that the arbitrator could not in any event enter on the reference before the receipt of the final statement of the contractor's claim on 28/1/1952, and actually entered on it in March of that year; the contractor himself had been requesting him (Ex. D/12 of 14-9-1951), that "the dispute should be determined only after his completion of that work and abandonment of the incomplete portions." This, according to the owner was only on the 12th March when the contractor clearly apprised the arbitrator of this completion and abandonment and invited him to act. On this view the entry would be in March 1952 and obviously the award is well within four months. The respondent has further urged that even if the entry was in January 1952 and in no event could it be earlier, because the final shape of the controversy was placed before him only on that date the letter in March from the contractor is a notice calling upon him to act so that the second alternative in Schedule 1(3) came into operation. On either view, it is not a case of contravention.

13. Stated thus, the problem is not complicated; but the parties have gone into a discussion of whether this is a rule of limitation properly so called, what exactly is meant by the words "entering reference", and what should be the form and content and the timing of the notice to act which would be, as it were, a step in aid giving a fresh term of four months. Paragraph 3 of Schedule I to the Arbitration Act runs thus-

"The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."

It is significant that this is not an article of the Limitation Act which would automatically be applicable u/s 37(1); it is essentially a rule of procedure, the distinction being that the Court may at any time extend the four months term. Again, a notice to act which has to be, of course, in writing, is not quite like an acknowledgment referred to in Section 19 of the Limitation Act, though the word "acknowledgment" can be conveniently used for this with the same qualifications

that would apply to the use of the word "limitation" to describe the effect of this paragraph as a whole.

14. On either view, the starting point is not the date of the reference, or of "the commencement of the arbitration" mentioned in. Section 37(3) which is often notional, but the date of the earliest judicial act of the arbitrator in accordance with the reference. These same words have been used in Section 11 as well, and have been examined by Courts from time to time, not without an apparent difference of opinion. As the caselaw has now shaped, the difference, if any, has been very considerably reduced, and can most often be traced not to a difference of principle, but of application to the facts of the cases concerned. It is always a question of fact, on what date the arbitrator or the umpire as the case may be, actually entered on the reference, to be answered in accordance with the circumstances of each case. It is not necessarily the date on which the arbitrator has before him the versions of the different parties of the subject-matter of the controversy in the form of written-statements or affidavits or oral depositions though-immediate entry on the reference is not inconceivable. It would be the date on which the arbitrator (or umpire) does the first appropriate judicial act in connection with the controversy referred to him, by way of examining witnesses, hearing arguments and the like. Though, as a general proposition this is necessarily vague, there will be no practical difficulty in deciding in any individual case when exactly the arbitrator did the first appropriate act of this kind.

Out of the caselaw, which is considerable, it is helpful to refer to the comparatively recent cases reported in *S. Ranganathan and Others Vs. A. Krishnayya, Arbitrator, Lloyds Road Area Town Planning Scheme and Another*, ; *Bajranglal Laduram Vs. Ganesh Commercial Co. Ltd*, ; *Soneylal Thakur Vs. Lachhminarain Thakur and Another*, . This is also touched upon in the recent Supreme Court ruling reported in *Hari Shankar Lal Vs. Shambhunath Prasad and Others*, . Where, however, the Court was giving more immediately attention to the circumstances in which the party's notice calling upon the arbitrator to act would be effective as the second alternative in Para (3). However, they visualized a case where the party's notice may reach before the arbitrator has entered on the reference, though obviously it would be after the commencement of the arbitration, and also the receipt by the arbitrator of the statement of the parties. The remarks in the *Soneylal Thakur Vs. Lachhminarain Thakur and Another*, , are illuminative :

"An arbitrator does not enter upon a reference the moment he accepts to work as an arbitrator, nor can it be said that he enters upon a reference only when he actually hears the reference. An arbitrator enters upon a reference when, after having accepted the reference, he applies, his mind and does something in furtherance and execution of the work of arbitration. The exact date as to when an arbitrator enters on a reference in a particular case, however has to be determined on the facts and circumstances of the case."

This is in substantial agreement with the Calcutta view to the effect that the

entry takes place when the arbitrator actually begins to discharge the functions as such. The ruling in *Sardar Mal v. Sheo Baksh* AIR 1922 All 105 seems to have stated the answer rather widely.

15. As already noted, the controversy between the parties has been, as it were, growing with the progress of the work; so that its final shape, both in terms of the numbers of items of work and of their money value, say in August 1951, was substantially different from the shape it had in January 1952. This was inevitable in the circumstances of the case. We cannot imagine the arbitrator entering on the reference as it stood in its final stages on a date earlier than in January 1952, when the contractor himself gave his final statements. No doubt, the earlier statements and claims would be part of the later statement; but the later statements by their very nature cover much wider ground and claim much higher amounts. There is nothing before us to justify a departure from the position the contractor himself had taken that the reference in its final form was in January 1952 and not earlier. Therefore, we have only to see whether the arbitrator entered on it as soon as he got the statement or was waiting to get some more information or further direction from the parties. The arbitrator's own position is that even with the statement before him, sent in January 1952 by the contractor as his final claim, he could not start on the reference because he had been requested earlier by the contractor himself not to give a decision till he had completed or abandoned the work. This information came to him only in March. Actually, there were one or two small items added after that date; but it was possible for the arbitrator to treat them separately from the claims put in January. Thus he could be deemed to have entered on the reference on the 12th March, 1952, at the earliest, if anything, it would be some days later and in no event before January.

16. The difficulty for the appellant is that even the assumption that he entered on the reference in January 1952 does not help him in this regard. His letter of the 12th March, 1952 is direct invitation to the arbitrator calling upon him to act. The operative portion is

"As the works are terminated, i request your favour to give your final award early....."

This is exactly what is meant by "a notice by one of the parties to the arbitrator calling upon him to act." This aspect of the matter came up before the Supreme Court in the ruling already referred to. In that case, the notice was given beyond the four-month period after the date found to be that of the arbitrator's entry on the reference. Whether or not it would be satisfactory for the purpose of para. 3 has been fully examined in the rulings; but in the instant case, the case for the validity of the award is much stronger even on the assumption that the respondent has to depend upon the second alternative. Thus, looked at in any way whatsoever, it cannot be urged that the four months rule has been contravened.

17. While at it, we find one aspect of the case to which the lower Court does not seem to have given due, attention. Sometime in April, there was a decision by the arbitrator in a small part of the dispute Involving about 6000/-. Again, towards the end of May, there was another in regard to the materials collected on the sites. While it is not clear whether the decision on the dispute involving 600/- has been, included in this award, it is clear that the decision regarding the building materials has not been (and could not be) included in the award, and was given separately. Both the parties have accepted that decision and have accordingly dealt with the materials allotted to them. Now it is not possible for a party to an arbitration having accepted and been benefited from part of the arbitrator's decision to question the rest. This arbitrator was to decide every one of the disputes arising between the parties out of these building contracts, As a matter of convenience, he gave the decision in the award in regard to such of them as could be calculated in terms of money while he decided separately the dispute regarding the materials as such in the end of May. The whole process is really one arbitration in which a piecemeal acceptance or challenge of the decision cannot be allowed. There is caselaw on this point; but the principle is very simple. A party to arbitration should take the decision of the arbitrator as a whole and cannot, having taken advantage of the part suitable to him, be heard to challenge a part which he finds not so suitable. On this view the appellant should have been estopped from objecting to the award on any grounds whatsoever.

18. Ground No. 2.-- The next heading which can be conveniently disposed of is the one numbered (4) (a) and (b) regarding the appellant's request that the arbitrator should wait till he moved the civil Court, that "s, the court of the District Judge, for revocation of the reference. It is significant that this notice should have been served immediately after the appellant had accepted the arbitrator's allotment of the building materials. But even then, it is clear he did not really intend to move the Court, but was only putting up a pretext so that it could come in handy if and when it was necessary for him to make a show of grievance. If indeed, he was serious about moving the Court for revocation, then it is difficult to understand why he did not do so immediately as there is always an arrangement for disposing urgent matters in vacation or on the reopening, which we are told was on the 16th June, or during the 17 days immediately after the reopening and before the award was made. The excuse that the counsel who issued the notice was no more in active practice at the Bar is altogether unsatisfactory; because it should be easy for a litigant to brief a new lawyer if not within a day or two, at least within two weeks. Whether it was necessary or not, the arbitrator did actually wait, for more than a month between the receipt of notice and the making of the award. This is no indication of any hurry on the part of the arbitrator to forestall an application by the appellant for revocation of the reference.

19. The more important question is, whether mere expression of a desire to move for the revocation of the reference on the part of one of the parties obliges

the arbitrator to keep the award pending till the matter goes to the Court. The position, would be different if a petition, is already filed and a stay order is made by the Court, but otherwise, there is nothing in the law that the mere desire on the part of a party to revoke the reference can have the effect of automatically staying further proceedings. It is for the party who wants to take steps to do so without any delay whatsoever.

20. Besides, the grounds on which the Court will revoke the reference are, generally speaking, equally effective in getting the award set aside on the ground of mis-conduct. Therefore, if a party is unable to seek revocation of the reference in time, it can still, on the same grounds and with equal chances of success, get the award itself set aside. In this case, the grounds are not sufficient for either purpose. Thus, there is no substance in the allegation that the arbitrator was guilty of improper haste or had lost jurisdiction the moment the appellant's intention was communicated to him of seeking revocation.

21. Ground No. 3 -- (i) (ii) and (iii) -- The next heading of grounds of objection consists of allegations of a personal or semipersonal nature about the arbitrator. Three of them have been emphasized, namely, (i) the relation-ship between him and the owners of the buildings; (ii) his inability to perform the duties of the supervision and by implication, those of the arbitrator after his transfer from Indore; and (iii) his allotting the costs of the two buildings indiscriminately, in other words, allotting against the owners of the Viram Lodge part that should have been allotted to the owners of the Lantern Hotel and vice versa. The learned District Judge has examined these allegations at length and found them to be nonsustainable.

22. (i) It is open to a party to arbitration to seek revocation of the reference if he discovers after the reference is made, that the arbitrator suffers from a personal disqualification or is for reasons which the party could not have ascertained with due diligence at the time of the reference, likely to take sides or to be incapable of attending to his duties. But the position is quite different if the disqualifications or incompetences that are alleged by the party were already there at the time of the reference or were either known to him or could have been ascertained by him with the amount of diligence that can be expected of a person in his situation. In the instant case, for example, it is alleged that Shri Dhanda the tie facto owner of all buildings was once the Deputy Prime Minister in the Holkar State and later on, the Adviser to the Senior Up-Rajpramukh of Madhya Bharat. Shri Joglekar arbitrator was a servant of the erstwhile Holkar State and continued in. service in the Madhya Bharat. As against it, it is alleged that Shri Dhanda was no more the Deputy Prime-Minister of the Holkar State when the contracts were signed in October 1948 and as for being the Adviser, he had in that capacity nothing whatsoever to do with the administration under which Shri Joglekar was then working.

23. But the real point is not whether or not Shri Dhanda could influence Joglekar either by actual exercise of official influence or on account of old associations,

but, whether" this was a discovery made by the appellant after the reference. Here again, there, is a body of caselaw; but like most problems connected with arbitration, it is a case primarily of commonsense and ordinary fairplay. To put it as an extreme example, if A and B agree to have A's brother as arbitrator in a dispute and B knows it, he cannot come round after some years and say that the award should be set aside because of personal relationship. He was aware of the personal relationship at the time of the reference and risked it or assumed that A's brother in the capacity of an arbitrator would still act impartially. Again, a position may arise in which one of the parties learns after the reference of the relationship of the arbitrator to the other. In that event, he should at once apprise the arbitrator and invite him not to proceed and on his failure immediately go to the Court with a prayer for revocation of the reference. But if after the discovery he continues to take part in the arbitration, he cannot be heard to say later on that the relationship is a ground on which the award should be set aside. He is really estopped from doing this, because by agreeing to have a particular person as arbitrator with all his apparent disqualifications, he has persuaded the other to proceed with the arbitration and not take steps in the Court. He cannot, subsequently call off the arbitration and force the other party to start again before the Court with additional inconvenience. It is not the appellant's case here that the alleged relationship between the arbitrator and the owner was not known to him. Thus, on this ground alone this objection can be rejected.

24. (ii). The second personal allegation is that at some stage, Shri Joglekar was transferred to a station at a short distance from Indore and later on to Gandhi Sagar about 200 miles away. Factually, this is correct. From this the appellant argues that after his transfer, Shri Joglekar was not in a position to give full day-to-day attention to his work in supervising the construction, and was therefore also unfit to become the arbitrator. This argument is fallacious for more than one reason. Firstly, the alleged inability to supervise efficiently is also brought in as the inability to arbitrate. Actually, they are two different capacities, though, no doubt, the day-to-day supervision would be giving the arbitrator a fuller picture that will help in his understanding the case of the parties. But that is another matter. In the extreme view it is quite possible for a person to be incapable of doing the supervision, to be fully capable of discharging the duties of the arbitrator. A more serious difficulty is that nowhere in the contract is it mentioned or implied that in the event of Joglekar's being transferred from Indore, he should cease to be the engineer in charge of supervision, and also that the arbitration reference would stand revoked. On the contrary, it is patent from the agreement that Shri Joglekar wherever he was, would be in charge of the supervision and also, would be the sole arbitrator in the event of dispute. It was for him to decide whether he would do the supervision by making daily visits or whether he would do it by getting technical reports from his own nominees or as for that matter, from the agents of the respective parties.

What actually happened after his transfer from Indore was that he paid

occasional visits during, which he looked into the matter. Data were supplied to him by the engineering assistance of the parties, Shri Puranik in the one case and Shri Tiiloo in the other. Regarding the advance of monies, the matter was put in the hands of Shri Samvatsar Advocate who was working in collaboration, with Joglekar. Thus there is nothing to show that the supervision suffered by him having been transferred. But even if it suffered the party cannot make a grievance of it at this stage. As for the arbitration it was to come after the completion of the work and there was nothing to prevent Shri Joglekar from functioning in that capacity after having left Indore. At the top of all this, at no time during the progress of the work or before the filing of the objections, or the notice of 1-6-1952, did the appellant request either Shri Joglekar or the Court to revoke the reference because he had been transferred. On the contrary, in spite of his leaving Indore, the appellant sought his help in the arbitration. So, he cannot be heard at this stage to make a grievance of it.

25. (iii). The third personal disqualification is mentioned for the first time in the notice of 1-6-1952. As fully expanded in course of this litigation, it seems to be to the effect that the arbitrator has not kept the claims and liabilities in regard to the two buildings strictly separate. In the notice itself, the grievance is that-

"Regarding the price of materials belonging to my client it appears that you are dealing in matters beyond the scope of the reference....."

In the present objection it is said that the apportionment between the two headings has not been done properly. In the form in which it is embodied in the issue framed by the trial Court, it is to the effect that the arbitrator has exceeded his authority in the apportionment of advance payment between Viram Lodge and Lantern Hotel. The factual position is that in regard to the two buildings there are so many headings of expense that it is quite likely, though it has not been brought out by clear evidence, that a claim or liability relating to the one has gone in the accounts to the other. But the contractor is the same in both the works; his gain or loss depends upon the assessed value of the material and of the work, and irrespective of whether it is related to the Lantern Hotel or the Viram Lodge. In the strict letter of the law, the owners of the two buildings are different; but in view of their relationship, they have been acting as if they were the same and that Shri Dhanda is the owner of both. So, if anybody can make a grievance about the so called apportionment between the two buildings, it is not the contractor, but one or the other of the owners of the respective buildings. If an amount payable by Shri Dhanda is charged to the owners of the Viram Lodge that is, his wife or children or vice versa, it is altogether difficult to see what grievance the contractor can make. This is obviously one of the pretexts set up with the sole purpose of avoiding the award.

26. Ground No. 4-- This takes us to the topic of legal misconduct. They are vaguely mentioned at different places but can be summarized as allegations of the arbitrator's failure to hear the parties, make a complete inquiry, and set out the reasons in the award. The arbitrator himself has been examined at

considerable length on these matters and his evidence shows that he gave full opportunity to the parties to come and explain to him their versions of the case, applied his mind to every one of the individual items in dispute, and made use of his technical skill and of the knowledge he got by his continued association with these constructions at different stages from the beginning to the completion. He has, however, not given his reasons in his award in the manner of a Court writing its judgment.

27. The grounds upon which Courts will infer misconduct on the part of the arbitrator have been the subject-matter of a very considerable quantity of caselaw; but the problem can be formulated under certain broad headings. For example, an arbitrator is complete master over questions of fact covered by his reference; the Court will not infer any misconduct if he judges in accordance with the ordinary principles of fairplay, and bases his decision on matters relating to the controversy and not on something altogether unconnected with the merits of the question before him. If it is a problem of law, certain other considerations arise as laid down in *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, . We are however dealing only with questions of fact so that it is unnecessary to go into that aspect of the matter. One more point is that where the arbitrator is appointed because of certain technical qualifications, he should examine the problem with the technical eye; if he admits for is found patently) not to have done so, then the award should be set aside.

28. Between the arbitrator's following the principles suggested above, and his noting down reasons and recording a formal judgment, there is a difference. If the award is silent on this point, and the evidence shows that he followed this and no other principles, then the award should be maintained. If, on the contrary, the award itself speaks of his having applied a reasoning altogether unconnected with the merits of the controversy or he admits to have done, so, in his evidence, then it would be legal misconduct.

29. In this case, it is difficult to find either from the award or from the evidence of the arbitrator before the District Judge that he is guilty of any of the lapses and omissions with which he is charged. He was in a particularly advantageous position, in understanding the nature of the claims and counter claims because he had been in the charge of the supervision of the works during their progress. Besides it appears from the evidence that he made his notes relating to each item, weighed the claims and counter claims, made a provisional decision in regard to each of them, and finally totalized the effect and gave the award. It is not anybody's case that he refused to look into the evidence or other similar material that either party placed before him or invited him to examine. On the contrary, whenever the parties sent him statements relating to the work in progress at different stages, he tabulated them for consideration in time. He only waited because of the request of the appellant himself that he should not give a final award till the work was completed or partly abandoned. It was a matter involving technical knowledge but this is exactly what the arbitrator had been

doing all through the years during which he had been following the progress of the work :

"After having given both parties an opportunity more than once to put up before me whatever they had to say, I set out below all the disputes so placed before me together with my findings on each....."

Then follows a large number of headings each with a separate finding. In his examination also he states that he had discussed with the parties their items of claim. He had of course inspected the buildings from time to time and there is no allegations either in the court or before him at any stage, that on being invited he refused to inspect any part of the buildings. On the contrary, the repeated notices and reference to the discussion between both the parties shows that every dispute as it arose, had been discussed with the parties and decision made with due regard to the conflicting claims.

30. In the argument it was made out that the decision is based on reasons which are not consonant with natural justice. It is conceivable that such a position can arise; but there is nothing to show that it arises here. To put a grotesque example, which is not far from the position created in certain reported cases, let us imagine an arbitrator making an award in favour of one of the parties in a reference about the value of a building, because he finds him "meticulous in religious ritual while his opponent regardless of religious observances". This certainly is a case where the arbitrator has gone so far away from the real controversy as to justify the award being set aside.

Again, in the case reported in *Amarchand v. Moosa-bhai* AIR 1955 AP 213 an arbitrator who is appointed for his technical skill may fail to make use of that skill, and thereby expose the award to being set aside. In that case, it was found as a fact from the evidence of the arbitrator that he admittedly did not study the problem in the light of the technical education and training he had received and on the strength of which he had been appointed arbitrator. But here the position is quite different. The approach of the present arbitrator has been of the technical man with a particularly good knowledge of the buildings concerned. That ruling, therefore, has no application here. Incidentally, that judgment sums up the case law both of the Privy Council and of our Indian Courts which is to the effect that the Court will not interfere simply because it might have arrived at a different conclusion. Even if the arbitrator had committed a mistake in the construction of a particular document still, the Privy Council in AIR 1927 164 (Privy Council) held that that alone would be no justification for setting aside the award.

31. The real grievance of the appellant here seems to be that while the arbitrator has certainly referred to the evidence and the discussion with the parties, he has not set out in extenso in respect of each of the items, the reasoning upon which he came to the conclusion. In our opinion, such elaborate discussion is not necessary in an award. In a judgment which is appealable, such full discussion of

the reasons becomes necessary because the appellate Court is entitled to examine the merits of each of the conclusions. But the arbitrator's award is not appealable in that sense, and his reasons are not justiciable in appeal. In fact, to expect an arbitrator to write a judgment like a civil Judge with all its technicalities and complications, is to defeat the very purpose for which arbitration has been provided for. In the case reported in *Sheodutt v. Pandit Vishnudatta* AIR 1955 Nag 116 the grounds on which legal misconduct would be found have been examined at some length :

"Even though the arbitrators are not bound to meticulously copy the procedure of a Court, yet they are not free to depart from the rule that no enquiry into the case should be undertaken behind the back of a party".

In this case, no inquiry even according to the appellant, has been conducted behind his back.

32. The appellant's insistence that the money claim in respect of each of the items should be separately examined by this Court is quite fallacious and inconsistent with the spirit of arbitration. Where there are a large number of items in regard to each of which there is a dispute about the amount payable by either party, it is quite usual for the arbitrator to be somewhat generous to one or the other of the parties in regard to some of the items, and strict in regard to the others, so that these balance one another and the net result is fair to both of them. If the Court filing the award or the one hearing the appeal, is called upon to examine each of the items and to decide whether the amount allowed or disallowed in respect of it is fair to both the parties, there would be no end to controversy and the purpose of having arbitration would be completely defeated. We are therefore called upon to see whether, on the whole, the award is fair in the sense that the arbitrator has applied the skill for which he has been appointed and has taken into account all the material placed before him and has not shut out anything to which the parties wanted to draw his attention, and has provided the parties an opportunity for discussion in the presence of each other. By all these standards, this award is a good one and the objections are groundless.

33. In the result, the appeals are dismissed with costs and pleaders fee payable by the appellant-contractor to the owner respondent in each of them.