

(1984) 01 BOM CK 0051

In the Bombay High Court

Case No : Appeal No. 914 of 1983, In Arbitration Petition No. 54 of 1983

Rashtriya Chemicals and Fertilizers Limited

APPELLANT

Vs

Mohindersingh and Co. and Another

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Arbitration Act, 1940 — Section 14, 30

Citation : AIR 1985 Bom 381 : (1984) 86 BOMLR 212 : (1984) MhLj 491

Hon'ble Judges : Rege, J;Lentin, J

Bench : Division Bench

Advocate : G.A. Thakkar, V.C. Kotval and Aspi Chinoi, for the Appellant; Ashok Desal and S. Ganesh, for the Respondent

Judgement

Lentin, J.—Is the award liable to be set aside on the ground of legal or factual misconduct on the part of the arbitrator? Such is the essential nature of the controversy in this appeal.

2. A brief narration of facts : --

3.

(A) The appellant is a wholly owned Government concern. The 1st respondent - firm (referred to hereafter as "the contractor") carries on business as civil and structural engineers and contractors.

(B) A contract was entered into between the parties whereby the contractor agreed to carry out certain civil and structural work in respect of certain plants to be erected at Thal. Work commenced in July 1980. Differences arose between the parties. The work came to a standstill in February 1982. The appellant terminated the contract.

(C) In June 1982 the contractor filed a petition against the appellant in this Court under S. 20 of the Arbitration Act. On 9th July 1982 parties filed consent terms. They provided inter alia that (i) certain joint measurements were to be taken and

those accepted by the parties would be recorded in the official measurement book; (ii) in case of dispute pertaining to any mutually agreed retired Chief Engineer (Civil) or Superintending Engineer (Civil) of any Government or semi-Government body whose decision would be accepted by both parties (iii) measurements of raw materials supplied by the appellant would be simultaneously proceeded with the contractor would return all the raw materials to the appellant forthwith; (iv) the contractor would be entitled to take away its machineries, materials and articles; (v) parties would appoint their arbitrator whom they would be entitled to refer their disputes, claims and counter-claims.

(D) Accordingly the parties appointed the 2nd respondent, a retired Chief Engineer, Central P.W.D., as sole arbitrator. All disputes 12 were referred to him. The contractor filed its statement of claim under 22 heads aggregating to Rs. 2,42,64,361. 29. The first head of claim was for Rs. 1,13,02,361. 29, later reduced to Rs. 93,16,002. 51. The appellant filed its counter-claim under 23 heads aggregating to Rs. 13, 40, 55, 315/-. Two more heads aggregating to Rs. 3,60,00,000/- were added.

(E) 27 meetings were held before the arbitrator who also visited the site. 500 exhibits, measurements books and registers were filed by the parties before the arbitrator. Neither party led oral evidence. On 28th February 1983 the arbitrator made a non-speaking lump sum award against the appellant for Rs. 95,52,623/-

(F) The appellant filed a petition in this Court for setting aside that award under S.30 of the Arbitration Act. The petition was dismissed. Hence this appeal.

3. Mr. Thakkar, the learned Counsel appearing on behalf of the appellant, invited us to attribute legal misconduct on the arbitrator's part on 7 grounds and factual misconduct on one ground. We state the former in the order enumerated by Mr. Thakkar, namely, (i) the award is unintelligible; (ii) the award does not disclose reasons; (iii) the arbitrator erred in giving a lump sum award instead of adjudicating each head of claim separately; (iv) in any event, he should have given a separate and specific finding on the joint measurements; (v) the award is perverse; (vi) there is no evidence on record to substantiate the contractor's heads of claim; (vii) the arbitrator laboured under a mistake as to the subject-matter of the reference; and regarding factual misconduct (viii) there was total non-application of mind by the arbitrator,

4. Mr. Desai, the learned counsel appearing on behalf of the contractor and who had also appeared before the learned single Judge, made a grievance that most of the contention urged by Mr. Thakkar before us were not urged before the learned single Judge. Mr. Thakkar was unable to contradict this statement on the ground that neither he nor his present attorneys had appeared at that stage. Mr. Desai's grievance does not seem to be entirely without foundation as is manifest from the Judgment of the learned single Judge. Be that as it may, we do not on a technicality propose to shut out Mr. Thakkar's submissions advanced before us.

5. The first 4 grounds can conveniently be taken together. Mr. Thakkar says that

under the consent terms 2 different persons could have been appointed as arbitrators, that is, one to arbitrate only regarding the measurement disputes and another to arbitrate on the other claims, in which event the former would, regarding the measurements, have been required to give his decision which would have been binding on the other arbitrator in making his award on the other disputes. Mr. Thakkar says that though under the consent terms the arbitrator, namely and 2nd respondent, had to give his decision pertaining to joint measurements which was a basic issue, he failed to do so and thus failed to exercise jurisdiction conferred upon him or omitted to decide what he was required to do under the terms of the reference. Reliance was placed by Mr. Thakkar on the observations in Union of India (UOI) Vs. Firm J.P. Sharma and Sons,

"..... where two or more distinct matters of difference have been referred to the arbitrator and if the arbitrator omits to decide one such distinct matter, that vitiates the whole award....."

Mr. Thakkar adds a rider that it would make no difference to the principle involved merely because both parties had appointed the 2nd respondent as the sole arbitrator to go into all the disputes including measurements.

6. The fallacy of these submissions is that it does make all the difference in the world that the parties appointed as their arbitrator only one person, namely the 2nd respondent, to go into all the disputes including measurements. In view thereof, it would be meaningless for the sole arbitrator, namely the 2nd respondent to solemnly make an award regarding measurements and thereafter himself make another award on the other disputes. Measurements were not the end by themselves. They were but a step towards determining the amount due by one party to the other. If Mr. Thakkar rationale is to be taken at face value, the result would be a separate award for each dispute referred to the sole arbitrator. Such an expedient under the Arbitration Act, no arbitrator is beholden to resort to. It is enough that he gives one award in respect of all the disputes. And that is exactly what the arbitrator has done.

7. Mr. Thakkar relied on the minutes of the arbitrator where it is stated as under -

"..... the parties were to take joint measurements for the steel and other materials which were to be returned to the Respondents (appellant before us) by the Claimants (contractor). All the materials lying at site and consumed in the works were calculated by the Engineers of the R.C.F. (appellant) and the statement was produced to the Arbitrator explaining the various quantities of steel and the rates chargeable to the Claimants (contractor). The statements now produced by the Respondents (appellant) is a total statement for all the materials which are to be taken into account by the Arbitrator in fixing the recoveries payable to the Respondents (appellant) by the Claimants (contractor). (The underlining is ours.)

Surely we are not sitting in appeal over the award. In any event it is difficult to

see what grievance can possibly be made by the appellant inasmuch as these minutes indicate in no uncertain terms that calculations were made and measurements were taken not by the contractor but by the appellant who in fact produced the statements before the arbitrator to enable him to ascertain the dues to the contractor.

8. The grievance made by Mr. Thakkar regarding measurements is merely a red herring sought to be laid across the trail. It is not without its own significance that no such grievance was made by the appellant before the arbitrator. Faced with an adverse award this grievance is contrived in an attempt willy-nilly to have the award set aside. The attempt must fail.

9. Mr. Thakkar invited our attention to the award where it is stated is under :-

" The balance materials which were lying unused, out of the materials issued by the Respondents (appellant before us) to the Claimants (contractor) were fully returned by the Claimants to the Respondents"

(The underlining is ours.)

Queried Mr. Thakkar : By what logic could the arbitrator say that the materials were "fully returned" by the contractor to the appellant because in the contractor's affidavit-in-reply the contractor has admitted that the latter had "mostly returned" the materials lying unused at the site. Perhaps learned counsel momentarily overlooked the later sentences in the same affidavit-in-reply which read as under :-

I say that even the partly fabricated components made out of the materials issued by the Petitioner (appellant) were also returned by the 1st Respondent (contractor) to the Petitioner (appellant). I say that whatever materials were still lying at site. which were Still not handed over were taken over by the Petitioner..... all the balance steel lying at the worksite unused and the partly fabricated materials lying at the worksite were either returned by the 1st Respondent to the Petitioner or taken over by the Petitioner from the 1st Respondent's site and that no further quantity of steel was remaining to be returned by the 1st Respondent to the Petitioner."

(The underlining is ours.)

Apart from this, the arbitrator had all the records before him and the submissions of the parties. Can it therefore be said that the arbitrator was not justified in holding that the materials were fully returned to the appellant'? We think not.

10. It is trite to say that an award must be intelligible on the face of it. Merely because the arbitrator awarded a lump sum amount does not make his award unintelligible. The award need not indicate how the arbitrator arrived at his decision but what his decision actually is. *Raminder Singh v. Mohinder Singh*, AIR 1940 Lah 186. That is exactly what the present award discloses. It discloses

unmistakably and most intelligibly that a" particular sum must be paid by the appellant to the contractor. It is as simple as that.

11. G.S. Atwal and Co. (GUA) Vs. Union of India and Others, Mr. Thakkar says that each head of claim should have been separately adjudicated by the arbitrator and that not having been done and a lump sum amount having been awarded, the award is liable to be set aside. Atwal's case can avail the appellant nothing. The reason why in that case the award was set aside was not because a lump sum had been awarded but because the arbitrator had gone outside the scope of his reference. Nothing of the kind can be said in the present matter.

12. There is nothing in the Arbitration Act and the law as it stands which makes it obligatory on an arbitrator whether he is given summary powers or not, to adjudicate each claim separately or to give a reasoned award. Unless of course the parties require him to do so by the terms of the reference, it is enough he gives a lump sum award without disclosing how he arrived at the amount. He is bound give no reasons nor lay down principles on which he has based his decision. Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, , Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), and N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, On the contrary, it is when the arbitrator gives reasons or lays down principles on which he has based his decision, that the award becomes vulnerable to the scrutiny of the Court.

13. The most recent instance is the order passed by the Supreme Court on 19th August 1983 in Indian Rare Earths v. M. N. Dastur & Co. (Appeal (Civil) No.7030 of 1983), where special leave to appeal granted on the restricted question whether an award should be a speaking award, was answered by the Supreme Court in the negative by a summary rejection of the petition. So well-settled is the law on this subject.

14. But Mr. Thakkar says that in, Indian Rare Earths, as the arbitrator was given summary powers he could dispense, with principles of natural justice and hence could, for instance, on his own take evidence behind, the back of the other party or decide the disputes solely on his personal knowledge. We pause to record this distinction assailed by learned Counsel not for its validity but as a concession to the solemnity with which it was made.

15. Mr. Thakkar attempted to take us through certain records before the arbitrator. The fallacy of such an exercise is apparent from the fact that we are not sitting in appeal over the award. Our jurisdiction is circumscribed by the restraints placed by S. 30 of the Arbitration Act.

16. Mr. Thakkar persists (the decisions of the Supreme Court referred to earlier notwithstanding), that the award not being a speaking award is contrary to the principles of natural justice and hence is liable to be vitiated Mr. Thakkar says that giving of reasons is a guarantee that the arbitrator has considered the matter; it excludes or minimises arbitrariness on his part; reasons would also reveal that consideration of extraneous matters have not influenced his decision;

the appellant would have an opportunity to demonstrate if it could; that the reasons which persuaded the arbitrator in making the award are patently erroneous or are not borne out by the record or are perverse; it would act as a deterrent against possible arbitrariness on the part of the arbitrator.

17. Reliance was placed on *Travancore Rayon Ltd. Vs. Union of India (UOI)*, In that case the order of the Central Government rejecting a revision application merely by stating that Government had carefully considered the points made by the appellant and saw no reason for interference, was vitiated as being a totally unsatisfactory method of disposal of a case in exercise of judicial power vested in the *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, was the subject-matter of certain orders passed by the Assistant Collector, Collector and Government; it was held that every quasi judicial order must be supported by reasons; that reasons must be given because then alone would the administrative authorities and tribunals exercising quasi judicial function carry credibility with the people by inspiring confidence in the adjudicatory process. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, it was held that the impounding of the passport without giving reasons was unjustified and amounted to a breach of the principles of natural justice, a hearing and reasons being part and parcel of the latter. In *Organo Chemical Industries V. Union of India* AIR 1979 SC 1803 , it was held that every quasi judicial order must be a reasoned order. In *Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another*, , the order of the Commission appointed under the M.R.T.P. Act was set aside as it was merely the final and operative order without any reasons having been given. In *Dewan Singh Vs. Champat Singh and Others*, , where the arbitrators decided disputes on the basis of their personal knowledge, it was held that this was contrary to the principles of natural justice despite the recital in the agreement that the arbitrators may decide the dispute in "whatever manner" they thought fit.

18. Viewed in the context of the law of arbitration, and the decisions of the Supreme Court, Mr. Thakkar's submissions are as fallacious as his reliance on these authorities is misplaced. *Dewan Singh's* case is irrelevant to the present controversy. The other decisions are on administrative law and hence are also irrelevant in the context of the law on arbitration. They rest on the fact that it is the power of the State that is exercised, that too by an authority not of the adversaries' choice and that the decision is subject to appeal or judicial review enabling the Court to ascertain what weighed with the tribunal in coming to the finding it did. What particular rule of natural justice shall apply to a given case must depend on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for the purpose. *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, Administrative law does not supplant the law of arbitration. The former makes it obligatory that a reasoned order be given; the latter does not. An arbitrator appointed by parties does not stand on the same footing as a statutory authority clothed with judicial powers whose functions and duties qua

the public, are entirely different from those of an arbitrator qua the parties appointing him. A statutory authority cannot be equated with an arbitrator. The former exercises power and passes orders over which the aggrieved party is entitled to come by way of appeal and thereby invite the Court's interference and the exercise of the Court's supervisory jurisdiction over such statutory authority. To do so the Court must have a reasoned order so as to ascertain by what process of thought and reasoning the tribunal came to its finding. The Court exercises no such power over an arbitrator. His award cannot be made the subject-matter of an appeal. His award is sacrosanct. It can be set aside only on the limited grounds set out in S. 30 of the Arbitration Act. Giving a non-speaking award is not violation of the principles of natural justice. It is the procedure which the arbitrator adopts at the hearing which must not violate the principles of natural justice. Unlike the Arbitration Act of 1979 in England, the concept of a reasoned award is not envisaged by our Arbitration Act. Thus today in India as the Law stands, unless the parties so stipulate in the reference, (and no such stipulation was made in the present matter), the arbitrator is not bound to give a speaking award. And failure to do so does not vitiate the award as being violative of the principles of natural justice.

19. Mr. Thakkar took us through certain observations of the Delhi High Court in *Bhilwara Synthetics Ltd. v. Delhi Hindustani Mercantile Assn.* AIR 1982 Delhi 155, where after extolling the rare virtue of silence it is stated in para 6 of the Report as under :-

"..... there is little doubt that in the present stage of law of arbitration in India, silence is truly golden. It is one of the well known anomalies of law of arbitration that while a speaking award is subjected to unrestricted justiciability, a non-speaking award enjoys near immunity from judicial control. In the expanding horizon of natural justice and the development of administrative law when every judicial, quasi judicial, executive and administrative body, charged with the duty to make a decision affecting rights and obligation, is considered under a duty to give reasons for its decision, it is quite anachronistic that an arbitrator in India is still immune from any such obligation. It is important to remember that duty to give reasons enlightens the party who is affected by the decisions, as to why the decision was unfavourable to it, illumines the path of the appellate authority, controls the tribunal itself and constitutes a built-in safeguard against arbitrariness. It is for this reason that in England the right to know reasons has been given statutory recognition. In English law, an award by an arbitrator without reasons, even without adequate reasons, would be bad in law but not so in India....." While the rule that the arbitrator need give no reason for the award may have had its importance at one time, there is little doubt that the power to make a non-speaking award must have given undue protection to considerable incompetence, arbitrariness and even dishonesty in the arbitral processit is high time the matter is considered afresh so as to bring the arbitral process in India in conformity with the norms accepted elsewhere " (The underlining is ours.)

These observations of the Delhi High Court are often cited and as often misinterpreted to mean what they do not. The plain reading of these observations does not reveal that they mean or were intended to convey that under our Arbitration Act an arbitrator is bound to give a reasoned award. Quite the contrary. These observations actually emphasise the difference between the English and Indian laws on the subject and the distinction between arbitration law and administrative law, the latter replete with its machinery and tribunals, and lament that our arbitration law which does not require the arbitrator to give a reasoned award, is not placed on the same footing as a tribunal in administrative law which is required to give a reasoned order for the benefit of judicial scrutiny. These observations are at best an exhortation to the Legislature to change the law as done in England by the Arbitration Act of 1979. Until any such change is effected by the Legislature or unless the parties themselves stipulate for a reasoned award, the law as it stands in India must hold the field and an arbitrator is under no obligation to give a reasoned award. His failure to do so does not violate the principles of natural justice.

20. The reliance by Mr. Thakkar on *State of Orissa v. Gangararn*, AIR 1982 Ori 277, can also avail the appellant nothing. In that case, without hearing the appellant, the Judge arbitrarily appointed an arbitrator from the panel of names given by the respondent. In these circumstances, the appointment was set aside on the ground that the method adopted in appointing the arbitrator was contrary to well-established principles of procedure and thereby contrary to the principles of natural justice. Reliance was also placed by Mr. Thakkar on *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, where it was held that the workers had the right to be heard in winding-up proceedings and not to allow them to do so was contrary to the principles of natural justice. What is the relevance of this decision to the present controversy, is not easy to understand.

21. Mr. Thakkar says that an arbitrator is bound to give a reasoned award unless empowered otherwise by the terms of his reference. The law is to the contrary. If the arbitrator is not obliged to give reasons, parties need not give him a fiat which in law he already has. For that matter in *Raminder Singh v. Mohinder Singh* AIR 1940 Lah 186, relied on by Mr. Thakkar himself, it was held that an arbitrator need not record a separate finding on various points nor write a reasoned judgment.

22. Mr. Thakkar says that the Arbitration Act does not say that the arbitrator shall not give reasons, therefore, he must. This is inverted logic. The Act also does not say that he must give reasons. Nor does the Supreme Court. Hence he need not.

23. According to Mr. Thakkar, looking to the technicality of the matter with several claims and counter-claims running into crores of rupees, it was imperative for the arbitrator to have given a reasoned award.

24. Fallacious. If in law the arbitrator was not obliged to give reasons for his award, that is the end of the matter, technicality, or complexity or amount involved notwithstanding. This contention also does not cater to the fact that the arbitrator was a person with the requisite technical knowledge (himself a retired Chief Engineer, Central P.W.D.), accustomed to dealing with technical matters and in whose expertise in dealing with complex and technical matters both parties had confidence which they made manifest by appointing him as sole arbitrator.

25. Mr. Thakkar's fifth ground, namely perversity of the award, was based on 2 counts. Firstly, no oral evidence was recorded by the arbitrator. It is true that an award is liable to beset aside if there is a total denial of hearing. *Musammam Amir Begum v. Khwaja Saiyed*, 16 Bom LR 413 : AIR 1914 PC 105. No such thing can be said in the present matter for the simple reason that neither party chose to lead oral evidence in support of its claim or counter-claim. Pray, then where arises question of perversity.

26. The second reason given by Mr. Thakkar was that no reasonable person could have awarded the amount of Rs. 95, 52, 623/-. According to Mr. Thakkar, only the first head of claim was for work done; the claim for interest (Rs. 2, 20, 000/-) could not be awarded as there was a term against interest in the contract; and the claim for arbitration costs (Rs. 2,00,000/-) was not allowed as the award stated that there would be no order as to costs. According to Mr. Thakkar all the other claims were for damages or quantum meruit, none of which could be allowed, as they were not proved. Hence Mr. Thakkar says even if the first head of claim had been allowed in toto, the award could not have exceeded Rs. 93,16,002/-. Yet the arbitrator awarded Rs. 95,52,623/-. Perverse, expostulates Mr. Thakkar.

27. Nothing of the kind. The very basis of the deductive piece of logic resorted to by learned Counsel is fallacious. Apart from the fact that there is no law which says that damages can only be proved by oral evidence, it does not now lie in the mouth of the appellant to say that all the other heads of claim were for damages or quantum meruit. The appellant has in no uncertain terms admitted in the petition that claims 5 to 11 are in "the nature of claims for alleged extra work alleged to have been done by the Respondent Contractor". Thus what is taken exception to is not that claims 5 to 11 are not claims for extra work done but that no extra work was in fact done by the contractor. The first head of claim is for Rs. 93,16,002/-. Heads 5 to 11 aggregate to Rs. 43,01,000/-. The total of heads 1 and 5 to 11 is Rs. 1,36,17,002/-. In these circumstances to say as Mr. Thakkar does, that only the first head of claim could have been taken into consideration by the arbitrator, is a mistake. It is manifest that in arriving at the sum of Rs. 95,52,623/- awarded, the arbitrator considered the various heads of claim made by the contractor including the claims for extra work and the heads of counter-claim made by the appellant. It may well be that in arriving at the figure awarded, the arbitrator may well have even allowed some heads of

counter-claim. When we say so, we do not seek to enter into forbidden territory of speculation of the mental process of the arbitrator Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, but only to drive home the point that the appellant is equally forbidden from doing so.

28. The sixth ground urged by Mr. Thakkar was that the arbitrator took on record documents which had not been strictly proved as required by the Evidence Act. This must surely be the weakest of all the contentions urged before us. Technical rules of evidence do not apply to arbitration proceedings. What is more, the arbitrator called upon both parties to produce the documents on which they relied. They did so. They were taken on record without demur from either side. The appellant took inspection of the measurement books and measurement registers tendered by the contractor. The appellant was even allowed to take away those books and registers for perusal. Parties based their arguments and submissions on the measurement books, measurement registers and other documents which were on record of the arbitrator. No desire was expressed by either party for production of any person for cross-examination or that any document be strictly proved. A party cannot sit back on an objection during the hearing before the arbitrator and raise it later after finding himself faced with an adverse award; such conduct would amount to acquiescence. National Electric Supply and Trading Corporation Private Ltd. Vs. Punjab State and Another, Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. Vs. Union of India (UOI) and Others, and N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another, In these circumstances, pray, where arises the question of the documents necessitating strict proof as required in a Court of law where the Evidence Act holds the field? In any event, in these circumstances, it was open to the arbitrator to dispense with strict proof.

29. Mr. Thakkar relied on Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, , where on the question of observance of the principles of natural justice it was held that where issues are seriously contested and have to be established and proved, the requirements relating to proof cannot be dispensed with even though the Evidence Act is not applicable to industrial tribunals. This is yet another decision which can avail the appellant nothing. Labour matters and decisions of tribunals cannot be equated with arbitration proceedings and arbitrators awards. In the former where depend issues like the correctness of a balance sheet prepared by the employer from materials to which the workers would have no access and on which their fate is in balance, it is but right that the strict requirements of proof should not and cannot be dispensed with. To do otherwise would be contrary to the principles of natural justice. Unlike arbitrators, industrial tribunals have statutory rules as to how evidence is to be taken. No parallel can conceivably be drawn between mode of proof before tribunals and arbitrators. Moreover, in the present matter even Mr. Thakkar does not say that the appellant challenges the genuineness of the documents produced by the contractor. All he says is that they have not been strictly proved. In these circumstances, reliance on the Bareilly Electricity Supply Co. Ltd. Vs.

The Workmen and Others, is utterly misplaced.

30. Coming to the seventh ground urged by Mr. Thakkar, namely that the award is vitiated as the arbitrator laboured under a mistake as to the subject-matter of the reference. Mr. Thakkar contented himself by stating that this objection was covered by his earlier submissions. In that event, nothing further need be stated as Mr. Thakkar's earlier submissions have been negative by us.

31. Mr. Thakkar's last grievance was factual misconduct on the part of the arbitrator. He says that the arbitrator gave a mere pretence of hearing as he was engaged in conversation and otherwise showed little interest in the proceedings, made no notes and conducted the proceedings in a slipshod and haphazard manner leaving it to the parties to dictate their submissions to the stenographer. Such is the grievance made in the petition.

32. It is devoid of merit. Initially the direction given by the arbitrator was that the contractor was to submit its documents and arguments in connection with one claim at a time and thereafter the appellant would offer its reply and evidence in connection with that claim; thereafter each party would submit its claim relating to the next claim and so forth. However on the appellant's application, it was agreed before the arbitrator that the contractor would submit its arguments in respect of all its claim seriatim and thereafter the appellant would give its reply in connection with each of these claims; similarly the appellant's counter-claim would also be dealt with. Accordingly the contractor made its submissions in respect of its claims. This procedure was followed by the consent of both parties. The minutes maintained by the arbitrator in connection with the meetings also contain a summary of the arguments advanced by each side. By consent of parties, the summary of the arguments was dictated by each party and/or its advocate to the arbitrator's stenographer in the presence of the arbitrator and the other party. It is only after the award has gone against the appellant that this grievance has now been made. And not unpredictably. Faced with an adverse award, any stick is good enough, as the old saying goes, to beat a dog with.

33. Mr. Thakkar ultimately suggested that the award be remitted to the arbitrator for consideration of the question of measurements arid to enable the parties to lead oral evidence and/or to allow the appellant to cross-examine the persons who had written the documents produced by the contractor. In the light of the discussion earlier, there is nothing to commend this suggestion. We reject it without hesitation.

34. The appeal is dismissed with costs.

Mr. Thakkar applies for leave to appeal to the Supreme Court.

Mr. Thakkar's application is rejected. All we have done is to follow the decisions of the Supreme Court itself.

Mr. Thakkar applies for stay of the operation of the order dt. 4th/5th Oct.1983.

Mr. Desai states that the requisite Notice of Motion for decree in terms of the award has already been taken out and will be coming up for hearing tomorrow. He further states that the contractor will not take the decree in terms of the award tomorrow, provided however the amount of Rs, 95,00,000/- deposited by the appellant in this Court is allowed to be withdrawn by the contractor on the contractor furnishing a Bank guarantee.

On the contractor through its learned counsel giving an undertaking to the Court not to obtain a decree in terms of the award on the pending Motion for a period of four weeks from today, the contractor shall be at liberty to withdraw the amount of Rs. 95,00,000/- deposited by the appellant in Court on the contractor furnishing a Bank guarantee for the said amount of a nationalised Bank to the satisfaction of the Prothonotary and Senior Master.

35. Appeal dismissed.