

CASE NO.:
Appeal (civil) 4040-4041 of 2002

PETITIONER:
SHYAMA CHARAN AGARWALA & SONS

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 15/07/2002

BENCH:
D.P. MOHAPATRA & P. VENKATARAMA REDDI

JUDGMENT:
JUDGMENT

2002(1) Suppl.SCR 148 = 2002(6)SCC 201

With
Appeal (civil) 4043-4044 of 2002

D.P.MOHAPATRA, J.

Leave is granted in all the SLPs.

These appeals are directed against the judgment of the High Court of Bombay at Goa, dated 29th February, 2000. Indeed both the parties to the dispute have filed appeals assailing the judgment of the High Court.

M/s. Shyama Charana Agarwala & Sons (hereinafter referred to as 'the Contractor') were entrusted with the work of construction of married accommodation for 80MCPOs/CPOs/80Pos and 16 sailors at Goa Naval Area, Varunapuri, Mangor Hill, Vasco-da-Gama, by the Union of India (for short 'the UOI') through the Chief Engineer (Navy), Cochin Naval Base under the agreement No.CECZ/GOA-12 of 1990-91. The work order was placed vide letter no.8319/43/E-8, dated 20-7-1990 for Rs.2,62,44,057-94. The date of commencement of the work was 16-8-1990 and the work was to be completed by 15-11-1991.

The same contractor by another agreement no.CECZ/GOA/40 of 1991-92 was entrusted with the work of construction of married accommodation for MCOS/CPOs and JCOs at Goa. The work order was placed vide letter no.8305/88/E-8, dated 5-2-1992. The date of commencement of the work was 24-2-1992 and the work was to be completed by 23-2-1994.

Before the work could be completed certain differences/disputes arose between the parties. Under Clause 70 of the General Conditions of the Contract all disputes [(other than those for which the decision of the CWE (Commander Works Engineer) or any other person is by the contract expressed to be final and binding)] shall, after written notice by either party to the contract to the other of them, be referred to sole arbitration of an Engineer Officer to be appointed by the Authority mentioned in the tender document. In the said clause it was further provided that unless both the parties agree in writing, such reference shall not take place until and unless after

completion or alleged completion of the work or termination or determination of the contract under Conditions 5, 56 and 57 thereof. The contractor gave notice for appointment of arbitrator specifying the items of dispute for adjudication. The UOI agreed for appointment of arbitrator. Accordingly Shri M.V.S.Rao, Chief Engineer (Air Force), Bangalore was appointed as the Sole Arbitrator vide the Engineer-in-Chief's letter dated 30th December, 1993. The nature of disputes raised in both the cases are similar though the amounts claimed against them differ. The disputes referred for arbitration were enumerated at Appendix 'A' to the said letter. In the contract agreement No.CECZ/GOA-12/1990-91 the items of claim were as follows :

Sr.No.	Brief description of Claims/Items	Amount in Rupees (Approx.)
1	Reimbursement of additional costs in the procurement of stone aggregate from crushers of Belgaum, Hubli, etc. in lieu of local sources of Goa	8,00,000-00
2	Reimbursement of additional costs in excavation encountering rock other than soft/disintegrated rock/laterite rock	14,00,000-00
3	Reimbursement of additional costs due to working in restricted area in lieu of unrestricted area	25,00,000-00
4	Interest on Serial Nos.1,2,3 above	Not indicated
5	Costs of reference	50,000-00

In respect of the contract agreement No.CECZ/GOA/40/1991-92 the following claims were made by the contractor :

Sr.No.	Brief description of Claims/Items	Amount in Rupees (Approx.)
1	Reimbursement of additional costs in the procurement of stone aggregate from crushers of Belgaum, Hubli, etc. in lieu of local sources of Goa	36,00,000-00
2	Reimbursement of additional costs in excavation encountering rock other than soft/disintegrated rock/laterite rock	

12,00,000-00

3

Reimbursement of additional costs
due to working in restricted area in
lieu of unrestricted area

30,00,000-00

4

Interest on Serial Nos.1,2,3 above

Not indicated

5

Costs of reference

50,000-00

The arbitrator by his Award dated 28th February, 1994 accepted the claims raised by the contractor. In respect of CECZ/GOA-12/1990-91 the award reads as follows:

Reference made to the
Arbitrator

Award given by the
Arbitrator

CLAIM NO.1

Reimbursement of
additional cost in
procurement of stone
aggregate from
crushers of Belgaum,
Hubli etc. in Lieu of
Local sources of Goa.
Rs.8,00,000/-.

13.10 Union of India shall
reimburse for the increase in rates
to the contractor M/s.Shyama
Charan Agarwala & Sons as
under:-

(i) For the quantity of stone
aggregate already brought after
Aug.92 and upto 24-01-94.

20 mm/12.5mm 2268 cm @
Rs.250/-per cm Rs.5,67,000/-
40 mm-100 cm @
Rs.230/- per cm Rs. 23,000/-

Rs.5,90,000/-
=====

(ii) For the quantities of stone
aggregate brought after 24-01-94,
reimbursement for increase in
rates shall be made at the rate of
Rs.250/- per cm for 20mm/
12.5 mm,
Rs.230/- per cm for 40 mm, and
Rs.225/- per cm for 63-40 mm.
This reimbursement shall be made
in each RAR for the actual quantity
brought at site.

(iii) Reimbursement/refund on variation in prices of material/fuel and labour wages, as per conditions 18 and 19 of special condition on pages 111 to 116 of the contract shall also be paid in RARs for the stone aggregates stone metal stone chipping brought after 24-01-94 as per the said conditions, excepting that the value of WO as in condition 18(a) for stone aggregate stone metal/stone chipping shall be taken as on 24-01-94 or any date immediately after 24-01-94 as published by the Economic Adviser, Govt. of India.

CLAIM NO.2

Reimbursement of additional costs in excavation encountering rock other than soft/disintegrated rock/laterite rock, Rs.14,00,000/-

14.7 Union of India shall pay to the contractor M/s. Shyama Charan Agarwala & Sons as per details given below :-
(i) Additional payment . For works already executed using chisels.
(a) Excavation (Schedule A Partl) 3930 cm @Rs.118.70 per cm Rs.3,83,594.80
(b) Surface excavation (as in item I Schedule A Part V) 50 SM @ 12.41 per SM Rs. 620.50

Total Rs.3,84,215.30
=====

(ii) For excavation works yet to be executed using Chisels :
(a) Additional payment for Schedule A Part I for excavation @Rs.118.76 per cm.
(b) Net payment for item 1 Schedule A Part V @ Rs.18.33 per SM.
(c) Net payment for item 2 Schedule A Part VI @Rs.165.69 per cm.
(d) Net payment for item 1 Schedule A Part VII@ Rs.18.33 per SM.
(e) Net payment for item 2 Schedule A Part VII@ Rs.120.12 per cm.

(f) Net payment for item 3
Schedule A Part VII @Rs.129.15
per cm.

(g) Net payment for item 6
Schedule A Part VII @Rs.165.69
per cm.

(h) Net payment for item 2(a)
Schedule A Part VIII @Rs.189.36
per cm.

(i) Net payment for item 2(b)
Schedule A Part VI @Rs.199.68
per cm.

(j) Extra over rate for item 26
Schedule A Part IX @Rs.294.03
each.

(k) Extra over rate for item 27
Schedule A Part IX @ Rs.441.05
each.

(iii) Reimbursement on variation
of prices as per conditions 18 and
19 of special condition of CA shall
be paid as under :-

(a) Rs.38,635/- shall be paid on
Rs.3,84,215.30 as in (i) above for
works already executed.

(b) Further, reimbursement/
refund for works done in future as
in (ii) above shall be worked out
as per conditions 18 and 19 of
special condition of CA and shall
be paid in the RARs as per CA.

CLAIM NO.3

Reimbursement of
additional costs due
to working in
restricted area in
lieu of unrestricted
area Rs.25,00,000/-

15.5 AWARD

(i) It has been brought out that
the amount of work done
including material collected upto
24-01-94 is Rs.2,03,00,000/-.
Considering 9% on
Rs.2,03,00,000/- a sum of
Rs.18,27,000/- is allowed on this
account, which should be paid to
the contractor by the Union of
India.

(ii) The Respondent, Union of
India shall also pay 9% extra on
this account for the works carried
out including material collected
beyond Rs.2,03,00,000/- to the
contractor in each RAR, till such
time the work is completed.

(iii) As regards contractor claim
of reimbursement/refund on
variation of prices, as per
conditions 18 and 19 of special
condition of CA, this should also

be paid, as the value of work done is increased on account of this factor, I award as under : -
(a) A sum of Rs.1,83,718/- towards reimbursement on variation of prices as per conditions 18 and 19 of special condition of CA for the works done upto 24-01-94 which is Rs.2,03,00,000/- as above should be paid to the contractor by the Union of India.

(b) Reimbursement/refund on variation of prices for works done beyond 24-01-94 shall also be made on the principle that the value of work done including material collected, as assessed in the normal manner, shall be increased by 9% to cater for the restriction and reimbursement/refund shall be worked out on this increased value of work done including material collected as per conditions 18 and 19 of the special condition of CA and paid to the contractor by the Union of India in RAR as per condition 18 and 19 ibid.

CLAIM NO.4

Interest in SL 1 to 3 above.

Amount not indicated

Interest on claim no.1 to 3 (Past, Pendente lite and future)

(i) Past interest I allow a sum of Rs.7,75,920/- for past interest on claim No.1(i), 2(i) and 3(i).

(ii) Pendente lite interest There is no delay. I have been appointed Arbitrator on 30-12-93 and had entered upon the reference on 21-01-94 and the award has also been finalized. Therefore, claim of pendente lite interest is rejected.

(iii) Future interest This is allowed. The Union of India shall pay interest @ 18% per annum if the amount of award as in item (i) of claim no.1, item (i) and (iii) (a) of claim no.2 and item (i) and (iii) (a) of claim no.3 is not paid within 30 days from the date of Award, till payment of the award or decree from the Court, whichever is earlier. If the award is not paid within 30 days as above, interest will be calculated from the date of award to the date of payment or decree from

the Court whichever is earlier.

CLAIM NO.5

Cost of reference.

Rs.50,000/-.

This claim is rejected.

In respect of CECZ/GOA/40/1990-91 the award reads as follows :

Reference made to the Arbitrator
Award given by the Arbitrator

CLAIM NO.1

Reimbursement of additional cost in procurement of stone aggregate from crushers of Belgaum, Hubli etc. in Lieu of Local sources of Goa.
Rs.36,00,000/-.

Union of India shall reimburse for the increase in rates to the contractor M/s. Shyama Charan Agarwala & Sons as under:-

(i) For the quantity of stone aggregate already brought after Aug.92 and upto 24-01-94.

20 mm/3934 cm @ Rs.250/-
per cm Rs.9,83,500/-
40 mm-662cm @
Rs.230/- per cm Rs.1,52,260/-

Rs.11,35,760/-
=====

(ii) For the quantities of stone aggregate brought after 24-01-94, reimbursement for increase in rates shall be made at the rate of Rs.250/- per cm for 20mm/
Rs.230/- per cm for 40 mm.
This reimbursement shall be made in each RAR for the actual quantity brought at site.

(iii) Reimbursement/refund on variation in prices of material/fuel and labour wages, as per conditions 18 and 19 of special condition on pages 95A,96 to 99 of the contract shall also be paid in RARs for the stone aggregates stone metal stone chipping brought after

24-01-94 as per the said conditions, excepting that the value of WO as in condition 18(a) for stone aggregate stone metal/stone chipping shall be taken as on 24-01-94 or any date immediately after 24-01-94 as published by the Economic Adviser, Govt. of India.

CLAIM NO.2

Reimbursement of additional costs in excavation encountering rock other than soft/disintegrated rock/laterite rock, Rs.12,00,000/-

14.7 Union of India shall pay to the contractor M/s. Shyama Charan Agarwala & Sons as per details given below :-
(i) Additional payment . For works already executed using chisels.

(a) Excavation (Schedule A Part 1)
3870 cm @Rs.138.41 per cm

Rs.5,35,646.70

(b) Excavation in column pits
640 cm @ Rs.138.41 per cm.

- Rs.88,582.40

(c) Excavation over areas (Schedule A part V item I)
150 cm. @ Rs.260.14 per cm.

- Rs.39,021.00

TOTAL Rs.6,63,250.10

=====

(ii) For excavation works yet to be executed using Chisels :

(a) Additional payment for Schedule A Part I for excavation at applicable rates as in item (i) above.

(b) Net payment (extra over) for item 7 Schedule A Part III @ Rs.197.12 each earthing over and above the rate given in item 7 of Schedule A Part III.

(c) Net payment for item 1 Schedule A Part V @ Rs.260.14 per cm.

Reimbursement on variation of prices as per conditions 18 and 19 of special condition of CA shall be paid as under :-

(d) Rs.41,367.51/- shall be paid on Rs.6,63,250.10 as in (i) above for works already executed.

(e) Further, reimbursement/ refund for works done in future as

in (ii) above shall be worked out as per conditions 18 and 19 of special condition of CA and shall be paid in the RARs as per CA.

CLAIM NO. 3

Reimbursement of additional costs due to working in restricted area in lieu of unrestricted area Rs.30,00,000/-

15.5 AWARD

(i) It has been brought out that the amount of work done including material collected upto 24-01-94 is Rs.1,25,00,000/-. Considering 9% on

Rs.1,25,00,000/- a sum of Rs.11,25,000/- is allowed on this account, which should be paid to the contractor by the Union of India.

(ii) The Respondent, Union of India shall also pay 9% extra on this account for the works carried out including material collected beyond Rs.1,25,00,000/- to the contractor in each RAR, till such time the work is completed.

(iii) As regards contractor claim of reimbursement/refund on variation of prices, as per conditions 18 and 19 of special condition of CA, this should also be paid, as the value of work done is increased on account of this factor, I award as under :-

(a) A sum of Rs.70,167/- towards reimbursement on variation of prices as per conditions 18 and 19 of special condition of CA for the works done upto 24-01-94 which is Rs.1,25,00,000/- as above should be paid to the contractor by the Union of India.

(b) Reimbursement/refund on variation of prices for works done beyond 24-01-94 shall also be made on the principle that the value of work done including material collected, as assessed in the normal manner, shall be increased by 9% to cater for the restriction and reimbursement/refund shall be worked out on this increased value of work done including material collected as per conditions 18 and 19 of the special condition of CA and paid to the contractor by the Union of India in RAR as per condition 18 and 19 ibid.

CLAIM NO.4

Interest in SL 1 to 3
above.

Amount not
indicated

Interest on claim no.1 to 3 (Past,
Pendente lite and future)

(ii) Past interest I allow a sum
of Rs.4,14,761/- for past interest
on claim No.1(i), 2(i) and 3(i) vide
pages 13, 19 & 21 respectively
herein before.

(iii) Pendente lite interest
There is no delay. I have been
appointed Arbitrator on 30-12-93
and had entered upon the
reference on 21-01-94 and the
award has also been finalized.

Therefore, claim of pendente lite
interest is rejected.

(iv) Future interest This is
allowed. The Union of India shall
pay interest @ 18% per annum if
the amount of award as in item (i)
of claim no.1, item (i) and (iii) (a)
of claim no.2 and item (i) and (iii)
(a) of claim no.3 is not paid
within 30 days from the date of
Award, till payment of the award
or decree from the Court,
whichever is earlier. If the award
is not paid within 30 days as
above, interest will be calculated
from the date of award to the
date of payment or decree from
the Court whichever is earlier.

The contractor filed a petition under Section 14
of the Arbitration Act, 1940 (for short 'the Act') seeking a
direction to the arbitrator to file the final Award dated 28th
February, 1994 with all records in the Court so that the
Award could be made Rule of the Court with interest @
24% p.a. from the date of decree till payment. Notice of the
said petition was given to the UOI who filed an application
under Sections 30 and 33 of the Act raising certain
objections against the Award. The objections filed by the
UOI were rejected by the Civil Judge, Senior Division,
Vasco-da-Gama vide judgment dated 8th April, 1996 and
the Award dated 28th February, 1994 of the Arbitrator was
made Rule of the Court with a further direction to the UOI
to pay the contractor simple interest @ 18% p.a. on the
principal amount adjudged in the Award from the date of
the decree till the date of actual payment. Against the said
order the UOI filed appeals before the High Court under
Section 39 of the Act. The High Court by the judgment
rendered on 29th February, 2000 allowed the appeals in
part. The operative portion of the judgment reads as
follows :

"For the aforesaid reasons, the appeals are
partly allowed. The claim for quantity of

stone aggregate already brought after August, 1992 upto 20-4-1994 in Arbitration Appeal No.2 of 1996 and Arbitration Appeal No.3 of 1996 to the tune of Rs.11,35,760/- and Rs.5,90,000/-, respectively, is sustained. The interest awarded on the said claim by the Arbitrator is also sustained. Except for this, the remaining claims granted by the Arbitrator are set aside. In the facts and circumstances, we shall leave the parties to bear their costs."

The High Court declined to interfere with the Award of the Arbitrator relating to claim Item No.1 upto 24.1.1994 when the statement of claims was filed before him by the parties. The High Court held that the Award in respect of claim no.1 beyond 24-1-94 did not form part of the terms of reference and further that the future claim in respect of stone aggregate would be subject to various factors including market conditions and whether the shortage continued. The High Court further held that under the circumstances, the Arbitrator could not have granted relief relating to future claim of the contractor with reference to stone aggregate. The High Court recorded the following finding in this regard:-

"Therefore, while sustaining claim no.1 in both the appeals for the quantity of stone aggregate already brought after August 1992 upto 24-1-1994, and Award of Rs.11,35,760/- in Arbitration Appeal No.2 of 1996 and Rs.5,90,000/- in Arbitration Appeal No.3 of 1996, the remaining part of Order on claim no.1 is set aside." [See page 31 para 21 last portion]

On claim no.2 the High Court interpreted clauses 3.3.2, 3.3.3 and 3.3.4 of the contract and held that excavation in any type of laterite rock, that is to say, soft or hard shall be treated as excavation in soft/disintegrated rock. The High Court further held that the Arbitrator had totally overlooked Clause 3.3.4 while coming to the conclusion on the basis of Clauses 3.3.2 and 3.3.3 alone. The High Court was of the view that the Arbitrator had not only misinterpreted the relevant clauses totally ignoring the Clause 3.3.4, but had also taken 'undue' interest in the matter in order to find out the classification of the strata which in fact, in view of Clause 3.3.4 would not have much relevance. The High Court held that the Arbitrator had misconducted himself and therefore, the Award against claim no.2 was totally unwarranted and invalid. According to the High Court, the view taken by the Arbitrator could not be said to be a possible view on the interpretation of Clauses 3.3.2, 3.3.3 and 3.3.4 read together. The High Court summed up its finding as follows :

"For the aforesaid reasons, we are of the opinion that the Award under claim no.2 in both the Appeals cannot be sustained and is liable to be set aside." [see para 25 at page 36]

In respect of claim no.3, the High Court took note of

Clauses 2, 3, 3.1, 3.2 and 3.3.3 of the Special Conditions in which provisions were made for inspection of the site prior to the filing of tender so that the tenderer was familiar with the working conditions, accessibility to site of works, etc. Regarding the security and passes to the persons who were required to enter the area in connection with the work in Special Condition 3.3 it was clearly stated that nothing extra shall be admissible for any man hours etc. lost on this account of the restrictions referred to under Special Condition no.3. The High Court held that the contractor had filed the tender knowing fully well the relevant provisions of the Special Conditions in the contract and as such he could not later on complain about such restrictions leading to reduced output of labourers, restricted working hours etc. The High Court opined that the conclusions arrived at by the Arbitrator were contrary to relevant Special Conditions which were part of the contract and as such, the Award of the claim under the said Award could not be sustained. Regarding claim no.4 which relates to interest, the High Court relying on the decision of the Supreme Court in State of Orissa vs. B.N. Agarwalla, (1997) 2 SCC 469, held that: "the Arbitrator has jurisdiction to award pre-reference interest in cases which arose after the Interest Act, 1978 and the power of the arbitrator to award interest for the post-award period also exists, besides power to grant pendente lite interest". The High Court found that the interest awarded by the arbitrator in relation to the claim for quantity of stone aggregate already brought after August, 1992 to 20-4-1994 could not be interfered with and that the pre-reference interest in respect of other items falls on account of rejection of claim nos.2 and 3. On such findings the High Court allowed the appeal in part and to the extent noted earlier.

Shri V.A. Mohta, learned senior counsel appearing for the contractor i.e. the appellants in Appeals arising out of SLP (C) Nos. 10526-527/2000 and respondents in Appeals arising out of SLP (C) Nos. 880-881 of 2001, strenuously contended that the High Court exceeded the limits of the jurisdiction vested under Section 39 of the Act in deciding the appeals filed by the UOI, and in setting aside the Award of the Arbitrator in respect of claim nos.2 and 3. Shri Mohta further contended that even assuming that the High Court found that the arbitrator had mis-interpreted the relevant clauses of the agreement, then it was not open to it to interfere with the Award since there was no error of law apparent on the face of the award and the matter relating to interpretation of the conditions in the agreement was within the jurisdiction of the arbitrator.

Shri Anoop G. Chaudhary, learned senior counsel appearing for the UOI contended that the award of the arbitrator so far as part of the claim no.1 and claim nos.2 and 3 are concerned was contrary to the specific conditions provided in the agreement, and therefore, was patently erroneous and uncalled for. Shri Chaudhary further contended that the arbitrator being a creature of the agreement could not ignore the relevant stipulations in the contract nor could he travel beyond the terms of the contract. In the circumstances, Shri Chaudhary submitted, the judgment of the High Court does not call for interference by this Court in the appeal filed by the contractor under Article 136 of the Constitution of India.

The provision for appeals against the orders passed under the Act is contained in Section 39 of the Act. The said Section is quoted hereunder :

"Appealable orders.-(a) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:

An order

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award;

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

On a plain reading of the section it is manifest that the section is restricted in its application. Only certain types of orders are made appealable under the provision. Being a special statute no appeal can be entertained except under Section 39. The principles on which the Court can interfere with an award or order passed under the Act are fairly well settled. The question has engaged the attention of this Court and different High Courts from time to time.

In the case of Coimbatore District Podu Thozillar Samgam represented by its Secretary vs. Balasubramania Foundry & Ors., (1987) 3 SCC 723, this Court, construing Section 30 of the Act, observed :

"The law on this aspect is, however, settled. In Union of India v. A.L. Rallia Ram, (1964) 3 SCR 164, this Court reiterated that in order to make arbitration effective and the awards enforceable, machinery was devised by the Arbitration Act for lending the assistance of the ordinary courts. The court was also entrusted with the power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which were severable from those referred. The Court had also

power to remit the award when it had left some matters referred undetermined, or when the award was indefinite, where the objection to the legality of the award was apparent on the face of the award. The court might also set aside an award on the ground of corruption or misconduct of the arbitrator, or that a party had been guilty of fraudulent concealment or willful deception. But the court could not interfere with the award if otherwise proper on the ground that the decision appeared to it to be erroneous. The award of the arbitrator was ordinarily final and conclusive, unless a contrary intention was disclosed by the agreement. The award was the decision of a domestic tribunal chosen by the parties, and the civil courts which were entrusted with the power to facilitate arbitration and to effectuate the awards, could not exercise appellate powers over the decision. Wrong or right the decision was binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. This Court reiterated in the said decision that it was now firmly established that an award was bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there was found some legal proposition which was the basis of the award and which was erroneous."

This Court in the case of Municipal Corporation of Delhi vs. M/s. Jagan Nath Ashok Kumar & Anr., (1987) 4 SCC 497, considered the reasons given in a speaking award and scope for the interference with such award. This Court in that connection made the following observations :

"In this case the reasons given by the arbitrator are cogent and based on materials on record. In Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is "reasonable" in each particular case. The word "reasonable" has in law the *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. See the observations, in *Re a Solicitor* (1945) KB 368 at 371.

After all an arbitrator as a judge in the

words of Benjamin N. Cardozo, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life".

In the case of M/s. Sudarsan Trading Co. vs. Government of Kerala & Anr., (1989) 2 SCC 38, construing Section 30 of the Act, this Court observed that the award can be set aside if the arbitrator had mis-conducted himself or the proceedings and had proceeded beyond his jurisdiction; that these are separate and distinct grounds for challenging an award; that where there are errors apparent on the face of the award it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award.

Reference was made to the decision of the Judicial Committee in Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd., AIR 1923 PC 660.

Considering the point that only in a speaking award a Court can look into the reasoning of the award, this Court observed : "...It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion". In this connection reference was made to the observations in Hindustan Steel Works Construction Ltd. vs. C. Rajasekhar Rao, (1987) 4 SCC 93. Drawing a distinction between the disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised, this Court observed :

"An award may be remitted or set aside on the ground that the arbitrator in making it, had exceeded his jurisdiction and evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has to be determined outside the award whatever might be said about it in the award or by the arbitration. See in this connection, the observations of Russel on The Law of Arbitration, 20th edn., p.427. Also see the observations of Christopher Brown Ltd. v. Genossenschaft Oesterreichischer (1954) 1 QB 8, 10 and Dalmia Dairy Industries Ltd. vs. National Bank of Pakistan (178) 2 Lloyd's Rep. 223. It has to be reiterated that an arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award. In Halbury's Laws of England II, 4th edn., Vol.2, para 622 one of the misconducts enumerated, is the decision by the arbitrator on a matter which is not included in the agreement or reference. But in such a case one has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. See the observations in Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 AC 147, and Regina v.

Noseda, Field, Knight & Fitzpatrick, (1958) 1 WLR 793. But, in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. It has to be determined that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that power of the arbitrator to grant a particular remedy.

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In the instant case, the High Court seems to have fallen into an error of deciding the question on interpretation of the contract. In the aforesaid view of the matter, we are of the opinion that the High Court was in error. It may be stated that 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 in the manner done by the High Court in the instant case.

In light of the above, the High Court, in our opinion, had no jurisdiction to examine the different items awarded clause by clause by the arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator."

In the case of Steel Authority of India Ltd. vs. J.C. Budharaja, Government and Mining Contractor, (1999) 8 SCC 122, this Court considering the point on lack of jurisdiction of the arbitrator held that when the conditions in the agreement specifically prohibited granting claim or damages for the breaches mentioned therein it was not open to the arbitrator to ignore the said conditions which were binding on the contracting parties; that by ignoring the same he has acted beyond the jurisdiction upon him; that it is settled law that the arbitrator derives authority from the contract and if he acts in manifest disregard of the contract, the award given by him would be an arbitrary one; that this deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part, but it may tantamount to mala

fide action. This Court further observed that the Arbitration Act does not give any power to the arbitrator to act arbitrarily or capriciously; that his existence depends upon the agreement and his function is to act within the limits of the said agreement. In para 17 of the judgment this Court made the following observations :

"It is to be reiterated that to find out whether the arbitrator has traveled beyond his jurisdiction and acted beyond the terms of the agreement between the parties, the agreement is required to be looked into. It is true that interpretation of a particular condition in the agreement would be within the jurisdiction of the arbitrator. However, in cases where there is no question of interpretation of any term of the contract, but of solely reading the same as it is and still the arbitrator ignores it and awards the amount despite the prohibition in the agreement, the award would be arbitrary, capricious and without jurisdiction.

Whether the arbitrator has acted beyond the terms of the contract or has traveled beyond his jurisdiction would depend upon facts, which however would be jurisdictional facts, and are required to be gone into by the court. The arbitrator may have jurisdiction to entertain claim and yet he may not have jurisdiction to pass award for particular items in view of the prohibition contained in the contract and, in such cases, it would be a jurisdictional error. For this limited purpose reference to the terms of the contract is a must. Dealing with a similar question this Court in New India Civil Erectors (P) Ltd. v. Oil and Natural Gas Corpn., (1997) 11 SCC 75, held thus : (SCC p.79 para 9)

"It is axiomatic that the arbitrator being a creature of the agreement, must operate within the four corners of the agreement and cannot travel beyond it. More particularly, he cannot award any amount which is ruled out or prohibited by the terms of the agreement. In this case, the agreement between the parties clearly says that in measuring the built-up area, the balcony areas should be excluded. The arbitrators could not have acted contrary to the said stipulation and awarded any amount to the appellant on that account."

In the case of Grid Corporation of Orissa Ltd. & Anr. vs. Balasore Technical School, (2000) 9 SCC 552, this Court considered the question of Courts interference in case of a non-speaking award. This Court referred to the decision in New India Civil Erectors (P) Ltd (supra) in which it was held that the arbitrator being a creature of the contract

must operate within the four corners of the contract cannot travel beyond it and he cannot award any amount which is ruled out or prohibited by the terms of the agreement and the decision in Associated Engg. Co. v. Govt. of A.P., (1991) 4 SCC 93, in which it was 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 matter not allotted to him, he commits a jurisdictional error and an umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. This Court referring to N.Chellappan v. Secy., Kerala SEB, (1975) 1 SCC 289, held that the principle was unexceptionable. Summing up its decision, this Court observed :

"However, from a reading of the decisions of this Court referred to earlier it is clear that when an award is made plainly contrary to the terms of the contract not by misinterpretation but which is plainly contrary to the terms of the contract it would certainly lead to an inference that there is an error apparent on the face of the award which results in jurisdictional error in the award. In such a case the courts can certainly interfere with the award made by the arbitrator."

Considering the scope of Section 30 of the Act, this Court in the case of Indu Engineering & Textiles Ltd. vs. Delhi Development Authority, (2001) 5 SCC 691, enumerated some of the well recognized grounds on which interference in award is permissible, observed :

"Interpreting the statutory provision courts have laid stress on the limitations on exercise of jurisdiction by the court for setting aside or interfering with an award in umpteen cases. Some of the well-recognised grounds on which interference is permissible are:

(1) violation of the principle of natural justice in passing the award;

(2) error apparent on the face of the award;

(3) the arbitrator has ignored or deliberately violated a clause in the agreement prohibiting dispute of the nature entertained;

(4) the award on the fact of it is based on a proposition of law which is erroneous etc."

Testing the case on hand on the touchstone of well

settled principles laid down by Courts, we are unable to hold that the High Court exceeded its jurisdiction in interfering with the award or failed to exercise the jurisdiction vested in it to set aside the award. The approach of the High Court cannot be said to be contrary to the well settled principles governing the scope of interference with an award of the Arbitrator under the old Act. As regards the first item, the question was whether the contract contemplates the use of stone aggregate and stone metal from the local sources only, the source of supply being silent in the relevant clause. The Arbitrator was of the view that the unprecedented situation of the contractor being put to the necessity of procuring the stone material from far off places was not visualized and the parties proceeded on the basis that such material was available locally. He further noted that the sample kept in the office of the concerned Engineer admittedly pertained to the material procured from local sources. A letter addressed by the Chief Engineer in support of contractor's claim was also relied on in this context. Hence, in these circumstances, the Arbitrator can be said to have taken a reasonably possible view and therefore the High Court rightly declined to set aside the award in so far as the quantity of stone aggregate/stone metal brought to site up to 24.1.1994 is concerned. The Arbitrator acted within the confines of his jurisdiction in making the award on this part of the claim.

As already noted, the award in so far as the future period is concerned, i.e. subsequent to 24.1.1994 which is the date of filing of claim statement, the High Court set aside the award on two grounds : (i) Such a claim did not form part of terms of reference, though the contractor had filed claim in respect of stone aggregate to be brought in future and (ii) the future claim in respect of stone aggregate would be subject to various factors including market conditions and whether the shortage continued.

In our view the view taken by the High Court cannot be sustained. It is clear from the arbitration clause viz. clause 70 that all disputes between the parties to the contract (other than excepted matters) can be referred to arbitration. The contractor did make a claim in respect of future period also. The document appointing the Arbitrator would show that the Arbitrator was required to decide the disputes arising between the parties. It is not possible to hold that the claim No.1 in so far as it relates to future period during which the contract work continued is beyond the scope of reference or outside the ambit of arbitration clause. The aim of arbitration is to settle all the disputes between the parties and to avoid further litigation. There is no legal justification in restricting the scope of arbitration in the manner in which the High Court did. In the list of disputes which is annexed to the letter of appointment of the Arbitrator, it is mentioned without any qualification or restriction as follows :

"Reimbursement of additional cost in procurement of stone aggregate from crusher of Belgaum, Hubli, etc. in lieu of local sources of Goa."

The claim amount is mentioned as 36 lakhs and 8

lakhs. This figure is over and above the amount claimed upto 24.1.1994 and is based on an estimate. It is also relevant to mention that Union of India did not take the stand before the Arbitrator that the claim in respect of future was beyond the scope of reference. However, in order to obviate any controversy, it is made clear that the payment at the rates specified in the award should be made only in respect of stone aggregate actually brought to the site from Belgaum, Hubli and other distant places. It is open to the Engineer concerned to be satisfied on this aspect before satisfying the award. Obviously, if any part of the stone aggregate was brought subsequent to 24.1.1994 from local sources the directions in the award will be ineffective. The observations of the High Court that conditions may not be the same for the future and therefore the Arbitrator was incompetent to make an award for the future period cannot be supported for the simple reason that the extra rate will become applicable only in respect of quantities brought from sources other than local. It has never been the case of Union of India either before the Arbitrator or the High Court or even this Court that the situation had changed after 24.1.1994 and that the stone aggregate could be secured at lesser rates from local sources or otherwise. For all these reasons, we are of the view that the High Court ought not to have interfered with the award in so far as claim No.1 is concerned in any respect. To this extent, the appeals filed by the Contractor i.e. arising out of SLP Nos. 10526-10527 of 2000 are partly allowed.

As regards the other two items viz. 2 and 3, on a perusal of the judgment of the High Court and on consideration of the relevant clauses, we are of the view that the judgment does not suffer from any serious error in the approach to the matter. In regard to item No.2, though the High Court may not be justified in observing that the Arbitrator took undue interest in trying to ascertain the classification of strata, the High Court is well justified in holding that the view taken by the Arbitrator is not at all a reasonably possible view and in fact he ignored one of the relevant clauses, namely, 3.3.4. The Arbitrator was carried away by the fact that chiselling had to be done in view of the hardness of rock. The Arbitrator at the same time did not choose to give a finding that what was encountered by the contractor was something other than laterite rock which is mentioned in the Agreement. As regards the 3rd item, the Arbitrator again ignored the relevant clauses in the agreement and came to the perverse conclusion that the site became restricted on account of certain security measures enforced in the area. The award of sum vis--vis this item is clearly outside the terms of contract. The High Court, therefore, rightly set aside the award on this aspect.

On the discussions in the foregoing paragraphs the appeals arising from S.L.P. Nos.10526-27 of 2000 filed by the contractor are allowed in part to the extent noted earlier and the appeals arising from S.L.P. Nos.880-881 of 2001 filed by Union of India & another are dismissed. There will, however, be no order for costs.