

(1996) 06 BOM CK 0029

In the Bombay High Court

Case No : Arbitration Petition No. 86 of 1995 in award No. 233 of 1994

Union of India

APPELLANT

Vs

Shyama Charan Agarwala and Sons

RESPONDENT

Date of Decision : 14-06-1996

Acts Referred:

Arbitration Act, 1940 — Section 30
Electricity (Supply) Act, 1948 — Section 49

Citation : (1996) 22 BOMLR 169

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Advocate : Sh. Suraj M. Shah and Ms. S.I. Shah, instructed by S. Bhattacharya, for the Appellant; Sh. M.H. Shah, instructed by N.B. Jagad, for the Respondent

Judgement

S.M. Jhunjhunwala, J.—By this petition, the petitioners seek to have the Award dated 30th August, 1994 filed in this court and numbered as Award No. 233 of 1994 set aside.

2. On 20th Oct., 1987, a Contract bearing No. CE BZ-54 of 1987-88 for "Construction of Married Accommodation for Civilians (Industrial Staff) at NCHC Pawai" (hereinafter referred to as "the said work") was entered into by and between the petitioners and the respondents on the terms and conditions mentioned therein. As per the said Contract commencement date of Phase I and Phase II of the Work was on 15th Dec., 1987 and the stipulated dated of completion for Phase I and Phase II was 14th June, 1988 and 14th June, 1989 respectively. However, the Work of Phase I was finally completed on 31st Oct., 1989 and of Phase II on 15th Oct., 1991 being the extended respective dates for completion thereof. The undisputed part of the final bill was paid by the petitioners to the respondents on 30th March, 1993. The said Contract contained a written arbitration agreement which inter alia provided that in case of any dispute between the parties thereto arising out of the said Contract, the same would be decided by the sole arbitrator to be appointed by the Engineer-in-Chief

of Military Engineer Services who was of the rank of Lt. Col. and the seniormost officer heading the department of the Military Engineer Services.

3. Certain disputes in relation to the said Contract arose by and between the respondents and the Chief Engineer, Navy Bombay during the execution of the said Work. According to the respondents, though the original period of completion stipulated under the said Contract was 18 months, the petitioners disregarded their contractual obligations from the very beginning and consequently the respondents were made to suffer damages due to the acts of omission and commission on the part of the petitioners. It is also the case of the respondents that the petitioners breached their reciprocal contractual obligations as regards timely handing over of the site, materials, plans, etc., and extended the period of completion under the said Contract from 18 months to more than 46 months by giving 8 separate and belated extensions of time; reduced the scope of work beyond the prescribed limits; and did not correctly pay the escalation for materials and labour as per the formula given in the Contract. It is also the case of the respondents that the respondents had signed the final bill under protest as large amounts were still due to the respondents under the said Contract. The respondents had submitted their claims to the petitioners but the petitioners did not agree to consider the claim of the respondents. The respondents invoked the arbitration by serving a notice upon the designated authorised viz., Engineer-in-Chief of MES Department of the petitioners. The respondents enclosed a list of claims and requested the designated authority to appoint an arbitrator. The Chief Engineer, Navy Bombay concurred in and recommended to the Engineer-in-Chief to appoint an arbitrator. The Chief Engineer, Navy Bombay, preferred only one claim against the respondents and that was for the costs of the reference to arbitration since according to the petitioners they had paid the final bill to the extend agreed by them to the respondents. The Engineer-in-Chief, MES Department appointed one M. V. S. Rao as the Sole arbitrator, an officer of the "MES Department. The said Rao accepted the appointment as the Sole Arbitrator and by his letter dated 31st Dec., 1993 called upon both the parties to submit to him their pleadings, defence and counters. The petitioners submitted their statement of claims along with their letter dated 27th Jan., 1994 claiming only the costs of the reference/, arbitration. Along with their letter dated 24th Feb., 1994, the respondents submitted their pleadings together with the relevant data and exhibits. Along with their letter dated 12th March, 1994, the respondents submitted their reply/written statement to the petitioners' claims. Along with their letter dated 30th June, 1994, the petitioners submitted their reply written statement to the respondents' statements of claims before the arbitrator. The respondents filed their rejoinder to the written statement of the petitioners along with their letter dated 29th July, 1994. The arbitrator heard the parties in the office of the petitioners at Bombay from 10th August, 1994 to 12th Aug. 1994. Both the parties were fully represented before the arbitrator and were given full and fair opportunity to make their respective submissions and produce their respective

evidence in the arbitration proceedings. Both the parties were fully heard by the arbitrator. The arbitrator has made his Award dated 30th August, 1994 which has been filed in this Court and numbered as Award No. 233 of 1994. By this petition the petitioners have challenged the said Award and intend to have the same set aside by this court.

4. Mr. Suraj Shah, learned counsel appearing for the petitioners, has submitted that the arbitrator has misconducted himself by not considering the submissions and contentions of the petitioners made before him, by making the said Award in breach of the principles of natural justice, by taking on record certain documents which were not produced before him during the course of hearing of the reference and basing his conclusions prejudicial to the interest of the petitioners on the strength thereof, by taking undue interest in the respondents and proceeding with the hearing of the reference while he was on medical leave; and by entertaining the claims of the respondents pertaining to excepted matters. Mr. Suraj Shah has further submitted that the arbitrator by travelling beyond the written terms of the said Contract and awarding Claim No. 8 of the respondents in contravention and violation of the express terms thereof has misconducted himself and the proceedings before him. Mr. Suraj Shah has also submitted that the respondents' Claims Nos. 1, 2, 3, 5, 6, 7, 10, 11, 13, 21, 22, 23 and 24 approximately aggregating to Rs. 17 lakhs have been awarded by the arbitrator without calling upon the respondents to produce any documentary evidence in support thereof and without the respondent producing any documentary evidence in support thereof.

5. Mr. M. H. Shah, learned Counsel appearing for the respondents, while supporting the said Award, has submitted that in no manner the arbitrator has either misconducted himself or the proceedings before him and that the arbitrator has neither travelled beyond the written terms of the said Contract nor awarded any amount to the respondents in breach or contravention of any express term of the said Contract. Mr. M. H. Shah has further submitted that for the defaults of the petitioners, the respondents could not be held responsible. In the submission of Mr. M. H. Shah, the arbitrator has interpreted the terms of the said Contract including Clause 11 thereof and on such interpretation, the view taken by the arbitrator being a possible and plausible view, the court cannot substitute its own view even if the view taken by the arbitrator may not meet the approval of the Court. Mr. M. H. Shah has further submitted that no proposition of law which can be said to be erroneous is made as the basis of the said Award and there being no error apparent on the face of the said Award, the said Award cannot be set aside by this Court. Mr. M. H. Shah has further submitted that in the facts of the case, the said Award is valid, proper, and legal and cannot be set aside by this Court.

6. The petitioners have sought to challenge the said Award on various grounds. However, since the ambit and scope of challenge to an award u/s 30 of the Arbitration Act, 1940 (for short, "the Act") has now been laid down by catena of

decisions of the Supreme Court as also this Court and other High Courts, an award is not vulnerable to any challenge thereto. Before I deal with the grounds of challenge to the said award, it is necessary to state that when an arbitrator is made the final arbiter of the disputes between the parties, an award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate the facts. The reasonableness of the reasons given by the arbitrator cannot be challenged and the appreciation of evidence by the arbitrator is never a matter which the Court questions and considers. An arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself task of being the judge on the evidence before the arbitrator. Once there is no dispute as to the contract, what is the interpretation of that contract is a matter for the arbitrator on which the court cannot substitute its own decision. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view, though perhaps not the correct view, the award cannot be examined by the court. However, an award can be set aside if the arbitrator misconducts himself or the proceedings or proceeds beyond his jurisdiction. There is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. The distinction has to be drawn between an error within the jurisdiction and an error in excess of jurisdiction. An award may be remitted or set aside on the ground that the arbitrator making it had exceeded his jurisdiction. An award can be set aside where there is error apparent on the face thereof, i.e., if there is any proposition of law which is apparent on the face thereof and is erroneous and made basis for it. The court in dealing with the application to set aside an award is not to consider whether the view of the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Section 30 of the Act. Needless to say that the Court has not appellate jurisdiction in deciding the petition to set aside an award u/s 30 of the Act.

7. The existence of the arbitration agreement between the petitioners and the respondents was not in dispute. The arbitration agreement between the petitioners and the respondents stipulated in no uncertain terms the mode of appointment of arbitrator. The said Rao was appointed as the sole arbitrator in accordance with the arbitration agreement between the petitioners and the respondents. Before the arbitrator, the respondent had filed various claims under the following heads :

- (i) Claim No. 1 for Rs. 3,62,340/- claiming extra payment for execution of work using sand (river) in lieu of crushed stone specified;
- (ii) Claim No. 2 for Rs. 1,10,192/- claiming extra payment which according to the respondents due but not made for work expected to muddy condition and change in strata for building and services;

- (iii) Claim No. 3 for Rs. 3,61,193/- claiming extra payment for providing double shutters for windows in lieu of single shutter as per contract provisions;
- (iv) Claim No. 4 for Rs. 76,400.83 claiming extra payment for applying 10-12 mm plaster to underside of RCC floor and roof slabs;
- (v) Claim No. 5 for Rs. 42,240/- claiming extra payment for providing MS boxes over niche for meter box;
- (vi) Claim Nos. 6 and 7 for Rs. 1,78,352.17 for (i) on account of incorrect and arbitrary rates applied to various items of external water supply not included in the Contract Schedule A (Part VIII) and (ii) loss suffered due to abnormal reduction in the scope of external water supply.
- (vii) Claim No. 8 for Rs. 20,76,035/- for compensation for extra expenses and losses suffered due to prolongation of contract period on account of various breaches of the Department;
- (viii) Claim No. 9 for Rs. 1,96,701.55 for compensation for loss suffered due to abnormal delay in ordering work order under provisional items;
- (ix) Claim No. 10 for Rs. 2,62,473/- for compensation for losses suffered due to delayed and under payment in various RA Bills;
- (x) Claim No. 11 for Rs. 32,650/- for extra expenditure incurred due to rectification of sewage line and relaying the same;
- (xi) Claim No. 12 for the losses suffered due, to unilateral and arbitrary reduction in quantity and rates against electrification;
- (xii) Claim No. 13 for Rs. 1,60,568.38 for underpayment made in respect of escalation of Contract;
- (xiii) Claim Nos. 14 and 19 for Rs. 1,03,56.32 on account of incorrect preparation of door for use of angle iron door frame in lieu of pressed steel frames and consequent changed and incorrect recoveries made in respect of providing second class hardwood shutters in lieu of first class hardwood;
- (xiv) Claim No. 15 for Rs. 5,000/- for extra expense incurred due to providing watchman at substation;
- (xv) Claim No. 16 for losses due to abnormal reduction in the scope of work for Schedule A (Part IX) (that is, site clearance and area development);
- (xvi) Claim No. 17 for reimbursement of work contract sales-tax to Sales Tax Authority;
- (xvii) Claim No. 18 for Rs. 20,688.32 for refund of arbitrary recovery made for electricity charges without producing bills;
- (xviii) Claim No. 20 for Rs. 18,400/- for reimbursement of extra costs incurred in shifting of Godown and offices;

(xix) Claim No. 21 for Rs. 6,40,294/- for escalation payable as per Contract escalation formula on contractors claim payable at contract rate and/or SSR rates;

(xx) Claim No. 22 for Rs. 1,02,873/- for losses suffered by contractor as the department has violation various terms and conditions of the Contract;

(xxi) Claim No. 23 for interest from the due date of detention till payment at the rate of 18% per annum (past, pendente lite and future);

(xxii) Claim No. 24 for Rs. 82,611/- for the refund of amount retrenched from the final bill after contractors' signature in March 1992 as a result of audit/technical check which was known to the Respondents only at the time of receiving payment on 30th March, 1993;

(xxiii) Claim No. 25 for Rs. 44,791.38 for delay in payment of final bill from March 1992 and consequent delay in release of BGB of 1.5 lakhs given as retention money;

(xxiv) Claim No. 26 for Rs. 1,05,000/- for costs of reference.

8. The petitioners had filed only one claim and that was only for the costs of the reference amounting to Rs. 48,175/-.

9. The arbitrator rejected Respondents' Claims Nos. 9, 14, 15 and 19 against the petitioners. The Respondents had withdrawn their Claims Nos. 12 and 16 against the petitioners in the arbitration proceedings before the arbitrator. The arbitrator held Claim No. 17 of the Respondents pertaining to sales-tax as premature and as such did not award to the respondent. The Respondent's Claim No. 11 against the petitioners was award to the full extent of Rs. 34,650/-. The Claim No. 18 of the Respondents against the Petitioners was awarded to the extent of Rs. 19,597.68 as per the agreement arrived between the parties. The other claim of the Respondents against the Petitioners were partly allowed by the arbitrator as under :

(i) Claim No. 1 was allowed to the extent of Rs. 1,30,900;

(ii) Claim No. 2 was allowed to the extent of Rs. 85,192;

(iii) Claim No. 3 was allowed to the extent of Rs. 3,40,137.60;

(iv) Claim No. 4 was allowed to the extent of Rs. 74,931.23;

(v) Claim No. 5 was allowed to the extent of Rs. 35,773;

(vi) Claim Nos. 6 and 7 were allowed to the extent of Rs. 25,000;

(vii) Claim No. 8 was allowed to the extent of Rs. 20,95,255;

(viii) Claim No. 10 was allowed to the extent of Rs. 1,45,625;

(ix) Claim No. 13 was allowed to the extent of Rs. 1,56,421.82;

- (x) Claim No. 20 was allowed to the extent of Rs. 15,000;
- (xi) Claim No. 21 was allowed to the extent of Rs. 3,00,302.04;
- (xii) Claim No. 22 was allowed to the extent of Rs. 1,55,267.23;
- (xiii) Claim No. 25 was allowed to the extent of Rs. 22,395.69;
- (xiv) Claim No. 26 was allowed to the extent of Rs. 19,900.

So far as Claim No. 23 for interest is concerned, past interest at the rate of 18% per annum for the period commencing from 1st April, 1993 to 31st December, 1993 for awarded amounts in respect of Respondent's Claim Nos. 1, 2, 3, 4, 5, 11, 13, 18, 21, 22 and 24 against the Petitioners was awarded to the Respondents by the arbitrator. Pendente lite interest for the period commencing from 1st January, 1994 to 30th August, 1994 at the rate of 18% in respect of these claims was also awarded to the Respondents. Future interest from 31st August, 1994 (with a grace period of 60 days) till the date of payment or date of decree, whichever is earlier, against all amounts awarded except the amount award on account of costs was also awarded to the Respondents at the rate of 18% per annum. The arbitrator has, however, clarified that in the event of payment as per the award being not made by the petitioners to the respondents within the grace period of 60 days, for payment of future interest, the petitioners would not be entitled to any grace period. The Respondents' Claim No. 24 was awarded against the petitioners to the extent of Rs. 69,911/- and the Respondents were directed to give bank guarantee on receipt of the said amount for Rs. 25,000/- in favour of the Petitioners. The Claim for costs made by the Petitioners was rejected by the arbitrator.

10. The Respondents had addressed letters from time to time seeking extension of time for completion of the said work and the Accepting Officer of the Petitioners in terms of condition No. 11 of IAFW-2249 had granted extensions of time to the Respondents for completion of the said work under the said contract. In each of the extensions granted to the Respondents, the Respondents were informed to initiate necessary deviation order stating the financial effect as nil and forward a copy thereof to the Chief Engineer, Bombay Zone at the earliest. In the proceedings before the arbitrator, both the parties were duly represented. The arbitrator had given full opportunity to both the parties to produce the necessary documents and to make their submissions on the merits of the claims. The arbitrator has not entertained any claim of the Respondents which can be said to fall in the excepted matters. In view of the reasons having been given by the arbitrator while awarding and/or rejecting the claims of the Respondents against the Petitioners, it cannot be said that the arbitrator has not applied his mind to the merits of the claims which he was called upon to adjudicate. There is nothing to show that the arbitrator has taken on record any material document adversely affecting the interest of the petitioners behind their back. Though the technical rules of Evidence Act did not apply to the proceedings before the arbitrator, the arbitrator did follow the principle of natural justice while awarding

the claims of the Respondents to the extent awarded by him or rejecting the same. Though on medical leave but on becoming physically fit to conduct the arbitration proceedings, the arbitrator, did proceed to conduct the hearings of the reference. Merely because the arbitrator proceeded with the hearing of the reference on physically becoming fit to conduct the proceedings though on medical leave, it cannot be said that the arbitrator took undue interest in the Respondents or that he was interested in the Respondents or misconducted himself or the proceedings before him.

11. In respect of the Claim No. 8 of the Respondents against the Petitioners, the arbitrator has awarded the sum of Rs. 20,95,255/- to the Respondents. The Respondents had made the claim for Rs. 28,76,035/- against the petitioners for compensation for extra expenses and losses alleged to have been incurred or suffered by the Respondents due to prolongation of Contract period on account of various breaches of the said Contract alleged to have been committed by the Petitioners. In the Statement of claims filed before the arbitrator, the Respondents contended that the petitioners had granted as many as 8 extensions for completion of the said work. In para 10.1 of the Statement of claims the Respondents have in terms stated that all such extensions were granted by the petitioners due to reasons which were beyond the control of the Respondents. The reasons for grant of such extensions, as stated by the Respondents, were due to bad planning and delay in decisions and non-availability of Government stores for being issued under Schedule B. The undermentioned tabulated statement will show the original date as also the extended date for completion of the said work and the dates on which the applications were made by the Respondents for grant of extensions as also the dates on which such, extensions were granted :

Clause 11 of IAHW-2249 General Conditions of Contract which was incorporated in the said Contract made provision for grant of extensions and the circumstances in which extension for completion of the work could be granted. The said Clause 11 was in three parts. As per Clause 11(a) if the work was delayed :

- (i) by force majeure; or
- (ii) by reasons of abnormal bad weather; or
- (iii) by reason of serious loss or damage by fire; or
- (iv) by reason of civil commotion, local components of work, strike or lockout, affecting any of the traders employed on the work, or
- (v) by reason of delay on the part of nominated sub-contractors or nominated suppliers which the contractors as in the opinion of GE taken all practical steps to avoid or release; or
- (vi) by reason of delay on the part of contractors or tradesmen engaged by the Government in executing works forming part of the Contract; or

(vii) by reason of any other cause, which in the absolute discretion of the Accepting Officer is beyond the Contractors control;

then in any such case, the officer could make fair and reasonable extension in the completion dates of individual items or groups of items of work for which separate periods of completion were provided in the Contract.

As per Clause 11(B), if the work was delayed -

(i) by reason of non-availability of Government stores shown in Schedule 8; or

(ii) by reason of non-availability of breakdown of Government tools and plants listed in Schedule C;

then any in any such event, notwithstanding the provisions contained in the earlier part of Clause 11, the Accepting Officer might in his discretion grant such extension of time as might appear reasonable to him and the same was required to be communicated to the Contractor by the GE in writing.

Clause 11(C) was as under :

"No claim in respect of compensation of or otherwise howsoever arising, as a result of extensions granted under Conditions A and B above shall be admitted."

In view of above recited Clause 11(C) which in express terms prohibited grant of allowance of claim in respect of compensation or otherwise howsoever arising as a result of extensions granted under Conditions (A) and (B) of Clause 11, Mr. Suraj Shah submitted that award of Rs. 20,95,255/- by the arbitrator in respect of Claim No. 8 made by the Respondents is in contravention or violation of express terms of the Contract and as such liable to be set aside. Mr. Suraj Shah further submitted that by awarding the said amount to the Respondents, the arbitrator has exceeded his jurisdiction and travelled beyond the terms of the said Contract and as such the said award, at least, to the extent it awards the said sum of Rs. 20,95,255/- to the Respondents is bad in law.

12. Mr. M. H. Shah has submitted that in the arbitration reference the arbitrator was called upon to interpret and/or construe the said Clause 11 including sub-clauses (A), (B) and (C) thereof and since the question of interpretation and/or construction of agreement and the terms contained therein is a question of law, a specific question of law was submitted to the arbitrator for his decision and the arbitrator has decided it and even if the decision is erroneous, it does not make the said Award bad on its face so as to be set aside by this court. Mr. M. H. Shah has further submitted that in the facts of the case, in any event a question of law was involved in the reference before the arbitrator which he decided and as such, unless there is error in law apparent on the face of the said Award, it cannot be set aside by this court even in respect of the Respondents' Claim No. 8 awarded to the Respondents. In support of his submissions, Mr. M. H. Shah has put reliance on the judgments of the Supreme Court in the case of U.P. Hotels and Others Vs. U.P. State Electricity Board, , Food Corporation of India Vs.

Joginderpal Mohinderpal, , and Sudarsan Trading Co. Vs. Government of Kerala and Another, . Reliance has also been placed on the judgments of this court in the case of International Airport Authority of India v. Mohinder Singh & Co. (Arb. Pet. No. 188 of 1988 dated 5-9-1995) by Jhunjhunwala J.), International Airport Authority of India v. Noor Mohamed & Sons (Arb. Pet. 160 of 1989 decided on 5-9-1992), by Jhunjhunwala J.), and Starting Wilson Electrical Pvt. Ltd. v. Reserve Bank of India (Appeal No. 403 of 1992 dated 9/10-8-1994), (decided by this court in Pendse and Vyas JJ.) Reliance has also been placed on the judgment of the Calcutta High Court in the case of Union of India (UOI) Vs. Unit Construction Co. (Pvt.) Ltd. and Another, .

13. In the case of U.P. Hotels (supra) the Supreme Court has held that even assuming that there was an error of construction of the agreement or even that there was an error of law in arriving at a conclusion, such an error is not an error which is amenable to correction even in a reasoned award under the law. It is further held by the Supreme Court that in order to set aside an award, there must be a wrong proposition of law laid down in the award as the basis of the award. In that case, there was Bulk Supply Agreement between the consumer and the Electricity Board for supply of energy. On interpretation of the agreement, the umpire held that the claim of the consumer was covered by a decision of the Supreme Court and the agreement was binding on the Board and its terms could not be varied from the uniform rate under sub-sections (i) and (ii) of Section 49 of the Electricity (Supply) Act, 1948. In the facts of the case, the Supreme Court held that a question of law arose during the course of the proceedings and such a question was decided by the umpire on a view which was a plausible one to take. It was further held that even if there was no specific reference of a question of law referred to the Umpire, there was a question of law involved. In the case of Food Corporation of India (supra) the Supreme Court has held that the arbitrator's award may be set aside for error of law appearing on the face of it though this jurisdiction is not lightly exercised. It is further held that an award can also be set aside if, inter alia, the arbitrator has misconducted himself or the proceedings. However, the Supreme Court held that it is not misconduct on the part of the arbitrator to come to erroneous decision, whether his error is one of fact or law, and whether or not his findings of facts are supported by evidence. In that case, the arbitrator had chosen to make a speaking award and the Supreme Court held that unless it was demonstrated to the Court that such reasons are erroneous as such as the proposition of law or a view which the arbitrator has taken is a view which it could not possibly be sustained on any view of the matter, then a challenge to the award of the arbitrator cannot be sustained. The arbitrator had construed the effect of particular clause of the contract and the Supreme Court on the facts of the case, held that it could not be said that such a construction was a construction which was not conceivable or possible and the order of the arbitrator was fair order after considering all the records and the conclusion arrived at by him was a plausible conclusion, therefore, the Court held no jurisdiction to interfere or

modify the award. In the case of Sudarshan Trading Company (supra), the Supreme Court has held that reasonableness of the reasons given by the arbitrator, cannot be challenged. It is further held that appraisal of evidence by the arbitrator is never a matter which the Court questions and considers. It is also held that the arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator, the Supreme Court further held :

"Once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator and on which court cannot substitute its own decision. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the Court."

Even in the case of International Airport Authority of India v. Joginder Pal (supra), on the facts of the case, it was held by this Court that the view taken by the arbitrator was possible or plausible view though perhaps not the only view which could be taken on interpretation of the terms of the contract and as such, the award could not be set aside. In the case of International Airport Authority of India v. Noor Mohamed & Sons (supra), this Court held that whether particular term of the contract in the facts of the case applied or not was purely a question of interpretation of the contract and if two interpretations were possible and the arbitrator had accepted one of such possible interpretations, the court cannot interfere with the same though the Court may not agree with such interpretation. The Division Bench of this court in the case of Sterling Wilson Electricals Pvt. Ltd. (supra) while relying upon the judgment of the Supreme Court in the case of UP Hotels has held that the question of law arises during the course of the proceedings before the arbitrator when such question of law is involved though not specifically referred to arbitrator for being decided by the arbitrator. In the case of Union of India v. United Construction Company Pvt. Ltd. (supra), the Calcutta High Court has held that the Court has no jurisdiction to look into the contract unless the contract is incorporated in the award either expressly or by implication and the ground taken in the error of law apparent on the face of the award. It was a case of a non-speaking award. The Court held that excepting in case of error apparent on the face of the award, the Court has no jurisdiction to investigate into the correctness of the arbitrator's decision on the merit of the case either on point of law or on facts.

14. In support of his submission that the arbitrator was bound by the terms of the said Contract and was not entitled to travel beyond the same or award any amount to the Respondents in contravention or violation of said Clause 11 and more particularly the said Clause 11(c). Mr. Suraj Shah has put reliance on the judgments of the Supreme Court of India in the case of M/s. Prabartak Commercial Corporation Ltd. Vs. The Chief Administrator Dandakaranya Project and another, , and in Associated Engineering Co. Vs. Government of Andhra

Pradesh and another, , Reliance has also been placed on the judgment of the Division Bench of this court in the case of Union of India Vs. M/s. Ajit Mehta and Associates, Pune and Others, .

15. In the case of Prabarka Commercial (supra) the Supreme Court has held that if the disputes referred to arbitration did not fall within the ambit and scope of the arbitration agreement, the arbitrator had no jurisdiction to arbitrate and as such the resultant award is bad in law. In the case of Associated Engineer Co. (supra) the Supreme Court has held that the dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which is to be decided outside the award. It is further held that an umpire or the arbitrator cannot widen his jurisdiction by deciding the question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. The Supreme Court has further held that the umpire or arbitrator cannot say that it does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. If he exceeds his jurisdiction by so doing, his award would be liable to be set aside. The Supreme Court has further held that if the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction but if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking to the material outside the award. Extrinsic evidence is admissible in such case because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. In the case of Union of India v. Ajit Mehta & Associates (supra) it was held by the Division Bench of this court that when a specific prohibition in contract against entertainment of certain claims is contained and claims nonetheless are granted by the arbitrator, the arbitrator was guilty of legal misconduct. The Division Bench had followed the judgments of the Supreme Court in the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), , and in the case of Alopri Parshad and Sons Ltd. Vs. Union of India (UOI), . In the case of Thawardas Pherumal (supra), a contractor entered into a contract with the Dominion of India for the supply of crores of pucca bricks according to a schedule. Delivery was to be at the kiln site. Owing to the default of the Government in not removing the burnt bricks which were ready for delivery and removal from the kilns according to the contract, delay occurred in the time table of the Government for removal with the result that lacs of katcha bricks were destroyed by rains. As this loss was occasioned by the default of the Government, the contractor claimed that he should be paid their price. The agreement between the parties contained an express stipulation that the Government "will not entertain any claim for damage to unburnt bricks due to any cause whatsoever". The Supreme Court held :

"that if Government expressly stipulated, and the contractor expressly agreed, that the Government was not to be liable for any loss occasioned by a consequence as remote as this, then that is an express term of the contract and

the contractor must be tied down to it".

The award made in breach of the terms of the contract was set aside. In the case of Alopi Prasad and Sons Ltd., the contract of purchasing ghee required by the Army personnel expressly stipulated for payment to the Agents, of charges at rates specified in the contract, under the head establishment and contingencies" the award of the arbitrators, on a general reference, awarding additional expenses under that head on account of abnormal rise in prices was, on the face of it, held to be erroneous. It view of the rate at which establishment and contingency charges were to be paid, was expressly stipulated in the contract, the Supreme Court held :

"..... when the contract expressly stipulated for payment of charges at rates specified therein, we fail to appreciate on what ground, the arbitrators could ignore the express covenants between the parties and award to the Agent amounts which the Union of India had not agreed to pay to the Agents. The award of the arbitrators awarding additional expenses under the head of establishment and contingencies, together with interest thereon, is on the face of it erroneous."

The Supreme Court further held -

"..... The Indian Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity."

The Claim No. 8 of the respondents for Rs. 28,76,085/- was considered by the arbitrator and the arbitrator has partly awarded the sum of Rs. 20,95,255/- to the respondents. According to the respondents, though the time was stated to be the essence of the contract, the petitioners did not consider it in real spirit and extended dates of completion of the said work from time to time. Clause 11(C) reproduced hereinabove amongst other things records an agreement between the petitioners and the respondents in categorical terms prohibiting admission of any claim by the petitioners in respect of compensation or otherwise as a result of extensions granted under sub-clauses (A) and (B) of the said Clause 11. Sub-clause (A) of Clause 11 records one of the reasons for delay being caused as the circumstances beyond the contractor's control. The fact that the circumstances beyond respondents' control existed necessitating the grant of extensions for completion of the said work has been admitted by the respondents" in the statement of claims filed before the arbitrator. The arbitrator on consideration rival contentions raised before him concluded that the petitioners were responsible for delay in completion of the said work resulting in extension of period of performance of the said Contract and held that the respondents" were entitled for the increased cost of works in whatever form the respondents" have suffered, be that on material, labour or supervisory staff or other incidental expenses, on interpreting or construing the said Clause 11 contained in the said

Contract, the arbitrator held that there was no prohibition in the said Contract for making payment to the respondents increased costs suffered by the respondents on supervisory staff, idle machinery and other incidental expenses. The arbitrator further held that the respondents could not be reimbursed for loss on capital blocked up. However, extra expenditure incurred by the respondents could be considered for reimbursement. The arbitrator assessed the extra cost on work for supervisory staff, idle labour, overhead expenses, tools and plant, loss of interest on BGB margin money etc., for the prolonged period and awarded the sum of Rs. 20,95,255/- to the respondents in respect thereof. The award of the said sum of Rs. 20,95,255/- to the respondents by the arbitrator has been in contravention or violation of the express term of the said Contract, viz., Clause 11(C) which is in terms prohibited grant of any claim in respect of Compensation or otherwise, however arising, as a result of extensions granted under sub-clauses (A) and (B) of Clause 11 of the said Contract. The sub-clause (C) of Clause 11 of the said Contract, being an expression term of the Contract duly agreed between the parties thereto, is clear and unambiguous. The interpretation placed by the arbitrator on the said sub-clause (C) of Clause 11 is totally unsustainable. The said Clause 11 could not be interpreted or construed in the manner as sought to be interpreted or construed by the arbitrator. The interpretation to the said Clause 11 and more, particularly sub-clause (C) thereof put by the arbitrator is neither possible nor plausible interpretation but is absolutely erroneous one. The arbitrator by awarding the said sum of Rs. 20,95,255/- to the respondents has travelled beyond the terms of the said contract and has acted in excess of the powers given to him under the said contract. By granting the Claim No. 8 to the extent of Rs. 20,95,255/- to the Respondents, the arbitrator has out stepped the confines of the said contract and wandered far outside the designated area. This error has gone to the root of his jurisdiction because he has asked himself the wrong question, disregarded the said Contract and awarded in excess of his authority so far as the Claim No. 8 of the respondents is concerned. In awarding the Claim No. 8 of the respondents even to the extent of Rs. 20,95,255/- the arbitrator has acted reasonably and irrationally in ignoring the limits and clear provisions of the said contract. In awarding the said Claim No. 8 which was totally opposed to the provisions of the said Contract to which he has made specific reference in allowing the same to the extent aforesaid, the arbitrator has misdirected himself if by manifestly disregarding the limits of his jurisdiction and the bound of the said Contract from which he derived his authority thereby acting *ultra fines compromissi*. Following the ratio of the judgment of the Supreme Court in the case of Associated Engineering Company (*supra*), and of the Division Bench of this Court in the case of Union of India v. M/s. Ajit Mehta & Associates (*supra*), the award of Rs. 20,95,255/- in respect of Claim No. 8 of the respondents being bad in law is liable to be set aside. The ratio of judgments relied upon by Mr. M. H. Shah has no applicability to the facts of the instant case since interpretation of said Clause 11 by the arbitrator under no circumstances be said to be a possible or plausible interpretation.

16. There is no merit in the submissions made on behalf of the petitioners that the arbitrator has awarded interest at excessive rate or that he exceeded his jurisdiction in awarding interest pendente lite and/or future interest. The controversy about the jurisdiction of the arbitrator in awarding Pendente lite interest has been set at rest by the Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , wherein it has held :

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite."

The ratio of this judgment applied with all force to the facts to the instant case. The issue as regards jurisdiction of the arbitrator to award past pendente lite and future interest is no more res integra.

17. In the facts of the case. I find no infirmity in the said Award save and except in respect in the Claim No. 8 of the respondents which has been awarded to the respondents to the extent of Rs. 20,95,255/-. Since the claims awarded to the Respondents are severable, it is not necessary to set aside the said Award in its entirety. Hence, petition is partly allowed and the said Award to the extent it awards payment of the sum of Rs. 20,95,255/- by the petitioners to the Respondents in respect of Claim No. 8 of the Respondents against the petitioners and interest pendente lite and future interest thereon is set aside. The rest of the said award is upheld and the petition to the extent it challenges the rest of the said Award is dismissed. There shall, however, be no order as to costs of the petition.

18. Order accordingly.