SUPREME COURT OF INDIA

Rajasthan State Mines & Minerals

Vs.

Eastern Engineering Enterprises

(D.P.Wadhwa and M.B.Shah JJ.)

20.09.1999

JUDGMENT:

SHAH, J.

By the impugned Judgment and Order dated 17th December, 1991, the High Court of Judicature of Rajasthan at Jodhpur, dismissed the S.B. Civil Miscellaneous Appeal No. 254 of 1991 filed by the appellant and confirmed the Judgment and Order dated 1st August, 1989 passed by the District Judge, Udaipur in Petition under Sections 30 and 33 of the Arbitration Act, 1940. The District Judge had passed the decree in terms of the award.

The brief facts of the case are that on 14th May, 1981, appellant and respondent no. 1 entered into an agreement on a turn-key basis for excavation, removal, transportation including loading and unloading, disposal dumping dozing, levelling etc. of over burden at the specified dump yards including final dressing of the mine benches, faces and sides etc. and incidental mining of rock phosphate ore encountered during the excavation of over-burden and its transportation to ore-stacks etc. from the footwall, western portion and eastern portions of D Block of the Jhamarkotra mines including drilling, blasting, loading, transportation, unloading etc. with the leads and lifts involved in connection therewith, more particularly described in the said contract for the period of three years and three months, that is, from 13.3.81 to 12.6.84 for the quantity of 21.15 lacs cubic meter subject to plus minus 10% at the fixed rate of Rs. 35.80 (Rupees Thirty Five and eighty paise) all inclusive per cubic meter in respect of over burden and/or ore actually excavated mined, removed etc.

Respondent No. 1 vide its letter dated 7th September, 1983, raised certain disputes and claimed reimbursement and/or additional payments and/or compensation on account of escalation of cost of work and breach of contract by the Appellant. The Appellant vide its letter dated 11th September,

1984 refuted the claims of Respondent No. 1 by stating that in no case the rates over and above Rs. 35.80 per cubic meter could be given. On 10th November, 1984, respondent No. 1 invoking the arbitration clause, requested the Managing Director of Appellant to appoint a sole arbitrator to adjudicate the claims made by the Contractor. Thereafter, on 5th February, 1985, Shri C.S. Jha, Chairman-cum-Managing Director, Bihar State Mineral Development Corporation Ltd. was appointed as a sole arbitrator to decide all claims raised by the contractor, M/s. Eastern Engineering Enterprises vide its letter dated 7th September, 1983.

On 20th September, 1985, the sole arbitrator made an interim award in respect of three claims, namely, claim nos. 2, 3 & 5 and awarded Rs. 65 lacs to the claimants. Paragraph 1 of the said award mentions that Mr. C.S. Jha was appointed as the sole arbitrator to decide the disputes between the parties arising out of the agreement dated 14th May, 1981. It also recites that by the consent of the parties, arguments were heard claim-wise and out of 7 claims submitted by the claimants, hearing in respect of claim no. 2, 3 & 5 was completed. It is also stated that when final award would be made in respect of the entire proceedings, interim award would be integrated into and form part of the final award. The Appellant challenged the interim award on 15th January, 1986 in the Court of District Judge, Udaipur.

Thereafter, on 18th February, 1986 the sole arbitrator made final award. It, inter-alia, provides that after considering the long drawn arguments and examination of documentary evidence and having made detailed examination of the calculations I have given due thought and weightage to all that was placed/argued before me, as regards admissibility as well as quantum of each claim by going through details of work done under each item of claim as filed before me. Thereafter, he awarded Rs. 1.07 crore for the claims made by the respondent no. 1. The said amount included the amount awarded against the claims 2, 3 & 5 for which he had passed interim award. He further awarded interest @ 12.5 % p.a. on the sum awarded from 5th February, 1985 till the date of payment or decree whichever is earlier.

That final award was also challenged before the District Judge. The Court framed as many as 12 issues out of which issues (5) to (8) are as under: - 5. Did the Arbitrator fail correctly to consider Clauses 17 and 18 of the Agreement and the Contract labour (Abolition and Regulation) Act, 1970? 6. Did the Arbitrator fail to apply his mind to consider pleadings, documents and evidence? 7. Whether the award is bad as the learned sole Arbitrator failed to apply his mind to documents and decide the dispute on per unit basis? 8. Is the award perverse? Has it been improperly procured and is it otherwise invalid as mentioned in the Objection Petition?

Thereafter, the District Judge, rejected the contentions raised by the appellant and declared the award as the rule of court and passed the decree. That was challenged by filing the appeal before the High Court.

Before the High Court, it was contended that the District Judge erred in accepting the interim as well as the final award and it was required to be set aside as the arbitrator had ignored the fixed rate mentioned in clauses 17 & 18 of the agreement and thereby he has travelled beyond his jurisdiction. It was also pointed out that by doing so the arbitrator has legally misconducted himself. It was also submitted that the arbitrator was influenced by Mr. K. Sehgal, hence, the award was required to be set aside. The High Court arrived at the conclusion that the point of jurisdiction was not raised before the arbitrator. Therefore, appellant cannot raise the same before the court. The learned Judge held that the perusal of the letter dated 5th February, 1985 goes to show that there was nothing by

which the arbitrator was restricted with regard to rates, on the contrary, he was asked to decide all the claims raised by the contractor without any clarification. The High Court further observed that the appellant raised objection in view of clauses 17 and 18 of the Contract in his reply to the claim petition but he has not raised this point before the arbitrator and thus the arbitrator has not disclosed it. The learned Judge further observed that the appellant never asked the arbitrator to decide his objection at initial stage or final stage and this conduct of the appellant goes to show that he has waived the objection, otherwise he ought to have asked the arbitrator to decide at proper stage. The Court held that even before District Judge, the point of jurisdiction was never raised and the issues framed were with regard to clauses 17 & 18 which were decided against the appellant.

Dr. A.M. Singhvi, the learned senior Counsel appearing on behalf of the appellant contended that the judgment and order passed by the High Court is, on the face of it, illegal because all throughout the appellant has contended that claims made by respondent no. 1 were not entertainable in view of clauses 17 & 18 of the agreement. He submitted that, on the face of it, claims made by the respondent no. 1 were for prohibited or excepted items under clauses 17 & 18 of the agreement between the parties. Therefore, he submitted that the arbitrator travelled beyond his jurisdiction in awarding the compensation for the said claims. He referred to all claims and pointed out that except the claim for release of additional security deposit of Rs. 5 lacs furnished by way of bank guarantee, no claim could be entertained and granted in view of stipulations in clauses 17 & 18 of the agreement and also because the contract is on a turn-key basis.

As against this, learned senior Counsel, Mr. Ashok H. Desai, appearing on behalf of the Respondent No. 1 strenuously submitted that, in the present case, arbitration clause is of widest amplitude and it provides that all disputes and differences arising out of or in any way touching or concerning the contract whatsoever shall be referred to the sole arbitration. Hence, the award passed by the arbitrator cannot be held to be without jurisdiction or it cannot be held that arbitrator has travelled beyond his jurisdiction. He also submitted that award is a non-speaking one and, therefore, also the Court cannot go behind the said award for finding out the mental process of the arbitrator for awarding the said sum. He submitted that the award only depends upon interpretation of the clauses of the agreement between the parties. It is his further contention that, in any case, jurisdictional question was not raised properly before the arbitrator or before the District Court and the appellant allowed the arbitrator to proceed with the proceedings without raising its objection of jurisdiction or competence. By the reference letter dated 5th February, 1985, arbitrator was empowered to decide all claims raised by the contractor vide its letter dated 7th September, 1983. He also submitted that even the committee appointed by the appellant-company to examine the claims of the respondent, has recommended same payment to the contractor by granting an escalation in contracted rate and to pay compensation towards loss suffered on account of non supply of explosives. Hence, the appellant should not be permitted to raise the contention of jurisdiction and the appeal be dismissed. For deciding the controversy, clauses 17 & 18 as well as clause 74 which provides for arbitration is required to be referred. Clauses 17 & 18 reads thus: -

17. Blasting Operation

It is express term of this contract that while carrying out the excavation/Mining operations from the aforesaid areas, blasting wherever required, shall be undertaken by the contractor at his cost. The remuneration payable under this contract for the work aforesaid is inclusive of this element which includes cost of explosives, its accessories transportation, salary and wages of its crew/blasters etc., or otherwise. In view of aforesaid, the contractor shall obtain necessary permission/s from the

Director General of Mines Safety and/or other competent authorities for undertaking the blasting operation independently at the aforesaid areas covered by this contract as also obtain necessary licence for the explosive magazine etc. The contractor shall do all that are required to be done to obtain the necessary permission etc., from the competent authorities immediately without any further loss of time and shall make regular and continuous efforts for the same if for the present such permission is not granted to him/her.

In the event of the contractor failing to obtain such permission required from the competent authority for doing blasting operation in the areas covered by this contract after all genuine and effective efforts, the company may at the request of the contractor and subject to its convenience take up the blasting operation in the areas entrusted to the contractor under this contract, at the cost and risk of the contractor. Provided, however that the contractor shall be bound to observe all terms and conditions of blasting operation in the contract and other operations involved therein shall be duly observed/undertaken by the contractor, as if the blasting is being done by them. Drilling shall be done by the contractor at places and as per the pattern approved in writing by the Engineer-in-charge. The Engineer-in-charge, may require drilling of additional holes by the contractor before blasting is taken up. The holes not drilled as per the approved drilling pattern shall not be taken up for blasting. On receipt of written requisition from the contractor in the prescribed proforma duly signed by the authorised representative of the contractor to the company not less than 2 days prior to intended date of blasting, blasting will be done by the Company as and when felt necessary and convenient by the Engineer-in-charge. The company shall make available the blasting material, its transportation, blasting accessories and blasting crews including blaster/s. In case the company is not in a position to arrange for the same, the contractor shall make his own arrangements for the same without any liability and obligation on the company. The company shall deduct the actual landed cost of all explosives ex-Jhamarkotra as may be used in the course of blasting plus five per cent value of the landed cost of explosives as blasting charges from the contractors running Bill/s or any amount that may be found due and payable to the contractor or the security amount. It is agreed and understood by the contractor that in the event of company doing blasting as aforesaid, for and on behalf of the contractor, the contractor shall not be allowed and/or permitted to raise any dispute as to make, type quantity of the explosives that will be used in blasting by the company, fragmentation of rock, toes at the mining face, landed cost of explosive, time and frequency of blasting etc., and the contractor shall be bound to make good the landed cost of explosives, cost of blasting accessories etc., plus overheads @ 5% as may be certified by the Engineer-in-charge from time to time. Provided also that the contractor shall not be entitled and/or justified to raise any claim or dispute on account of blasting or non blasting or idling of his equipment or his labour or any rise in the landed cost of explosives at any time or during the currency of this agreement or on any ground or any reason of any account, whatsoever.

At the time of blasting in the areas being worked by the Company or by the contractor if the company is required to carry out blasting operation, the contractor shall be required to vacate the areas if the areas fall within blasting zone, worked by him for which the contractor shall not be entitled for any claim, additional payment whatsoever.

18. Contractors remuneration for works under the Contract:-

In consideration of the performance of the work, fulfillment of all the obligations, terms and conditions of this agreement by the contractor in execution of the work covered by this contract in and from the aforesaid areas, the contractor shall be paid remuneration calculated @ Rs. 35.80

(thirty five and eighty paise) all inclusive per cubic meter in respect of over burden and/or Ore actually excavated, mined, removed, transported, disposed off, dumped, dozed, levelled and spreaded including drilling, blasting, mucking, loading, and unloading, etc., with all leads and lifts involved in connection with the transportation and dumping of over-burden to the dump yards or ore stacks, including all preparatory dressing, finishing and other operational works etc., executed and approved by the Engineer- in-charge. The rates aforesaid shall be composite and inclusive of all services, activities and operations involved in the execution of the work as per terms and conditions of this agreement which constitute the whole and inclusive remuneration that is payable by the Company to the contractor under this contract. The contractor shall be only entitled to the payment of composite rate as aforesaid and no other or further payment of any kind or item, whatsoever, shall be due and payable by the Company to the contractor under this agreement except as aforesaid.

The rates aforesaid shall remain firm, fixed and binding during the currency of this agreement till the issue of final certificate irrespective of any fall or rise in the cost of Mining operations of the work covered by this contract or for any other reason or any account or any ground whatsoever.

Provided, however, that the company has agreed to freeze the issue rate of Diesel as on 13th March, 1981, at the rate of Rs. 2.78 (Rupees Two and seventy eight paise only) per litre and the company shall issue the Diesel subject to availability and its convenience to the contractor against the surrender of permit/s of the equipment by him at the frozen rate of Rs. 2.78 per litre during the currency of this contract even if there by any rise in the cost of diesel after execution of this agreement subject to a ceiling of 1.3 litres(one point three litre) for one cubit meter of rock (in situ) actually handled and work executed by the contractor and approved by the Engineer-in-charge, as per provisions of this agreement. No diesel at the frozen rate of Rs. 2.78 per litre shall be supplied and/or issued to the contractor after the 12th day of June, 1984, if the work is not finally completed by the contractor as aforesaid. The company shall deduct the cost of diesel @ Rs. 2.78 per litre actually issued to the contractor from the contractors running bills or any amount that may be due to him or the security amount. Save and except as aforesaid the contractor shall not be entitled to raise any claim and/or dispute on account of any rise in the price of oil, lubricants, tyres, tubes, explosives, spares etc. statutory or otherwise or increase in the wages or Minimum wages or on any other ground or reason or account, whatsoever.

Relevant part of arbitration clause 74 is as under:-

All disputes and differences arising out of or in any way touching or concerning this contract whatsoever, except as to any matter, the decision of which is expressly vested in any authority in this contract, shall be referred to the sole arbitration of the person appointed by the Managing Director of Company who shall have status of a Mines Manager having 1st Class Mines Managers Certificate and having experience not less than five years in open cast mining as Mines Manager.

At this stage, we would refer to the relevant portion of letter dated 7- 9-1983 written by the Contractor to the appellant as the dispute for the said claims made in the letter are referred to for arbitration. 1. After stating the reasons in delay in starting the work, it is mentioned: - In view of above, we now request RSMML to consider our case and condone the theoretical delay, which, in fact, was not there and also give us necessary, relief as to consequential damages thereof. Hence, we request you to consider 1st August, 1981 as the date of start of work and accordingly, extend the validity of the contract.

2. The demand is Release of additional security deposit of Rs. 5 lakhs furnished by us in RSMMLs favour by way of bank guarantee for the reasons stated therein. 3. Request for Rescheduling of the existing excavation schedule for the reasons mentioned therein. 4. Claim for Escalation in the existing rate of excavation: We signed the contract with a clear understanding that the rate under this contract is firm and final and we shall get no escalation in our rates, except in case of diesel, which will be supplied to us by the Company at a frozen rate. With the passage of time our cost calculations went hayway for reasons which were beyond our control.

5 (i) From the beginning of the contract we had paid wages equivalent to RSMML wages instead of Minimum wages. The difference between the two on an average in the last 25 months works out to Rs.75,000/- per month, against an average production of 40,000 cu.m. per month. Thus the additional cost works out to Rs.1.80 per cu.m.

(ii) Unforeseen and difficult operating condition in the footwall and its effect on the cost of operation: The work in footwall area of D block is a major constituent of the contract both quality and quantity wise. While the contract is termed as a Turnkey contract, at least in the footwall the work cannot, by any stretch of imagination, be considered as Turnkey, as the operation in that area is totally controlled by the Principal employer.

In fact, it was beyond our imagination that our working in the footwall will be so much restricted, resulting the cost of operation, which is virtually very high than normal cost of operation. In view of above, we feel that our request in this regard will be sympathetically considered by the Management, who are also engaged in similar work. Thus, for such poor utilisation of the Shovel, the rate should be 35.80 = 61.20. 58.50x100 Thus, an additional rate of Rs.25.40 per cu.m. for the entire footwall operation has to be provided for. (iii) Non-availability of explosive and use of costly explosive for blasting :

Reimbursement of Rs.22.55 lakhs towards cash loss due to non- supply of explosives in time plus Rs.1.82 per cu.m. of rock handled so far. 6. Claim for Transportation of ore : After stating reasons in detail, it is claimed thus:

Till 31st August, 1983 mined and transported 45,456 tonnes of ore and mixed ore from Eastern Saddle and Footwall, the additional expenses involved in this operation are: -

(i) Care being taken during mining to avoid as much as possible admixture of ore and overburden, and

(ii) Additional transportation involved for taking it to the crusher instead of the dumpyard. Towards this we have to make claim of Rs.6/- towards this mining cost per tonne and Rs.4/- towards transportation cost per tonne making the total to Rs.4,05,660/- for 40,566 tonnes of ore after allowing % of the total excavation volume of footwall i.e. 3.36 lakhs cu/.m.

To sum up, claims under various heads are as under: -

(i) Not to levy any damages for not starting work in time and to treat 1st August, 1981 as the date of start of work and thereafter calculate 3 years for completing this work under this contract; (ii) To release performance bank guarantee of 5 lakhs furnished in your favour by way of additional security deposit; (iii) To re-schedule the excavation schedule keeping in view the industrial climate

at Jhamarkotra @ 40,000/- cu.m. per month; (iv) To allow us escalation of Rs.3.62 in our rates towards additional cost that has been incurred by us with retrospective effect. (v) To admit our claim of Rs.22.55 lakhs towards loss suffered on account of non supply of explosives, Rs.4,05,660/- towards additional cost of mining and transportation of ore and Rs.52,53,650/- on account of loss suffered by us for unforeseen and difficult operating condition at footwall or in other words the present rate of Rs.35.80 per cu.m. with retrospective effect. On the basis of the claims made in the letter dated 7th September, 1983, respondent filed claim statement for 8 items which is tabulated by the High Court in its judgment. Claim Description of Relief claimed No. claim

1. Claim for increase in rate Claimed reimbursement @ for excavation work at Rs.25.40 per cu.m. up to the Footwall area demand Aug.83 thereafter @ 63.56 for escalation in the per cu.m. Over and above existing rates of the contract rate of Rs.35.80 excavation. Cu.m. In all claim under this item quantified for Rs. 1,36,43,218/-.

2. Claim for increase in costs Claimed reimbursement @ Rs. Of work due to use of high 1.80 per cu.m. for all Explosives instead of use excavation done/to be done Of ANFO mixture. Under the contract using high Explosives instead of ANFO mixture.

3. Claim for reimbursement for Claim reimbursement of Losses suffered due to non- Rs. 22.55 lacs by way of loss Availability of explosive. During the period February, 1963 to May 1983.

4. Claim for reimbursement Claimed reimbursement of of additional costs for mining additional costs at the rate of and transport of ore. Rs. 6/- per ton Towards mining and Rs.4/- per ton towards additional transportation to the crusher. Total Rs.10/- per ton for 47856 tonnes of ore and mixed ore upto 31st December, 1984 quantifying claim of Rs.4,31,890/-.

5. Claim for reimbursement Claim reimbursement @ Rs. of additional expenditure 1.82 per cu.m. for excavation incurred on account of done/to be done on account Agreement with RPMS.- Of respondent entering into For wages to labourers. An agreement with RPMS Dated 26.5.81 Ex.C/I of the Arbitration proceedings.

6. Claim for release of Claimed release of duly discharged additional securities Bank guarantee of Rs.5 lacks on deposit. Account of Addl. Security deposit.

7. Claim for reimbursement Claim reimbursement of Rs.0.90 of additional expenses on per cu.m. of excavation done account of revised wage since 1.4.83 or to be done structure w.e.f.1.4.83. thereafter as per Ex.C/58 and C/68.

8. Interest Claimed interest on the amount of Award @ Rs.18% per annum Or decree whichever is earlier.

As stated earlier by interim award, arbitrator has awarded Rs. 65 lakhs for claims No. 2, 3 & 5. Thereafter, by final award, he has awarded total sum Rs. 1.07 crores with 12.5% interest w.e.f. 5.2.85.

Before discussing further, what emerges from the facts stated above is: -

(1) in the award, no reasons are assigned for granting various claims to that extent, it is non-

speaking. For claim Nos. 2,3 and 5, Rs. 65 lakhs were awarded by interim award dated 20th September, 1985. (2) In the interim award, the arbitrator has made it clear that he was appointed as the sole arbitrator vide memo dated 5th February 1985 to decide the dispute between the parties arising out of the agreement dated 14th May, 1981. So, his authority or jurisdiction to decide the claims raised by the contractor was on the basis of the agreement between the parties. (3) In the final award also, in the first paragraph itself, arbitrator has stated that:-

The claimants have put in claims arising out of and in relation to the work Excavation and removal of overburden at the Jhamarkotra mines of RSMML executed under agreement dated 14.5.1981, and have put in their claims under 7 heads of claim and have further claimed interest, pendentelite and future at 18% per annum.. It further mentions that he has given due weightage to all the documents placed and arguments submitted before him as regards admissibility as well as quantum of each claim by going through details of work done under each item of claims as filed before me.

(4) In the letter dated 7th September, 1983, the Contractor himself has clarified, admitted and stated thus:

We signed the contract with a clear understanding that the rate under this contract is firm and final and we shall get no escalation in our rates, except in case of diesel, which will be supplied to us by the company at a frozen rate. With the passage of time our cost calculations went hay way for reasons which were beyond our control.

(5) The appellant in his detailed reply before the arbitrator to the claims made by the contractor has pointed out and relied upon clauses 17 & 18 for contending that contractor was not entitled to any such claim under the contract. (6) Before the District Judge also, the issues pertaining to clauses 17 & 18 as stated above were raised. (7) Before the High Court also, it was contended that arbitrator made award against the stipulations of the agreement between the parties and thereby travelled beyond his jurisdiction.

From the facts stated above, learned Counsel for the appellant has rightly pointed out that Claim No. 1 for increase in rate of excavation work at footwall area and claim no. 4 for reimbursement of additional costs for mining and transport of ore is against the stipulation of clause 18 as narrated above, which inter-alia, specifically provides as under:-

(a) The contractor shall be paid remuneration calculated @ Rs. 35.80(Rupees Thirty Five and Eighty Paise only) all inclusive per cubic meter in respect of over burden and/or Ore actually excavated transported (b) The contractor shall be only entitled to payment of composite rate as aforesaid and no other or further payment of any kind of item, whatsoever, shall be due and payable by the Company to the contractor under this agreement except as aforesaid. (c) The rates shall remain in firm, fixed and binding irrespective of any fall or rise in the cost of Mining operations of the work covered by the contract or for any other reason or any account or any ground whatsoever. Similarly, claim no. 2 for increase in costs of work due to use of high explosives instead of use of ANFO mixture and claim no. 3 for reimbursement for losses suffered due to non-availability of explosive is also against Clause 17, which inter-alia, provides:- (a) It is express term of this contract that while carrying out the excavation/Mining operations from the aforesaid areas, blasting wherever required, shall be undertaken by the contractor at his cost. The remuneration payable under this contract for the work aforesaid is inclusive of this element which includes cost of explosives, its accessories transportation, salary and wages of its crew/blasters etc., or otherwise. (b) Provided also

that the contractor shall not be entitled and/or justified to raise any claim or dispute on account of blasting or non blasting or idling of his equipment or his labour or any rise in the landed cost of explosives at any time or during the currency of this agreement or on any ground or any reason of any account, whatsoever.

Similarly, claim no. 5 for reimbursement of additional expenditure incurred on account of RPMS and claim no. 7 for reimbursement of additional expenses on account of revised wage structure w.e.f. 1.4.83 also cannot be granted in view of aforesaid stipulations and also part of Clause 18 which, inter-alia, provides as under: Save and except as aforesaid the contractor shall not be entitled to raise any claim and/or dispute on account of any rise in the price of oil, lubricants, tyres, tubes, explosives, spares, etc. statutory or otherwise or increase in the wages or Minimum wages or on any other ground or reason or account, whatsoever.

Apart from the aforesaid specific stipulations, even the contractor has admitted in his letter dated 7th September, 1983 that the contract was signed with clear understanding that the rate under the contract was firm and final and that no escalation in rates except in case of diesel would be granted. Despite the admission by the contractor, it is apparent that arbitrator has ignored the aforesaid stipulations in the contract. In the award, the arbitrator has specifically mentioned that he has given due weightage to all the documents placed before him and has also considered the admissibility of each claim. However, while passing the award basic and fundamental terms of the agreement between the parties are ignored. By doing so, it is apparent that he has exceeded his jurisdiction. Further, in the present case, there is no question of interpretation of clauses 17 & 18 as the said clauses are so clear and unambiguous that they do not require any interpretation. It is both, in positive and negative terms by providing that contractor shall be paid rates as fixed and that he shall not be entitled to extra payment or further payment for any ground whatsoever except as mentioned therein. The rates agreed were firm, fixed and binding irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or any ground whatsoever. It is specifically agreed that contractor will not be entitled or justified in raising any claim or dispute because of increase in cost of expenses on any ground whatsoever. By ignoring the said terms, arbitrator has travelled beyond his jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement. This deliberate departure from the contract amounts not only to manifests disregard of the authority or misconduct on his part but it may tantamount to mala fide action.

It is settled law that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the Court for that limited purpose agreement is required to be considered. For deciding whether the arbitrator has exceeded his jurisdiction reference to the terms of the contract is a must It is true that arbitration clause 74 is very widely worded, therefore, the dispute was required to be referred to the arbitrator. Hence, the award passed by the arbitrator cannot be said to be without jurisdiction but, at the same time, it is apparent that he has exceeded his jurisdiction by ignoring the specific stipulations in the agreement which prohibits entertaining of the claims made by the contractor. In the letter dated 5th February, 1985 appointing the sole arbitrator, it has been specifically mentioned that agreement dated 14th May, 1981 was executed by and between the parties and that contractor has raised the claims as mentioned in the letter dated 7th September, 1983 which was denied by the company and at the request of the contractor, sole arbitrator was appointed to adjudicate the claims made by the contractor vide his letter dated 7th September, 1983. This reference to the arbitrator also clearly provides that reference was with regard to the dispute arising

between the parties on the basis of the agreement dated 14th May, 1981. It nowhere indicates that the arbitrator was empowered to adjudicate any other claims beyond the agreement between the parties. No such issue was referred for adjudication. Even the arbitrator in his interim award has specifically stated that he was appointed to adjudicate the disputes between the parties arising out of the agreement dated 14th May, 1981.

However, learned senior Counsel, Mr. Ashok H. Desai, submitted that award is a non-speaking one and the arbitration clause, in this case empowers the arbitrator not only to decide all disputes arising out of the contract but also to decide all disputes in any way touching the contract whatsoever, hence the arbitrator is not required to confine himself only to the terms of the contract but can pass appropriate award so as to do justice between the parties including awarding damages suffered by the contracting parties. Therefore, award cannot be said to be without or beyond jurisdiction. He further submitted that the award passed by the arbitrator is on the basis of the interpretation of clauses 17 & 18 and, therefore, the award would be within his jurisdiction. Learned counsel for both the parties submitted that law on this subject is well settled. However, they referred to various decisions to buttress their respective contentions. To do justice to their contentions, we would refer to the various decisions of this Court relied upon by them. In Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others [(1964) 5 S.C.R. 481], the dispute arose between the partners of a firm on retirement of partners which was referred to the arbitrator. The arbitrator had passed non-speaking award. While revoking the award, the High Court in concurrence with the Court below upheld two objections: - (a) that the arbitrator exceeded his jurisdiction; and (b) that he was guilty of misconduct in receiving some evidence behind the back of one partner, Chintaman Rao. Before this Court, it was contended that the deed of partnership as well as the order of reference left the arbitrator a free hand and even if the arbitrator wrongly interpreted the deed of partnership and had included the depreciation and appreciation while valuing partnership property, no question of jurisdiction could arise. The partnership deed referred to by the Court provided that in ascertaining the valuation of the firm, the property was to be valued at the book value of the firm and such stock and movables thus valued shall be given to the remaining partners. After considering the decision in Chempsey Bhara and Company Vs. Jivraj Balloo Spinning and Weaving Company Ltd. [LR 50 I.A. 324], Shah.J, observed that : (a) It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion (b) It is not open to the Court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award. (c) The primary duty of the arbitrator under the deed of a reference in which was incorporated the partnership agreement, was to value the net assets of the firm and to award to the retiring partners a share therein. In making the valuation of the firm, his jurisdiction was restricted in a manner provided by paragraph 13 of the partnership agreement. As the arbitrator has expressly stated in his award that in arriving at his valuation, he has included the depreciation and appreciation of the property, the arbitrator has travelled outside his jurisdiction and the award was on that account liable to be set aside. This was not a case in which the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication. It is a case of assumption of jurisdiction not possessed by him, and that renders the award, to the extent to which it is beyond the arbitrators jurisdiction, invalid. The award must fail in its entirety as it was not possible to sever from the valuation made by the arbitrator, the value of the depreciation and appreciation included. In a concurring judgment, Hidayatullah J, after considering the decision in Chempsey Bhara and Companys case (supra) observed that the first point is therefore to decide what were the limits of the arbitrators action as disclosed by the reference and the deed of partnership and then to see what the arbitrator has actually done and not what he may have stated loosely in his award. This is the only way in which the excess of

jurisdiction can be found. If the interpretation of the deed of partnership lies with the arbitrator, then there is no question of sitting in appeal over his interpretation, in view of the passage quoted above from Champseys case but if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him, and the court can find that he has exceeded his jurisdiction on proof of such action.

The next decision on which reliance is placed is Continental Construction Co. Ltd. Vs. State of M.P. [1988 (3) SCR 103]. In the said case, it was contended by the contractor that contract could not be completed within stipulated time because of alleged gross delay on the part of the State in allotment of work and discharge of its obligation under the contract. He had, therefore, incurred unforeseen expenditure and claimed damages to the tune of Rs. 5,29,812/-. The matter was referred to the retired Engineer-in- Chief, PWD, Bhopal, who partly allowed the contractors claim. The award was set aside by the District Judge. Appeal was also dismissed by the High Court and in appeal before this Court, it was contended that the contractor was not entitled to extra cost for material and labour in terms of the contract. This Court held that arbitrator misconducted himself in allowing the claim without deciding the objection of the State that in view of the specific clauses of the contract, the Contractor was not legally entitled to claim extra cost. The Court observed: If no specific question of law is referred, the decision of the arbitrator on that question is not final however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not he can be set right by the Court provided his error appears on the face of the award. In this case, the contractor having contracted, he cannot go back to the agreement simply because he does not suit him to abide by it. The decision of this Court in M/s. Alopi Parshad Vs. Union of India, [1960] 2 SCR 793 may be examined. There it was observed that a contract is not frustrated merely because the circumstances in which the contract was made, altered. The 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 parties to an executory contract are often faced, in the course of carrying it out, with a turn of event which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract merely because on account of an uncontemplated turn of events, the performance of the contract may become onerous.

Thereafter, the Court distinguished the decision in Tarapore Company Vs. Cochin Shipyard Ltd. And another [1984(2) SCC 680]. In the said case, there were no specific clauses which barred consideration of extra claims in events of price escalation. At this stage, we would mention that in Tarapore Companys case, this Court after considering the various decisions has held that a specific question as to whether the claim of compensation made by the Contractor demurred and disputed by the respondent would be covered within the scope, ambit and width of the arbitration clause was specifically referred by the parties for the decision of the Arbitrator. In such cases, the award cannot be set aside on the ground that there is an error of law on the face of the award. Learned Sr. Counsel, Mr. Ashok H. Desai has heavily relied upon this decision in support of his contention that in the present case also, arbitration clause 74 is very widely worded. Dealing with arbitration clause, Court observed arbitration clause so widely worded, as disputes arising out of the contract or in relation to the contract or execution of the works, would comprehend within its compass a claim for compensation related to estimates and arising out of the contract. The test is whether it is necessary

to have recourse to the contract to settle the dispute that has arisen. Further, while interpreting such clause, the Court has held as under:- We may now turn to some decisions to which our attention was drawn. The first case we would like to refer to is A.M. Mair & Co. Vs. Gordhandass Sagarmull [1950] SCR 792. The Court was concerned with the arbitration clause drawn up as : all matters, questions, disputes, differences and/or claims, arising out of and/or concerning, and/or in connection and/or in consequence of, or relating to, the contract etc.. The question arose whether the due date under the contract was extended within the time, earlier reserved. The arbitrator held that the due date of the contract has been extended by a mutual agreement and the respondents were held liable to pay a sum of Rs. 4116 together with interest at the rates specified in the award. It was contended that the dispute is not covered by the arbitration clause. This clause while holding that the dispute is covered by the arbitration clause observed that looking to the rival contentions, such a dispute, the determination of which turns on the true construction of the contract, would also seem to be a dispute under or arising out of or concerning the contract. The test formulated was that if in settling a dispute, a reference to the contract is necessary, such a dispute would be covered by the arbitration clause.

It is true that arbitration clause in the present case, is also very widely worded and that all disputes in any way touching or concerning the contract whatsoever are required to be referred to the arbitration. Therefore, reference of the dispute to the arbitrator cannot be termed as without jurisdiction. Still the question would be whether arbitrator will have authority or jurisdiction to grant damages or compensation in teeth of stipulation providing that no escalation would be granted and that contractor would only be entitled to payment of composite rate as mentioned and no other or further payment of any kind or item whatsoever, shall be due and payable by the company to the contractor; the rates wherever fixed are binding during the currency of the agreement irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or on any account or any other ground whatsoever. In the said case, there was no such specific agreement or stipulation. Further, the Court has also given a finding that it was a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties. Hence the Court held that in such a situation, even if the view taken by the arbitrator may not accord with the view of the Court, the award cannot be set aside on the ground that there is an error of law apparent on the face of the record. Facts and issues in the present case are quite different as stated above.

In M/s. Sudarshan Trading Co. Vs. Government of Kerala and Another [1989] 2 SCC 38, this Court posed the following questions for its decision: - How should the court examine an award to find out whether it was a speaking award or not; and if it be a non-speaking award, how and to what extent the court could go to determine whether there was any error apparent on the face of the award to be liable for the interference by the court. The other question that arises in this case is, to what extent can the court examine the contract in question though not incorporated or referred to in the award.

In that case also, the arbitrator has passed the non-speaking awards but with regard to each and every claim it has separated and passed the order either accepting or rejecting the claim or partly accepting the claim of the contractor. After referring to the various decisions including Jivarbhai Ujamshi Sheth case, the Court observed as under: This was reiterated by Justice Hidayatullah that if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him and the court can find that he exceeded his jurisdiction on proof of such excess. In that case the arbitrator in working out net profits for four years took into account depreciation of immovable property. For this reason he must be held to have exceeded his jurisdiction and it is not a question of

his having merely interpreted the partnership agreement for himself as to which the civil court could have had no say, unless there was an error of law on the face of the award. Therefore, it appears to us that there are two different and distinct grounds involved in many of the cases. One is the error apparent on the face of the award, and the other is that the arbitrator exceeded his jurisdiction. In the latter case, the courts can look into the arbitration agreement but in the former, it cannot, unless the agreement was incorporated or recited in the award.

This Court further 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 arbitrator... 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.

Further, dealing with the non-speaking award and also for the claims on the ground of escalation of price, due to various reasons including payment of minimum rates of wages payable to various categories of workers, this Court in Associated Engineering Co. Vs. Government of Andhra Pradesh and Another [1991] 4 SCC 93 referred to the contract clauses and set aside the award by holding: - This conclusion is reached not by construction of the contract but by merely looking at the contract. The umpire travelled totally outside the permissible territory and thus exceeded his jurisdiction in making the award under those claims. This is an error going to the root of his jurisdiction: See Jivarajbhai Ujamshi Sheth Vs. Chintamanrao Balaji.

The Court further held as under: An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency(see Mustill and Boyds Commercial Arbitration, 2nd edn., p. 641). He commits misconduct if by his award he decides matters excluded by the agreement(see Halsburys Laws of England, Volume II, 4th edn., para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.

Learned Counsel for the Respondent relied upon the case of Hindustan Construction Co. Ltd. Vs. State of Jammu & Kashmir [1992] 4 SCC 217. In the said case, the Court has observed that award was a non- speaking one and contained no reasoning which could be declared to be faulty; the scope of the Courts jurisdiction in interfering with the non- speaking award is extremely limited. While discussing the contention, the Court quoted the decision in the case of Sudarshan Trading Co. case (which we have earlier referred) and thereafter held that High Court has not rested its decision on any question of the arbitrator having exceeded his jurisdiction or travelled beyond the contract; the Court has set aside the award on the ground of error apparent on the face of it. The Court further held that clauses of the contract referred to by the High Court are not so clear or unambiguous as to warrant an inference that the interpretation placed on them by the arbitrators is totally unsustainable. In that view of the matter, the Court held that it was difficult to say that the arbitrators interpretation was erroneous on the face of it. Hence, the aforesaid decision would have no bearing to the facts and the law involved in this matter. Similarly, in Managing Director, J&K Handicrafts, Jammu Vs.

Good Luck Carpets [1990] 4 SCC 740, dealing with the non-speaking award, the Court negatived the contention that the agreement containing the arbitration clause cannot be looked into even to find out as to what was the nature of the dispute contemplated by it with regard to which a reference to an arbitrator was contemplated, nor so, when the award was non-speaking one, by observing thus: Firstly, the award is not a totally non-speaking one inasmuch as it gives a resume of the incentive scheme and the agreement between the parties as also the items of the claim made by the respondent. Of course while fixing the amount found payable by the appellant, no reasons are recorded. Secondly, if there is any challenge to the award on the ground that the arbitrator had no jurisdiction to make the award with regard to a particular item inasmuch as it was beyond the scope of reference, the only way to test the correctness of such a challenge is to look into the agreement itself. In our opinion, looking into the agreement for this limited purpose is neither tantamount to going into the evidence produced by the parties nor into the reasons which weighed with the arbitrator in making the award.

In Tarapore & Co. Vs. State of M.P. 1994(3) SCC 521, this Court again considered whether the arbitrator has exceeded his jurisdiction in awarding extra payment to the contractor on account of payment of enhanced wages to labour by the contractor pursuant to statutory revision of minimum wages by Government or increase in rates of fair wages by wage committee binding on the contractor under conditions of tender notice. In the said case, Court considered the distinction between the latent and patent jurisdiction of the arbitrator in deciding the disputes and after referring to the arbitration clause, observed that: - Any dispute relating to or arising out of or in any way connected with the contract has to be referred to arbitration. It cannot be said that there was patent lack of jurisdiction on the part of arbitrators in having gone into the question of reimbursement; at the best it could be said that arbitrators had no jurisdiction to entertain the claim and hence a case of latent lack of jurisdiction.

After considering the decisions in Continental Construction Co.(supra) and Tarapore and Co. (supra), this Court held that as there was absence of escalation clause, it was not a case where on the basis of the terms of the agreement entered between the parties, it can be held that arbitrator had no jurisdiction to make the award. The Court observed that it cannot be held that arbitrator has no jurisdiction to make the award because of lack of specific provision permitting the claim at the hand. The Court further observed:- It has to be seen whether the term of the agreement permitted entertainment of the claim by necessary implication. It may be stated that we do not accept the broad contention of Shri Nariman that whatever is not excluded specifically by the contract can be subject-matter of claim by a contractor. Such a proposition will mock at the terms agreed upon. Parties cannot be allowed to depart from what they had agreed. Of course, if something flows as a necessary concomitant to what was agreed upon, courts can assume that too as a part of the contract between the parties.

After referring to the facts as found from the record, the Court held that the award cannot be said to be beyond the jurisdiction of the arbitrator insofar as increased payment on account of rise in rates of fair wages was concerned. In our view, the said finding is based on appreciation of evidence on record and the terms of the contract. However, the Court made it clear that part of the award which is relatable to increase in minimum wages cannot be regarded as one within jurisdiction and observed needless to say that if arbitrator goes beyond jurisdiction, the same would amount to misconduct.

In T.N. Electricity Board Vs. Bridge Tunnel Constructions and Others 1997(4) SCC 121, the

contractor had set up the claims raised at rates higher than the contracted rates and twice the rate for the work done after the expiry of the contract period. For those claims, dispute was raised and the matter was referred to the arbitrator. The Civil Court made the award rule of the Court. The High Court confirmed the same. In appeal, this Court set aside the award and while discussing various contentions, observed as under: If the arbitrator decides a dispute which is beyond the scope of his reference or beyond the subject-matter of the reference or he makes the award disregarding the terms of reference or the arbitration agreement or terms of the contract, it would be a jurisdictional error beyond the scope of reference; he cannot clothe himself to decide conclusively that dispute as it is an error of jurisdiction which requires to be ultimately decided by the Court.

In New India Civil Erectors (P) Ltd. Vs. Oil & Natural Gas Corporation [1997] 11 SCC 75, this Court again considered the contention wherein the arbitrator has passed award contrary to the specific stipulation/condition contained in the agreement between the parties. The Court observed thus:- 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.

The aforesaid judgment was considered in H.P. State Electricity Board Vs. R.J. Shah and Company [1999(4) SCC 214] and in paragraph 26, the Court held as under:

In order to determine whether the arbitrator has acted in excess of jurisdiction what has to be seen is whether the claimant could raise a particular dispute or claim before the arbitrator. If the answer is in affirmative, then it is clear that arbitrator would have the jurisdiction to deal with such a claim. On the other hand if the arbitration clause or a specific term in the contract or the law does not permit or give the arbitrator the power to decide or to adjudicate on a dispute raised by the claimant or there is a specific bar to the raising of a particular dispute or claim, then any decision given by the Arbitrator in respect thereof would clearly be in excess of jurisdiction.

Learned Sr. Counsel, Mr. Ashok H. Desai relied upon the case of P.V. Subba Naidu and Others Vs. Government of A.P. and others 1998(9) SCC 407. In that case, the non-speaking award was rendered by the arbitrator. The Court held that the terms of the arbitration clause were very wide, therefore, all the disputes which arise as a result of the contract would be covered by the arbitration clause and that all claims were expressly referred to the arbitrator and were raised before the arbitrator. In that set of circumstances, by purporting to construe the contract the Court could not take upon itself the burden of saying that it was contrary to the contract and as such beyond jurisdiction. Thereafter, the Court referred to the decision in Ch. Ramalinga Reddy Vs. Superintending Engineer (1994) 5 Scale 67 and observed that in that case arbitrator was required to decide the claims referred to him having regard to the contract. Hence, his jurisdiction was expressly limited to decide claims under the terms of the contract but in the case which was considered by the Court, there was no clause in the contract which prevented the arbitrator from examining the claims put up before the arbitrator. Considering the aforesaid aspect, in our view, this judgment also would have no bearing in the present case, as there are express prohibitions and stipulations in the contract for non-payment of extra amount on any ground whatsoever. In the present case, the rates were to remain firm, fixed and binding irrespective of fall or rise in cost of mining operation of the work covered by the contract or for any other reason. The contract was for

composite rate and it stipulated that no other or further payment of any kind of item whatsoever was payable by the company to the Contractor. From the resume of the aforesaid decisions, it can be stated that: (a) it is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion. (b) It is not open to the Court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award. (c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere. (d) If no specific question of law is referred, the decision of the Arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding. (e) In a case of non-speaking award, the jurisdiction of the Court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction. (f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. Arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award. (g) In order to determine whether arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction. (h) The award made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of wider arbitration clause such claim amount cannot be awarded as agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement. This aspect is absolutely made clear in Continental Construction Co. Ltd.(supra) by relying upon the following passage from M/s. Alopi Parshad Vs. Union of India [1960] 2 SCR 703 which is to the following effect: - There it was observed that a contract is not frustrated merely because the circumstances in which the contract was made, altered. The 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 parties to an executory contract are often faced, in the course of carrying it out, with a turn of event which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract merely because on account of an uncontemplated turn of events, the performance of the contract may become onerous.

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action. (j) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law.

In view of the aforesaid law and the facts stated above, it is apparent that the award passed by the arbitrator is against the stipulations and prohibitions contained in the contract between the parties. In

the present case, there is no question of interpretation of clauses 17 & 18 as the language of the said clauses is absolutely clear and unambiguous. Even the contractor has admitted in his letter demanding such claims that the contract was signed with clear understanding that the rate under the contract was firm and final and no escalation in rates except in case of diesel would be granted. Hence, by ignoring the same, the arbitrator has travelled beyond his jurisdiction. It amounts to deliberate departure from the contract. Further, the reference to the arbitrator is solely based upon the agreement between the parties and the arbitrator has stated so in his interim award that he was appointed to adjudicate the disputes between the parties arising out of the agreement. No specific issue was referred to the arbitrator which would confer jurisdiction on the arbitrator to go beyond the terms of the contract. Hence, the award passed by the arbitrator is, on the face of it, illegal and in excess of his jurisdiction which requires to be quashed and set aside.

Lastly, we would mention few other contentions raised by the learned counsel for the respondent which are required to be stated for rejection. His contention that arbitrator has acted beyond his jurisdiction was not raised before the District Court as well as before the Arbitrator, is without any substance. Surprisingly, to say the least, the High Court as well as the District Court observed that no specific contention with regard to the jurisdiction was raised before the arbitrator. It appears that the High Court and the District Court had not considered the written statement filed by the appellant before the arbitrator. The District Court has also raised issue Nos. 5 to 8 quoted above, which would cover the contention raised by the appellant. The issue whether the award is perverse and that the arbitrator failed to apply his mind to pleadings, documents and evidence as well as the clauses 17 & 18 of the agreement would cover the contention that the arbitrator acted beyond his jurisdiction in ignoring stipulations of the contract. With regard to the committees report on which the learned Counsel for the respondent has relied upon, it had been pointed out by the learned Counsel for the appellant that the said report was specifically rejected by the board of the appellant. Hence, it would have no bearing on the award which was to be passed by the Arbitrator.

In the result, the appeal is allowed with costs. The award passed by the arbitrator is quashed and set aside. Consequently, the judgment and order dated 17th December, 1991 passed by the High Court in S.B. Civil Miscellaneous Appeal No.254 of 1991confirming the judgment and order dated 1st August, 1989 passed by the District Judge, Udaipur in Civil Miscellaneous Case No. 131 of 1985 and 45 of 1986 is also quashed and set aside.