

(1977) 05 PAT CK 0010

In the Patna High Court

Case No : Appeal from Original Order No. 273 of 1973

The State of Bihar

APPELLANT

Vs

R.B. Ojha for Ojha Brothers

RESPONDENT

Date of Decision : 02-05-1977

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 13, 2, 20(4)
Constitution of India, 1950 — Article 299
Contract Act, 1872 — Section 62
Evidence Act, 1872 — Section 101, 102, 114

Citation : AIR 1977 Patna 258

Hon'ble Judges : Nagendra Prasad Singh, J;B.S. Sinha, J

Bench : Division Bench

Advocate : Ram Balak Mahto, G.P. IV and Sachchidanand Jha, J.C. to G.P. IV, for the Appellant; Balbhadra Prasad Singh, Sreenath Singh, Lakshman Saran Singh and Madhusudan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Prasad Singh, J.—This is an appeal u/s 39(1)(vi) of the Arbitration Act, 1940 on behalf of State of Bihar against an order rejecting the prayer made on behalf of the appellant to set aside an award.

2. It is an admitted position that a contract was entered between the appellant and M/s. Ojha Brothers, the respondent, for execution of work in Hayadhar Syphon of the Eastern Kosi Canal. The contract was executed in the prescribed form, on 29-3-1961 (Ext. 3) and was signed by the Chief Engineer, Kosi Project on behalf of the Governor, and Mr. Ojha on behalf of the firm. After the contractor had executed some part of the contract, some dispute arose between the contractor and the local officers resulting in ultimate recession of the said contract by the State Government. On 21-12-1963, the respondent made a protest regarding the unilateral recession of the contract. By letter dated 18-2-1964 (Ext. 4), the respondent made a request for reference of the dispute for arbitration in terms of Clause 23 of the aforesaid contract. In that very letter

it was stated on behalf of the respondent that in view of the animus of the local engineers against the respondent, the dispute should be referred to a person other than an officer of the River Valley Project Department. Under Clause 23 of the Contract, the dispute was to be referred to the Superintending Engineer of the Circle. By letter dated 26-2-1964 (Ext. 5), the then Deputy Secretary of the River Valley Project Department of the State Government informed the respondent that State Government was agreeable to refer the dispute to another Superintending Engineer of the River Valley Project. By a letter dated 5-3-1964 (Ext. 6) the respondent again made the request for arbitration by an outsider and suggested names of eight persons who were at one time Chief Engineer of one Department or other. The State Government, out of the persons suggested, accepted the name of Shri A. L. Das, ex-Chief Engineer, Damodar Valley Corporation and the said acceptance was communicated by letter dated 16-5-1965 (Ext. 6/A) under the signature of the aforesaid Deputy Secretary. The respondent was also asked to deposit Rs. 2000/- as his contribution to the remuneration of the aforesaid arbitrator. Respondent, while accepting the appointment of Shri A. L. Das forwarded a demand draft for that amount, by a letter dated 23-5-1964 (Ext. 6/B). On 29-5-1964, the aforesaid Deputy Secretary informed Shri A. L. Das about the arbitration and requested him to visit the site. The draft of the agreement for reference to aforesaid Shri A. L. Das was sent along with letter dated 6-6-1964 (Ext. 6/G) to the respondent by the State Government and on 8-8-1964 the agreement (Ext. 1) to refer the dispute to aforesaid Shri A. L. Das was executed. On behalf of the Governor, it was signed by Shri B. P. Srivastava, the Deputy Secretary of the River Valley Project Department. The arbitrator inspected the site and entered into reference. After the hearing had commenced, on 5-12-1964 a letter (Ext. A) was addressed to Shri A. L. Das by one Shri B. N. Sinha, the Deputy Secretary to the Government, saying that he was directed to say that on examination of the agreement for arbitration dated 8-8-1964, it had been discovered that the said agreement was not in conformity with Article 299 of the Constitution of India, as such, no useful purpose will be served by bringing the arbitration to the conclusion, which will result in an invalid award. The State Government, however, participated during the hearing and the arbitration proceeded. On 23-12-1964, the arbitrator gave, his award that the respondent was entitled for an amount of Rs. 9,58,506. The award was filed in the court concerned where a prayer was made on behalf of the respondent to make it a rule of the court. An objection was filed on behalf of the appellant on 2-2-1965. As already stated above, learned Subordinate Judge after consideration of the question involved, has rejected the objection filed on behalf of the appellant; hence this appeal.

3. The only objection which had been taken before the learned Subordinate Judge on behalf of the appellant against the award in question was that there was no valid arbitration agreement to refer the dispute to said Shri A. L. Das, and, as such, the award given by him itself is invalid in law. The agreement to refer the dispute (Ext. 1) is being challenged on the ground that it was in

contravention of Article 299 of the Constitution, and, as such, it is void in eye of law. No other objection appears to have been taken in the court below. Same is the position before this Court. As such, the precise question which has to be answered is as to whether the award given by Shri A. L. Das was on the basis of a valid arbitration agreement.

4. There cannot be two opinions that before an award is given by an arbitrator, there must be a valid arbitration agreement. In the instant case, it is not in dispute that there was an arbitration agreement under Clause 23 of the original contract, dated 29-3-1961 (Ext. 3). Under that arbitration clause it had been agreed between the State Government and the respondent that in case any dispute or differences arise between the parties in respect of the meaning of specification, design, drawing and other connected matters or in respect of any other condition of the contract, then such dispute or differences "shall be referred to the Superintending Engineer of the Circle and his decision thereon shall be final, conclusive and binding on all the parties." The reference which was made for arbitration was under this Clause 23. But, instead of the Suprintending Engineer of the Circle, who was the arbitrator mentioned in the original contract, it was referred to Shri A. L. Das, who ultimately gave the award. On behalf of the appellant, it has been urged that substituting one arbitrator for the arbitrator named in the arbitration agreement itself amounts to substituting one contract by another and this also must be in accordance with the requirement of Article 299 of the Constitution, failing which all steps taken will be nullified. According to the appellant, Shri B. P. Srivastava, the Deputy Secretary aforesaid, was not duly authorised by the Governor to execute contracts on behalf of the State Government as required by Article 299 of the Constitution, and, as such, the agreement dated 8-8-1964 (Ext. 1) itself was void. On behalf of the respondent, however, both the aforesaid assertions have been challenged. According to him, in the circumstances of the case, there is no question of substituting one contract by another; it only amounted to referring the dispute by consent of both the parties to a person other than the person mentioned in the arbitration agreement, and even if it is held that it amounted to altering the terms of the contract dated 29-3-1961 (Ext. 3) by the agreement dated 8-8-1964 (Ext. 1), still the agreement (Ext. 1) is not invalid because Shri B. P. Srivastava, the Deputy Secretary, who signed it on behalf of the Governor, was duly authorised by the Governor.

5. Before I examine the legal and factual aspect of the matter, one fact must be taken note of that it is an admitted position that the decision to substitute Shri A. L. Das for the Superintending Engineer of the Circle has been taken at the highest level, i. e., by the State Government. Before the learned Subordinate Judge all the materials in connection with the same were produced and I may incidentally refer to some of the oral and documentary evidence on that point. D. W. 1, who was examined on behalf of the State Government, has stated on that point as follows:--

"After Ojha Brothers submitted representation that the dispute be referred to arbitration, the concerned file was sent to the Deputy Secy. Shri B. P. Srivastav. He recommended for arbitration. Secretary also agreed with the said recommendation. Shri S. N. Singh had the full name Sachida Nand Singh. Concerned Minister agreed with the recommendation of the Secy. Therefore Ojha Brothers was informed that the Govt. has agreed for arbitration. On the basis of the letter 6 (a) dated 16-5-64 Govt. informed the Ojha Brothers about Govt. willingness to go for arbitration. The letter is signed by Shri B. P. Srivastav.

Both the Govt. and the contractor Ojha Brothers agreed to the proposal that Mr A. L. Das be the arbitrator." The letter (Ext. 6/A) dated 16-5-1964 spoken by the aforesaid witness is the letter by which the name of Sri A L. Das was accepted by the State Government. In that letter it was stated "I am directed to say that Government have agreed to refer the dispute with you for arbitration to Shri A. L. Das, Ex-Chief Engineer, Domodar Valley Corporation..." This fact has not been disputed even before this Court. But, it was urged that although the decision to substitute Shri A. L. Das in place of the Superintending Engineer of the Circle had been taken by the State Government, the contract which was executed in pursuance to that decision was executed by the Deputy Secretary, Sri B. P. Srivastava, who was not authorised to execute the contract on behalf of the Governor.

6. Whether the agreement dated 8-8-1964 (Ext. 1) is a contract within the meaning of Article 299 of the Constitution, I shall deal later. But, even if it is assumed that it is a contract in view of the stand taken on behalf of the State, in my opinion, the burden is on them to show that Shri B. P. Srivastava was not duly authorised to execute the said contract on behalf of the Governor. The document (Ex. 1) ex facie has been executed on behalf of the Governor. Having been executed in course of the official business and in discharge of executive functions ostensibly it is to be taken to conform to the requirement of Article 299 of the Constitution. The appellant wants to be relieved of the burden under the contract. In such a situation, it is for the appellant to prove to the satisfaction of the Court that due to lack of proper authorisation the contract became void. In order to show that Shri B. P. Srivastava, the Deputy Secretary, had no authority to execute the document (Ext.1), the appellant has produced an authorisation by the Governor of Bihar, dated 10.12.1959 which has been marked as Ext. C. This authorisation is divided into different sub-heads. Sub-head A refers to the Public Works Department Irrigation and Electricity Departments. Under 12 serials different nature of the documents are mentioned and against them the officers concerned who can execute those documents and contracts are named by designation. Sub-head B is in respect of Forest Department. Sub-head C is in respect of Public and Currency Department, Treasuries. Sub-head E is "As regards contracts etc. not hereinbefore specified." According to the appellant, there is no reference of River Valley Project Department in Sub-heads A to D. As such, the contract in respect of this Department has to be executed according to the mode prescribed under heading E. It may be pointed out that so far as the

present contract is concerned, it is not directly covered by any of the items mentioned under heading E. It has been asserted that it will be covered by serial No. 1 which says, "All deeds and instruments relating to matters, other than those specified in heads 2 to 9", then such documents are to be executed, "by Secretary to Government." It has been submitted that the case in question will be covered by this residuary clause of residuary heading of the authorisation and only Secretary of the Department could have executed the contract. On behalf of the respondent, however, it has been urged that the River Valley Project Department was a temporary department and part and parcel of Irrigation Department, as such, the instant contract will be covered under sub-head A Clause 12, which could be executed by the Secretary, Additional Secretary or Deputy Secretary to the Government. Admittedly this River Valley Project Department was in existence prior to 10-12-1959. No reason has been given on behalf of the appellant as to why then this River Valley Project Department was not separately dealt with in Ext. C. On behalf of the respondent it has been asserted that all the relevant authorisations from time to time have not been produced by the State Government, and this is demonstrated by the fact that the original contract dated 29-3-1961 (Ext. 3), legality of which is not being questioned, had been signed by the Chief Engineer, Kosi Project. According to respondent, if authorisation dated 10-12-1959 (Ext. C) was the authorisation even in respect of the River Valley Project Department, then the Chief Engineer could not have signed the contract on behalf of the Government even in the year 1961. The State Government has not challenged the contract (Ext. 3) to be void at any stage. In this connection, our attention was drawn to the objection filed before the learned Subordinate Judge as well as to the evidence of D. W. 1. D. W. 1 in course of his evidence has stated that Ojha Brothers has been given a contract for construction of syphon in the Eastern Kosi Canal and a contract (Ext. 3) was executed. He has further said that as he did not perform the full work as per the agreement, the contract was rescinded sometime in the year 1963. Learned Subordinate Judge in the impugned order has also stated on the basis of the arguments made before him as follows:--

"A contract was entered into between the State of Bihar (defendant) and the firm of Ojha Brothers (plaintiff) for execution of work in Hayadhar Syphon of the Eastern Kosi Canal on the basis of written agreement D/- 29-3-1961 Ext. 3. This was a contract in accordance with the provisions of Article 299 of the Constitution and was signed by the Chief Engineer having authority to sign such contract on behalf of the Government."

In the memorandum of appeal which was filed before this Court, on affidavit it, has been stated in paragraph 1 as follows:--

"A contract was entered into between the State of Bihar (defendant) and the firm Ojha Brothers (Plaintiff) for execution of work in Hayadhar Syphon of the Eastern Kosi Canal on the basis of a written agreement dated 29-3-1961 Ext. 3. This was a contract in accordance with the provisions of Article 299 of the

Constitution and was signed by the Chief Engineer having authority to sign such contract on behalf of the Government. The contract included an agreement for arbitration vide Clause 23."

During the course of the argument also the validity of the original contract dated 29-3-1961 (Ext. 31) was not challenged. As to how in the year 1961 the Chief Engineer signed the contract on behalf of the Government, in view of authorisation dated 10-12-1959 has not been explained, and learned Government Pleader appearing on behalf of the appellant could not reconcile this position. None has been examined on behalf of the State, except D. W. 1, who is an assistant in the Department to state that Shri B. P. Srivastava was not duly authorised and that the aforesaid authorisation dated 10-12-1959 (Ext. C) was the authorisation by the Governor even for the River Valley Project Department. Even D. W. 1. Deobali Singh, has not stated this fact. He has simply stated about the aforesaid authorisation in these words, "I possess notification issued by the Law Department showing authorisation of power under Article 299 of the Constitution. This is the said notification which is marked Ext. C."

7. D. W. 1 in his cross-examination has admitted that there was a duty chart in the department showing which officer of the department was entrusted with which work. The duty chart which was prepared in the year 1961 (Ext. 2) showed that Shri B. P. Srivastava was to deal with contract relating to the department apart from other matters. D.W. 1 admitted that that chart was in force up to 1963. A petition was filed on behalf of the respondent to produce the duty chart for the year 1964. Learned Subordinate Judge by his order dated 18-5-1973 passed a specific order directing the appellant to produce the duty chart for the year 1964. No such duty chart for the year 1964 was produced. Although a duty chart will not amount to an authorisation within the meaning of Article 299 of the Constitution, still it supports the stand of the respondent that Shri B. P. Srivastava had been entrusted with the contracts of the department and he was authorised to execute the contracts.

8. Apart from that, it is an admitted position that decision to sub-stitute Shri A. L. Das for the Superintending Engineer of the Circle was taken at the highest level by State Government, which will undoubtedly amount to a decision of the State Government. Only after such decision the so-called contract dated 8-8-1964 was signed by Sri B. P. Srivastava. In such a situation, unless it is shown otherwise, in my opinion, the presumption in accordance with Section 114(e) of the Evidence Act can be raised that the official acts have been regularly performed. In this connection, reference has been made to the cases of AIR 1930 193 (Privy Council) . AIR 1934 217 (Privy Council) and AIR 1947 135 (Privy Council) . It is a rebuttable presumption, but I have already pointed out that no material has been produced except the aforesaid authorisation dated 10-12-1959 (Ext. C) in support of the assertion that the contract in respect of the department in question could have been executed only by the Secretary of the department. I have already pointed out that there is nothing in Ext. C from which it can be

inferred that it was the authorisation by the Governor even in respect of the department in question specially in view of the admitted position that in the year 1961 the Chief Engineer of the Kosi Project could have executed a valid contract on behalf of the Governor so far as this department is concerned. In my opinion, it is one of those cases where it was for the State to show that although one of its officers has purported to execute a contract on behalf of the Governor, the said contract was invalid. In such a situation, the burden of proof was on the appellant. It was pointed out in the case of *Bakshi Das v. Nadu Das* 1905 CLJ 261 that if one of the contracting parties alleges that the contract is opposed to public policy, it is for him to set out and prove those special circumstances which will invalidate the contract. Similarly, in the cases of *Official Assignee of the Estate of Cheah Soo Tuan v. Khoo Saw Cheow* (1931) App Cas 67 : AIR 1930 PC 265 : AIR 1949 278 (Privy Council) : *Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay*, and *K.S. Nanji and Company Vs. Jatashankar Dossa and Others*, . it was observed that in some situation onus shifts from one party to the other during the trial, but even in such cases where after the entire evidence is adduced and the court or the Tribunal concerned feels that it cannot make up its mind as to which of the versions is true, it will hold that the party on whom the burden lies has not discharged the burden. In the instant case, in my opinion, the appellants have not led any such evidence in their support, so as to shift the onus on the question of adducing evidence in rebuttal on the respondent. They wanted this Court to give a judgment about the invalidity of the contract and liability of the State under that contract. The facts necessary for that finding had to be adduced and proved by them in view of Section 101 of the Evidence Act. Even the test of Section 102 of the Evidence Act has not been fulfilled because if no evidence is led on the question of authorisation then it is apparent that the appellant will fail. According to me, it has not been established by the appellant that Shri B. P. Srivastava, the Deputy Secretary, who executed the contract dated 8-8-1964 (Ext. 1) on behalf of the Governor was not duly authorised to execute the same. In that view of the matter, it has to be held that the document (Ext. 1) is not void due to non-compliance of Article 299 of the Constitution so as to invalidate the award in question.

9. Although I have held that it has not been established that Shri B. P. Srivastava was not duly authorised to execute the contract on behalf of the Governor, but even if it is assumed that he was not so authorised the question which I now propose to consider is as to whether the document D/- 8-8-1964 (Ext. 1) is a contract so as to attract the provisions of Article 299 of Constitution. It has been submitted on behalf of the respondent that the original contract was in two parts. One part was in respect of the constructions in question, in respect of which there has been breach. The second part was incorporated in Clause 23, i. e., if there was any dispute or difference regarding the terms of the contract, then it shall be referred to arbitration. By the document (Ext. 1), dated 8-8-1964, this contract was never modified or substituted. The document dated 8-8-1964 is at most a reference under the provision of the Arbitration Act and while doing that

by consent of the parties, instead of the Superintending Engineer of the Circle it was referred to Shri A. L. Das. Learned counsel appearing for the respondent pointed out that the power to refer the dispute to Shri A. L. Das has not been questioned in this case because the decision in respect of the same has been taken by the State Government. The only objection is that substitution of the original arbitrator by Shri A. L. Das should have been in accordance with Article 299 because this will amount to substitution or alteration of the original arbitration agreement in Clause 23 within the meaning of Section 62 of the Contract Act. As such, precise question to be answered is whether the document dated 8-8-1964 will amount to a fresh arbitration agreement or a mere order of reference within the meaning of Arbitration Act. The arbitration agreement has been defined u/s 2(a) of the Arbitration Act to mean as follows:--

" "Arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not."

"Reference" has been defined u/s 2(e) of the Arbitration Act as follows:--

" "reference" means a reference to arbitration".

From the definition of the "arbitration agreement" it is clear that the arbitration agreement is not dependent on naming the arbitrator; an arbitrator may be named or may not be named. In a case where no arbitrator has been named, by consent of the parties an arbitrator has to be nominated, or in absence thereof, the court has to appoint an arbitrator in accordance with the provisions of the Arbitration Act. In such a situation, can it be said that they are entering into a fresh contract substituting or modifying the original contract? In my opinion, the answer is in negative because it will only amount to carrying out or implementing the arbitration agreement. If appointing an arbitrator on the basis of such arbitration agreement does not amount to entering into a fresh contract, then can it be held that substituting one arbitrator by another with consent of the parties will amount to altering or substituting the original agreement or contract?

10. It has been submitted on behalf of respondent that if Clause 23 of the original contract, saying that dispute shall be referred to arbitration, remained intact, then both the parties were under obligation to refer the dispute to arbitration. Unless the arbitration agreement stipulates in clear and unambiguous terms that dispute will be referred to the person named and none else, it is open to the party to appoint some one else under certain contingencies and if they fail to do so, one of the parties to such an arbitration agreement can move the court for appointing an arbitrator. In this connection, reference was made to Section 8(1)(b), Sections 11, 12 and Section 20(4) of the Arbitration Act. From those sections, it appears that under certain circumstances the parties by mutual consent may substitute an arbitrator, failing which the court has power to appoint any arbitrator other than one who had been appointed by the parties concerned earlier. If the substitution of one arbitrator for another arbitrator by consent of the parties was an integral part of the arbitration agreement, then court could

not have been invested with power to substitute a contract for a contract which had been originally entered into between the parties. No doubt, by statutory intervention even some contracts, which have been entered into between the parties, can be altered or modified, but that is not the situation under the Arbitration Act. In my opinion, these provisions have been made so that a valid arbitration agreement should not become infructuous merely because an arbitrator named therein for one reason or other is incapable of proceeding with the reference or giving an award. This aspect of the matter has been considered in the case of Governor-General in Council Vs. Associated Live-stock Farm (India) Ltd., , Balika Devi and Another Vs. Kedar Nath Puri, , Gannon Dunkerley and Co. Vs. Union Carbide (India) Ltd., , India Hosiery Works Vs. Bharat Woollen Mills Ltd., and Juggilal Kamlapat Vs. General Fibre Dealers Ltd. (And Connected Appeal), . In the aforesaid case it was pointed out that unless it was intended in the arbitration agreement that the vacancy should not be supplied, it is always open to the parties to substitute one arbitrator by another and in absence thereof, in accordance with the provisions of the Act the court can appoint an arbitrator. In my opinion, once it is established that parties had agreed to substitute the Superintending Engineer of the Circle by Shri A. L. Das, then the document which was executed in pursuance thereof will amount only to carrying out the terms of the arbitration agreement under Clause 23 of the original contract which was never substituted or altered within the meaning of Section 62 of the Contract Act. In such a situation, of course, the decision to substitute the arbitrator must be taken by the State Government and not by any of its officers who is not competent to take such a decision. In the instant case, admittedly the decision to appoint Shri A. L. Das was taken by the State Government. That the parties never substituted Clause 23 of the original contract is also supported by the document (Ext. 1) itself. After making reference to the details of the contract dated 29-3-1961 (Ext. 3), this document (Ext. 1) states as follows:--

"AND WHEREAS dispute and differences have so arisen between the said contractor and the said Government relating to the said claims and counter claims.

AND WHEREAS under Clause 23 of the aforesaid contract between the parties the claims and counter claims and any dispute or difference between the parties relating to the said contract were to be referred to the Superintending Engineer of the Circle and his decisions thereon were to be final, conclusive and binding on the parties but in the special circumstances of this case the contractor made a representation that the dispute be referred to arbitration of any one of the nine persons named in the said representation including Shri A. L. Das, Ex-Chief Engineer D. V. C. at present residing at 103 F2, Block New Alipur, Calcutta-53.

And whereas the said Government accepted the proposal and suggestion of the said contractor and selected Sri A. L. Das aforesaid to be the arbitrator in the matter."

In the circumstances referred to above, in my view, it is difficult to hold that the

substitution of Shri A. L. Das amounted to alteration or substitution of the original contract, dated 29-3-1961 so as to attract the provisions of Article 299 of the Constitution.

11. On behalf of the respondent it was also urged that the document dated 8-8-1964 (Ext. 1) cannot be held to be a contract because there was no consideration for the promise made and in that connection reference was made to definition of contract u/s 2 of the Contract Act. It was urged that both parties were under obligation in view of Clause 23 of the original contract to get the matter decided by an arbitrator, and, as such, when the State agreed to replace Shri A. L. Das for the Superintending Engineer of the Circle at the request of the respondent, for this there was no consideration so as to make it a contract within the meaning of the Contract Act. In support of this reliance was placed on several authorities. In my opinion in view of my findings recorded above, there is no necessity of deciding this question.

12. It was also submitted on behalf of the respondent that while agreeing for arbitration by Shri A. L. Das. the State had exercised its power u/s 63 of the Contract Act by waiving its right to get it adjudicated by the arbitrator named in the original contract and it will not amount to novation within the meaning of Section 62 of the Contract Act. Some authorities were cited in support of this contention and reference was also made to the documents as to how the request was acceded to. In my opinion, in the facts and circumstances of the case, it is not necessary to decide this point as well.

13. Learned Government Pleader appearing for the appellant lastly submitted that even if it is held that Shri A. L. Das, the arbitrator had jurisdiction to give an award, there is an error apparent on the award, inasmuch as the arbitrator has allowed interest to the respondent. From the award it appears that the arbitrator, after holding that the respondent was entitled to Rs. 9,58,506 after adjustment of the excess payment of Rs. 6,043, has directed the State Government to pay interest at the rate of six per cent per annum on amount of the unpaid bills and the amount awarded from 1st March 1965 if the payment was not made before that date. This award was made, as I have already stated, on 23-12-1964. On proper construction, this will mean that he has allowed interest from 1st March, 1965 till the the award is made the rule of the court. On behalf of the appellant, it has been urged that an arbitrator has no authority to award interest, pendente lite or future, as Section 34 of the CPC is not applicable to arbitration proceedings. In support of this contention, reliance was placed on the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), . That judgment was also referred to in the case of Union of India (UOI) Vs. A.L. Rallia Ram, . Counsel appearing for the respondent has placed reliance on the judgment of the Supreme Court in Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., , Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, and State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd., . It appears that the view expressed by the Supreme Court in the case of Thawardas Pherumal (supra) has

been explained in the later judgments of the Supreme Court and it was pointed out that in *Thawardas Pherumal* (supra) the Supreme Court did not intend to lay down such a broad and unqualified proposition. It was also held that if the claim regarding the interest is referred to arbitration, then an arbitrator can award interest as well. The case of *Union of India v. Bungo Steel Furniture* (supra) related to a claim for future interest and at paragraph 6 thereof it was held that arbitrator had authority to grant interest from the date of the award to the date of the decree. The same view was taken in the case of *R. B. Somappa v. The Mysore Co-operative Appellate Tribunal* AIR 1973 Mys 37 and *Patel Engineering Co. Ltd. Vs. Indian Oil Corporation Ltd.*, . Now the question is as to whether in the instant case the claim for future interest was a subject-matter of dispute before the arbitrator. From para. 13 of the award itself it appears that the respondent had claimed "interest on blockage of amount". He had claimed 9 per cent interest on the award from 1-8-1964 till final payment. The arbitrator, however, awarded interest from 1st March, 1965 if the payment was not made between the period after the award and prior to that date. This is to mean, as I have already stated above, till the award was made rule of the court. That the question of interest was a subject-matter in dispute and had been referred to, is also supported by the aforesaid document dated 8-8-1964 (Ext. 1) where, after the recital of necessary facts, it has been stated as follows:--

"And whereas the parties accordingly have appointed the said Sri A. L. Das as the sole arbitrator to decide the entire dispute between the parties..."

If the entire dispute had been referred to for adjudication to the arbitrator in question, it is apparent that even the claim regarding the future interest had been referred to. In that view of the matter, the arbitrator had authority to award the interest. In my opinion, there is no substance in the contention raised on behalf of the appellant in this Court as well.

14. In the result, the appeal fails and is, accordingly, dismissed. In the circumstances of the case, however, there will be no order as to costs.

B.S. Sinha, J.

15. I agree.