SUPREME COURT OF INDIA

J.C. Budhraja

Vs.

Chairman, Orissa Mining Corporation.

C.A.No.1971-1973 of 2000

(H. K. Sema CJ. G. P. Mathur and R. V. RaveendranJJ.)

18.01.2008

JUDGMENT

Raveendran, J.

1. These appeals are filed against the common judgment dated 15.10.1999 passed by the High Court of Orissa in Misc. Appeal No.296/1998 filed by the respondents and Misc. Appeal No.198/1998 and Civil Revision No.109/1998 filed by the appellant.

2. The appellant is stated to be legal heir and successor in interest of N.C. Budhraja (hereinafter referred to as the contractor). M/s. Orissa Mining Corporation Ltd. (for short OMC or respondent) entered into an agreement dated 16.9.1967 (Agreement No.30/F-2) for removal of over-burden at Kaliapani (Cuttack District) by excavation in all kinds of soil (including stone earth and gravel mixed with boulders), and depositing/disposing of the same, as directed. The maximum lift was 6m including initial lift of one metre. The order to commence work was issued on 23.9.1967. Parties also entered into three supplementary agreements in regard to the said contract No.30/F-2, on 2.8.1969, 7.3.1970 and 10.2.1972. [Note : OMC had also entered into other contracts with the contractor including contract dated 22.2.1968 (Contract No.2/F/2) for raising Chrome Ore by open excavation from the said mining area. We are not concerned with those contracts in these appeals].

3. The main agreement enumerated two items of work in its schedule. The first, second, and third supplementary agreements enumerated respectively eight items, one item and four items in their respective schedules. The work was completed by the contractor on 15.6.1975. The final bill in respect of the work was prepared by OMC on 21.10.1976. It was revised in March-April 1977 by OMC. The final Bill It showed the total value of the work done (under several items in the schedule to main and three supplementary agreements) as Rs.1, 49, 190, 76.74. The contractor countersigned the said bill on 14.4.1977 under protest, but, however, certified and confirmed that the measurements shown therein were correct.

4. According to the contractor, having regard to the zig-zag route by which the over burden had to be carried, the actual lead was much longer and actual lift was much higher than what were stipulated in the agreement. He contended that the amounts shown as due for the work done was as per contract rates which was for removing overburden to the extent of lift and lead provided in the contract schedules; and at several places, he had to cut and remove the over-burden beyond the extent of lift and lead provided in the contract, and he should be paid for such extra leads and lifts. He claimed to have executed certain additional works not provided in the contract schedules, on the directions of OMC. He therefore represented that the matter may be examined and enquired into for determination of proper amounts due. In view of the several representations made by the contractor in respect of the contract no.30/F-2 as also other contracts, OMC sent the following letter dated 28.10.1978 to the contractor :- Re : Settlement of pending claims.

5. You had called on Chairman, OMC, recently and apprised him of the dues receivable by you in respect of certain long pending matters such as mine benches work and raising at Kaliapani Quarry-I. In the matter of Kaliapani it has been decided to constitute a committee which will go separately into your claims and other facts, in which connection you are requested to give all possible help and assistance, so that your dues, if any, will be ascertainable.

6. In regard to other pending matters, you had indicated yourself that you will give the details of claims and payment received by you. This may be given within a day or two so as to enable OMC to settle up the above at the earliest.

7. The contractor sent a reply dated 16.11.1978 enclosing therewith a statement quantifying his claims relating to contract no. 30F-2 (subject matter of these appeals) as also another contract (no. 2F-2). A Committee was constituted by OMC to scrutinize and recommend on the admissibility of the claims made by the contractor in regard to Agreement No.30/F-2 and Agreement No.2/F-2. Several meetings were held by the said Committee and the claims of the contractor aggregating to Rs.50, 15,820 in regard to contract no.30.F2 were considered. Ultimately the Committee submitted a final report dated 7.12.1979 expressing the view that the contractor could be paid only a sum of Rs.3, 52,916/- in regard to his claims in respect of the two contracts. The contractor, thereafter, wrote a letter dated 29.2.1980 stating that he had come to know that the Committee had submitted its final report and requested for a copy of the report and for payments of the amounts due. OMC sent a reply dated 4.3.1980 stating that the claims were not accepted yet but however agreed to release a sum of Rs.3.5 lakhs and released the said sum on that day.

8. The contractor sent a notice dated 4.6.1980 invoking the Arbitration Agreement (Clause 23) in respect of pending claims relating to Contract No. 30F-2 and two other contracts. He suggested a panel of names and requested OMC to appoint one of them as Arbitrator. Immediately, thereafter, the contractor filed Misc. Case No.306/80 in regard to the contract in the Court of the Sub-Judge, Bhubaneswar, under section 8(2) of Arbitration Act, 1940 (Act for short) for appointment of an Arbitrator. The court allowed the said petition by order dated

6.10.1980 appointing Mr. Justice Balakrishna Patro, a retired Judge of the Orissa High Court as Arbitrator by consent. On 16.12.1982, an application was made by the present appellant under Order 22 Rule 3 CPC claiming to be the son of legatee of the contractor and for substituting him in place of the deceased N.C. Budhraja, as his legal heir. The said application was allowed by the court on 15.11.1985. In the meanwhile, Arbitration Act, 1940 ('Act' for short) was amended by the Arbitration (Orissa Amendment) Act, 1984, inserting section 41A providing for constitution of and reference to the Arbitration Tribunal. By Notification dated 3.5.1986, (amended by Memo dated 23.6.1986) the State Government constituted a one Member Special Arbitral Tribunal with Justice N. K. Das as Arbitral Tribunal to settle the disputes between the contractor and OMC in regard to contract no. 30/F-2.

9. The contractor filed a claim statement dated 27.6.1986 before the arbitrator praying for an award of Rs.3,41,42,040 with interest from 1.6.1986, as detailed below:

> "Value of work done by the contractor: Rs.2, 45, 85,183 Less: Amounts paid by OMC to the
> Contractor: Rs.1, 49, 88,566.90 Balance due: (Rs.95, 96,616.99) rounded off as Rs.95, 96,616.00 Add: Interest on the said amounts from the respective dates : Rs.2, 40,09,948.00 Add: Interest on belated Payment Rs. 5, 35,476.00 Rs. 2, 45, 45,424.00
>
> Total : Rs.3, 41, 42,040.00
>
> In the claim statement filed before the arbitrator, the nature and quantum of claim made was different from what was claimed in the letter dated 16.11.1978 which was considered by the Committee. In the claim statement the contractor abandoned claims to an extent of Rs.21,83,692 out of the claim of Rs.50,15,820/- made on 16.11.1978 and claimed only Rs.26,32,128 from the original claim. The balance of the claim was fresh claims, not made earlier. The claim of Rs.95,96,616 made before the arbitrator was made up of two parts, first being a part of the original claim made in the letter dated 16.11.1978 and the second being completely fresh claims made for the first time in the claim statement, as detailed below :"

"(i) Out of the original claim of Rs.50, 15,820 made in the letter dated 16.11.1978 (The claim for balance of Rs.21,83,692 not pursued in arbitration)	Rs. 28, 32,128
(ii) Fresh claims not made earlier	Rs. 67, 64,488

(Note: As per actual calculations, the total of the claims made by the appellant was Rs.96, 66,107 and the new claims were Rs.68, 33,979]."

10. The Arbitrator made a reasoned award dated 28.11.1986 holding that the appellant was entitled to a sum of Rs.1, 02, 66,901.36 (which was more than the claim of Rs.95, 96,616) with interest at 12% per annum from 1.8.1977 till date of award, and future interest at the rate of 6% P.A. from the expiry of one month from the date of the award till date of decree. The award is in respect of 35 claims. Out of 35 claims, Items 1 to 16 related to the schedule items of work under the contract (main agreement and the supplementary agreement 1 to 3). Items 17 to 34 were in respect of work which did not form part of the contract schedule. Claim 35 related to escalation in cost of labour and material on account of delay in execution.

11. The details of the items 1 to 16, (that is description of work, total amount claimed, amount admitted, difference in dispute and amount awarded) are as under :

Sl. No.	Description of item	Claim of Contractor	Amount admitted by OMC	Amount in dispute	
1	Removal of overburden in all kinds of soil etc. within a lead of 100 m. (Maximum lift 6M)	50802.98	45040.32	5762.66	
2	Removal of overburden etc. within a lead of one km beyond initial lead of 30 m (maximum lift 6m)	406881.20	406581.20	300.00	
3	Transportation of excavated overburdened etc., within a lead of 1 km beyond initial lead of 6m	676228.94	616245.60	59983.34	
4	Transportation of excavated over burdened etc., within a lead of 2km beyond one km	5361.09	5361.09	0	
5	Clearing heavy jungle etc.,	6201.72	3303.72	2898.00	
6	Cutting and uprooting trees etc., 5 grith	29800.80	14205.60	15595.20	
7	Cutting and uprooting trees etc., 5 to 10 grith	11352.00	3360.00	7992.00	

8	Excavation of overburden in all kinds of rocks etc., up to 60m lead	3689850.00	3390979.12	298870.88	
9	Excavation of overburden in all kinds of rock etc., up to 2km distance and within lifts of 35m	10379041.20	10379041.20	0	
10	Lift beyond 15m up to 16m depth	5066.85	5054.84	12.01	
11	Lift beyond 16m up to 17m	9858.70	9785.55	73.15	
12	Lift beyond 17m up to 18m	12647.79	12373.84	273.95	
13	Lift beyond 18m up to 19m	13358.54	13037.07	321.47	
14	Lift beyond 19m up to 20m	9812.25	9447.79	364.46	
15	Lift beyond 20 up to 21m	5070.33	4882.89	187.44	
16	Lift beyond 21m up to 22m	89.71	76.89	12.82	
17	TOTAL	1,53,16,507.00	149, 19,076/72	397,430/28	

12. Though in the claim statement, the appellant had clearly stated that he had in all received Rs.149, 88,566/90, and given credit for the said sum, during the hearing, the appellant contended that instead of Rs.149,88,566/90, he had appropriated only Rs.120,01,695/90 towards this contract and that the balance of Rs.29,86,871/- had been adjusted towards some other contacts. Even though the claim statement was not amended, the Arbitrator proceeded on that basis and awarded Rs.32, 83,243 in respect of items 1 to 16 as under:

"A. Total amount claimed for Items 1 to 16		Rs. 153, 16,507.00
B. Total of Items 1 to 16 admitted by OMC		Rs. 149, 19,076/72
C. Total of claims admitted by Arbitrator		Rs. 3, 65,862/18
(B+C)	Total	Rs. 152, 84,938/90
Amount shown as received by contractor towards Items 1 to 16 (as against Rs.149, 88,566/90 shown as		Rs.1, 20, 01,695/90

Received from OMC in the claim statement)

BALANCE arrived at Arbitrator — Rs.32, 83,243.00
As due to contractor in respect of items 1 to 16 ”

13. Claims of contractor at Sl. No. 17 to 34 related to items of work not covered in the schedule to the contract, for which claim was made on the basis of damages/quantum merit. As against the total of Rs.70, 56,573/55 claimed in regard to these 18 items (Items 17 to 34), the Arbitrator awarded in all Rs.52, 56,847/36. The details of the claims made by the appellant and the amount awarded in respect of each of them are as under:

S. No.	Description of item	Amount Claimed	Amount Awarded
17	Extra Head Lead for 90 m	2810144.10	2450042.88
18	Removal of excavated materials from the edge of the quarry	54888.60	50858.60
19	Unmeasured quantity of excavation	848372.64	664720.00
20	Catch Water Drain	278842.50	27842.50
21	Removal of slipped earth from side slopes	143646.00	Nil
22	Restoration of benches to proper shape	186761.16	140070.87
23	Bullah Pilling to prevent slipping of benches	15722.70	Nil
24	Dry rubble packing	202499.00	122856.40
25	Extra lift during construction of Haul Road	262837.73	262837.73
26	Extra lift for excavated materials dumped at quarry edge.	360690.49	270517.88
27	Extra lift measured by Surveyor but not paid	1396128.63	1047096.50

28	Idle labour due to non-supply of working plan	145577.00	Nil
29	Idle labor due to want of working site	76850.00	Nil
30	Idle labor due to stoppage of work by the respondent and restriction of working area	389288.00	194644.00
31	Repairing of Haul road damaged by cyclone	10640.00	Nil
32	Reconstruction of Damsala Embankment	25370.00	25370.00
33	Barbed wire fencing	27315.00	Nil
34	Supply of electricity to work site and respondents colony	72000.00	Nil
	TOTAL	Rs. 70,56,573/55	Rs.52,56,847/36

14. The last item of claim of the appellant, namely item No.35 was for Rs.22, 17,188/34 as escalation in cost between 1972 and 1975 on account of increase in cost of labor and material, based on the General Price Index. The Arbitrator determined the value of work executed after 1.4.1973 as Rs.52, 96,967/-. He awarded an escalation of 32.6% on the said value of work and awarded Rs.17, 26,811.00 as escalation in cost of labor and material.

15. Thus the Arbitrator awarded Rs.102, 66,901.66 to the appellant as detailed below (exclusive of interest), as against the claim of Rs.95, 96,616/- (exclusive of interest) made by the appellant:

"(i) Amounts award in respect of claims 1 to 16	Rs.32, 83,243.00
(ii) Amounts awarded in respect of claims17 to 34 (As against claim of Rs.70, 56,573/55)	Rs.52, 56,847.36
(iii) Amount awarded in respect of claim 35 as escalation (As against claim of Rs.22, 17,188/34)	Rs. 17, 26,811.00
Total award	Rs.102, 66,901.36

The contractor filed OS No.224/1986 for making the award rule of the court, on the file of the Civil Judge, Sr. Division, and Bhubaneswar. The objections to the said award filed by OMC were registered as Misc. Case No.5/1987. The said court, by common judgment dated 21.3.1998, overruled the objections and directed that the award of the arbitrator be made the rule of the court and a decree be drawn in terms of the award.

Feeling aggrieved, OMC filed Misc. Appeal No.296/1998, challenging the decision of the Civil Judge refusing to set aside the award, directing a decree in terms of the award. The contractor filed Misc. Appeal No.198/1998 and Civil Revision No.109/1998 claiming future interest from the date of decree as the judgment of the Civil Judge was silent on that aspect. The High Court heard and disposed of the said appeals and revision petition by common judgment 15.10.1999. It allowed Misc. Appeal No.296/1998 filed by OMC and dismissed M.A. No.198/1998 and C.R. No.109/1998 filed by the contractor. The High Court held:

"(i) The claim of the contractor was barred by limitation and therefore the award was liable to be set aside.

(ii) The arbitrator acted beyond his jurisdiction in awarding huge amounts towards alleged extra work, even though there was nothing to indicate that conditions contemplated in proviso to Clause 11 (relating to additional work) were satisfied.

(iii) Though the award purported to be a reasoned award, the award in regard to Items 17, 18, 19 and 25 to 27 was not supported by any reason and therefore, the award was liable to be set aside.

(iv) The award in respect of escalation in cost (item 35) at the rate of 32.6% of the value of work was without basis, (when the claim itself was for a lesser rate), in the absence of any provision in the contract for escalation, amounted to legal misconduct.

(v) The award being in excess of the claim made by the contractor shocked the judicial conscience of the court.

(vi) Interest could have been awarded by the arbitrator only from the date of reference (6.10.1980) and could not be awarded in regard to any pre-reference period.

(vii) Though in the normal course, some of the issues would have necessitated remitting the matter to the arbitrator for fresh consideration, it was not necessary to remit the matter as the entire award was being set aside on the ground of limitation."

16. The said decision of the High Court is challenged by the appellant in this appeal by special leave.

17. On the contentions urged, the following questions arise for consideration:

> "(i) Whether the claim made before the arbitrator or any part thereof was barred by limitation?
>
> (ii) Whether the award is liable to be set aside on the ground of legal misconduct and the error apparent on the face of the award?
>
> (iii) Whether the award is liable to be set aside on the ground that the arbitrator exceeded his jurisdiction?
>
> (iv)To what relief the parties are entitled?
>
> Questions (i) and (ii):"

18. The Arbitrator held that the claims were not barred. He held:

> "In the case of a suit, the date on which the cause of action arises is the date from which the limitation period starts. Under section 20, it is the date on which the right to apply accrues that determines the starting point. That starting point does not coincide with the date on which the cause of action for filing a suit arises. The same principle would apply to an application under section 8 of the Act. The claimant signed the final bill on 14.4.1977 under protest. It is not correct to say that the claimant accepted the final bill. All these factors show that negotiation was going on and the matter was in a nebulous and fluid stage. The committee gave its report in December, 1979. In March, 1980 some portion out of the money said to have been found due by the committee was paid on ad hoc basis. Notice was given by the contractor on 14.6.80. So, the dispute as to final bill still continues. Till the final bill is prepared and accepted by the contractor, limitation would not accrue. When the matter went to court in 1980, it was not barred by limitation"

19. The High Court found that the work was completed on 15.6.1975, final measurement was taken on 16.6.1975 and the final bill was signed by the contractor under protest on 14.4.1977 and therefore held that the cause of action for the contractor to make a claim arose on 14.4.1977. According to the High Court, as the notice invoking arbitration was issued on 4.6.1980 and the petition under section 8(2) of the Act was filed thereafter, beyond three years from 14.4.1977, the entire claim was barred by limitation. The High Court further held that as the final bill was signed under protest by the contractor, it could be said that the cause of action arose on a date subsequent to the date of signing of the final bill. It further held that the fact that the Departmental Committee considered the claims in 1979, subsequent to the

signing of the final bill under protest, did not have the effect of saving/extending limitation in the absence of any acknowledgement in writing as required under section 18 of the Act.

20. Section 18 of the Limitation Act, 1963 deals with effect of acknowledgement in writing. Sub-section (1) thereof provides that where, before the expiration of the prescribed period for a suit or application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The explanation to the section provides that an acknowledgement may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come or is accompanied by a refusal to pay, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the right. Interpreting section 19 of the Limitation Act, 1908 (corresponding to section 18 of the Limitation Act, 1963) this *Court in Shapur Foredoom Mazda v. Durga Prosad Chamaria*[1] held:

> "Acknowledgement as prescribed by section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication."

21. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear, then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. Stated generally, courts lean in favor of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning.

22. In construing words used in the statements made in writing on which a plea of acknowledgement rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document.

23. It is now well settled that a writing to be an acknowledgement of liability must involve an admission of a subsisting jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. The admission need not be in regard to any precise amount or by expressed words. If a defendant writes to the plaintiff requesting him to send his claim for verification and payment, it amounts to an acknowledgement. But if the defendant merely says, without admitting liability, it would like to examine the claim or the accounts; it may not amount to acknowledgement. In other words, a writing, to be treated as an acknowledgement of liability should consciously admit his liability to pay or admit his intention to pay the debt. Let us illustrate. If a creditor sends a demand notice demanding payment of Rs.1 lakh due under a promissory note executed by the debtor and the debtor sends a reply stating that he would pay the amount due, without mentioning the amount, it will still be an acknowledgement of liability. If writing is relied on as an acknowledgement for extending the period of limitation in respect of the amount or right claimed in the suit, the acknowledgement should necessarily be in respect of the subject matter of the suit. If a person executes a work and issues a demand letter making a claim for the amount due as per the final bill and the defendant agrees to verify the bill and pay the amount, the acknowledgement will save limitation for a suit for recovery of only such bill amount, but will not extend the limitation in regard to any fresh or additional claim for damages made in the suit, which was not a part of the bill or the demand letter. Again we may illustrate.

24. If a house is constructed under the item rate contract and the amount due in regard to work executed is Rs. two lakhs and certain part payments say aggregating to Rs.1, 25, 0000/- have been made and the contractor demands payment of the balance of Rs.75, 000/- due towards the bill and the employer acknowledges liability, that acknowledgement will be only in regard to the sum of Rs.75, 000/- which is due. If the contractor files a suit for recovery of the said Rs.75,000/- due in regard to work done and also for recovery of Rs.50,000/- as damages for breach by the employer and the said suit is filed beyond three years from completion of work and submission of the bill but within three years from the date of acknowledgement, the suit will be saved from bar of limitation only in regard to the liability that was acknowledged namely Rs.75,000/- and not in regard to the fresh or additional claim of Rs.50,000/- which was not the subject matter of acknowledgement. What can be acknowledged is a present subsisting liability. An acknowledgment made with reference to a liability, cannot extend limitation for a time barred liability or a claim that was not made at the time of acknowledgment or some other liability relating to other transactions. Any admission of jural relationship in regard to the ascertained sum due or a pending claim, cannot be an acknowledgement for a new additional claim for damages.

25. We will now examine this case with reference to the said principles. In this case, the cause of action accrued on 14.4.1977 when the final bill was signed by the contractor. It is not in dispute that the final bill showed that a sum of Rs.17,69,608.73 was payable to the contractor (after giving credit to the payments made and after withholding a sum of Rs.7,45,953.83 as 5% security deposit). Towards the said sum of Rs.17, 69,608.73. Rs.17 lacs was paid on 25.2.1976 and Rs.70, 000/- was paid on 6.8.1977. The contractor had

made some claims and OMC wrote a letter dated 28.10.1978 in regard to the pending claims of the contractor. In regard to Kaliapani matters, OMC informed the contractor that it has been decided to constitute a Committee which will go into the claims of the contractor so that the dues, if any, could be ascertained. It further stated that on the details of the claims and payments received being given to the contractor, OMC will settle up the pending matters at the earliest. This clearly showed an intention on the part of OMC to admit the jural relationship of contractor and employer and an intention to settle the pending claims after being satisfied about them.

26. Therefore, the letter dated 28.10.1978 was clearly an acknowledgement in writing in so far as the pending claims of the contractor. What were the pending claims is made clear in the letter dated 16.11.1978 written by the contractor enclosing a statement showing that in all, a sum of Rs.50,15,820/- was due. The Committee constituted by the OMC examined these claims and admitted the claims only to an extent of Rs.3, 52,916/- as per its final report dated 7.12.1979. OMC paid Rs.3, 50,000/- on 4.3.1980. In view of the acknowledgement in writing on 28.10.1978 and payment of the Rs.3,50,000/- on 4.3.1980, it can be said that in regard to the pending claims of the contractor, the limitation stood extended by three years from 4.3.1980 and at all events by three years from 28.10.1978. It is not in dispute that the contractor issued the notice invoking arbitration on 4.6.1980 and immediately filed a petition under section 8(2) of the Act for appointment of Arbitrator which was allowed on 6.10.1980. Therefore, whatever claims were made before the Arbitrator which was part of the claim of Rs.50, 15,820, was within time, having been made within three years from 28.10.1978 and 4.6.1980.

27. In regard to the claims aggregating to Rs.95,96,616/- made in the claim statement filed before the Arbitrator, only claims aggregating to Rs.28,32,138 related to and formed part of the said pending claim of Rs.50,15,820. The appellant did not make a claim in regard to the remaining Rs.21, 83,692. Therefore, out of the claim of Rs.95, 96,616 made by the appellant before the Arbitrator, the claim for only Rs.28, 32,138/- was not barred by limitation. The remaining claims of the appellant aggregating to Rs.67,64,488/- out of the total of Rs.95,96,616/- being fresh claims, were not pending claims in respect of which the acknowledgement was made. Therefore the said fresh claims aggregating to Rs.67, 64,488 made for the first time in the claims statement filed on 27.6.1986 were clearly barred by limitation.

28. The learned counsel for the appellant submitted that the limitation would begun to run from the date on which a difference arose between the parties, and in this case the difference arose only when OMC refused to comply with the notice dated 4.6.1980 seeking reference to arbitration. We are afraid, the contention is without merit. The appellant is obviously confusing the limitation for a petition under section 8(2) of the Arbitration Act, 1940 with the limitation for the claim itself. The limitation for a suit is calculated as on the date of filing of the suit. In the case of arbitration, limitation for the claim is to be calculated on the date on which the arbitration is deemed to have commenced. Section 37(3) of the Act provides that for the purpose of Limitation Act, arbitration is deemed to have been commenced when one

party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4.6.1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4.6.1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under section 8(2) of the Act. Insofar as a petition under section 8(2), the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in *Inder Singh Rekhi vs. Delhi Development Authority*[2] *Panchu Gopal Bose vs. Board of Trustees for Port of Calcutta*[3] and *Utkal Commercial Corporation vs. Central Coal Fields*[4] also make this position clear.

29. The appellant next contended, relying on section 18 of Limitation Act, that as there was acknowledgement of liability in regard to Contract No.30/F-2 in the letter dated 28.10.1978, and the notice invoking arbitration was issued on 4.6.1980 within 3 years from 28.10.1978, he was at liberty to make any claim in regard to the contract before the arbitrator, (even though such claims had not been earlier made) and all such claims shall have to be treated as being within the period of limitation. Such a contention cannot be countenanced. As noticed above, the cause of action arose on 14.4.1977. But for the acknowledgement on 28.10.1978, on the date of invoking arbitration (4.6.1980), the claims would have been barred by time as being beyond the period of limitation. The limitation is extended only in regard to the liability which was acknowledged in the letter dated 28.10.1978. It is not in dispute that either on 28.10.1978 or on 4.3.1980, the contractor had not made the fresh claims aggregating to Rs.67,64,488 and the question of such claims made in future for the first time on 27.6.1986, being acknowledged by OMC on 28.10.1998 did not arise.

30. Another aspect requires to be noticed. The contractor was N.C.Budhraja. The original claim (which was the subject matter of letter dated 28.10.1978, subjected to examination by the Committee as per report dated 7.12.1979, and towards which Rs.3, 50,000/- was paid) made by the contractor N.C. Budhraja aggregated to Rs.50, 15,820. The Appellant who is his LR cannot for the first time make a fresh claim before the Arbitrator, which was never made by N.C. Budhraja. The Appellant could only pursue the claim made by N.C. Budhraja, which were pending or subsisting when N.C. Budhraja issued the notice dated 4.6.1980

31. The arbitrator committed an error apparent on the face of the record and a legal misconduct in holding that the entire claim was within time. His assumption that if the application filed by the contractor in 1980 under section 8(2) of Arbitration Act for appointment of an Arbitrator was in time, all claims made in the claim statement filed before the Arbitrator appointed in such proceeding under section 8(2) are also in time, is patently erroneous and is an error apparent on the face of the record. The reasoning of the arbitrator that on account of the formation of the Committee by OMC to scrutinize the pending claims in pursuance of the OMC's letter dated 28.10.1978, and the payment of Rs.3,50,000/- on

4.3.1980 in pursuance of the Committee giving its final report on 7.12.1979, every claim of the contract including new claims which were made for the first time in the claim statement filed in 1986 (as contrasted with 'pending claims' considered by OMC), are not barred by limitation, is also an error apparent in the face of the award. Under section 18 an acknowledgement in writing extends the limitation. Under section 19 a payment made on account of a debt, enables a fresh period of limitation being computed.

32. Therefore, the letter of OMC dated 28.10.1978 and the payment of Rs.3,50,000/- by OMC, would result in a fresh period of limitation being computed only in regard to the 'existing debt' in respect of which acknowledgment and payment was made. Admittedly, as at that time, the claim of the contractor was only for a sum of Rs.50, 15,820. Therefore, the letter dated 28.10.1978 and payment on 4.3.1980 extended the limitation only in respect of the claims which were part of the said claim of Rs.50, 15,820. Therefore, the fresh claims of Rs.67,64,488/- (out of the total claim of Rs.95,96,616) is barred by limitation and the award made in that behalf is liable to be set aside. Consequently, we hold that only that part of the claim before the Arbitrator which was part of the claim of Rs.5015,820/- made by the contractor, that was existing or pending as on 28.10.1978 and 4.3.1980, namely Rs.28,32,128 (out of Rs.95,96,616) could have been considered by the Arbitrator. Question (iii) & (IV):

33. In the claim statement filed before the arbitrator the appellant showed the value of work done as Rs.2,45,85,183.89 and the total payments made by OMC as Rs.149,88,566.90. Thus he claimed the balance due as Rs.95, 96,616. Even while calculating the interest on the amount outstanding, the claimant proceeded on the basis that he has received in all, Rs.1, 49, 88,566.90 from OMC. The prayer before the arbitrator in the claim statement was for the award of Rs.95,96,616 in regard to the work done after giving credit of Rs.1,49,88,566.90. The categorical stand of the contractor and the appellant all along has been that OMC had paid in all a sum of Rs.149, 88,566.90. But during the course of the arbitration proceedings, the appellant contended that out of Rs.149,88,566.90 received from OMC and taken into credit towards this contract, a sum of Rs.29,86,871/- was being appropriated towards other contracts and therefore the payments made by OMC towards this contract should be taken as Rs.120,01,695.90. The arbitrator has mechanically accepted the said altered stand contrary to the claim statement and proceeded to determine the amount payable by OMC, by taking the amount paid by OMC as Rs.120,01,659.90 towards this contract, even though the claim statement showing that OMC had paid Rs.149,88,566.90 remained unaltered. The claim statement was not amended to show that only Rs.120, 01,659.90 had been received from OMC in regard to the contract. When the claim made in the claim statement is after adjusting Rs.149, 88,566.90 paid by OMC towards the work, the arbitrator cannot proceed on the basis that only Rs.120, 01,659.90 was paid towards the work. As a result though the Arbitrator found that the amount payable towards claims at Items 1 to 16 was only Rs.365,862.18, he awarded Rs.32,83,243/- to the appellant, thereby increasing the liability of OMC by Rs.29,86,871/-. By awarding more than what was claimed in the claim statement (by showing a lesser amount as having been paid by OMC though claim statement showed a higher amount), the Arbitrator clearly exceeded his jurisdiction. The Arbitrator thus committed a legal misconduct and the award to that extent is liable to be set aside. Therefore the amount

awarded in respect of claims at items 1 to 16 by the Arbitrator is to be reduced by Rs.29,86,871/-.

34. The Arbitrator has exceeded his jurisdiction in another respect. The total claim made by the contractor before the Arbitration was Rs.95, 96,616/- (excluding interest). But the amount awarded by the arbitrator towards the said claim was Rs.1, 02, 66,901/36 (excluding interest). Making an award in excess of the claim itself by Rs.6, 70,285 is a clear act of exceeding the jurisdiction and amounts to a legal misconduct and to that extent of Rs.6, 70,285/- the award is invalid.

35. In regard to item 35, that is escalation in cost, the claim in the claim statement was at the rate of 15% for the value of work done in 1972-73, 28.5% in respect of value of work done in 1973-74 and 32% in respect of work done in 1974-75. But the Arbitrator has awarded escalation at a flat rate of 32.6% on the entire cost of work done from 1.4.1973 and thereby awarded an escalation in excess of what was claimed. This also amounts to exceeding the jurisdiction and therefore legal misconduct. The award in excess of what was claimed was invalid.

36. The award of the arbitrator in respect of time barred claim of Rs.67, 64,488 is an error apparent on the face of the award. Award of amounts in excess of claim (referred to in paras 22, 23 and 24) clearly amount to exceeding the jurisdiction. All these, that is awarding amount towards time barred part of the claim of Rs.67,64,488, and awarding amounts of Rs.29,86,871, Rs.670,285 and escalation in cost at a rate more than what is claimed, are all legal misconducts and the award in regard to those amounts are null and void. There is however some overlapping of the aforesaid amounts.

37. Does it mean that the entire award should be set aside? The answer is no. That part of the award which is valid and separable can be upheld. That part relates to the claims which were validly before the Arbitrator, which were part of the existing or pending claims of Rs.50, 15,820 and which were not barred by limitation. As stated above they were the claims which were existing or pending in 1978, 1979 and 1980 (considered by the committee and payment made by OMC) which were carried before the Arbitrator to an extent of Rs.28, 32,128. Only the amounts awarded by the Arbitrator against those claims can be considered as award validly made in Arbitration, falling within jurisdiction. They are clearly severable from the other portions of the award. The particulars of the claims and corresponding awards are as follows:

Item No.	Description	Item No. in letter dated 16.11.78	Contractor's claim originally made 16.11.78	Contractor's claim before Arbitrator	Award by Arbitrator

7.	Cutting and uprooting trees	5	20,869.32	11,352.00	Nil
17.	Extra head lead for 90 M	7(a)	2, 61,926.40	28, 10,144.00	24, 50,042.88 (261,926.40)*
18.	Removal of excavated material from edge of quarry	3	3, 43,360.58	54,888.60	50,858.60
19.	Unmeasured quantity of excavation	4	8, 44,360.00	8, 48,372.64	6, 64,720.00
20.	Catch water drain	12	1, 55,400.00	27,842.50	27,842.50
21.	Removal of slipped earth from side slopes	15	3, 42,960.00	1, 43,646.00	Nil
26.	Extra lift for excavated material dumped at quarry edge	7(e)	42,370.00	3, 60,690.49	270,517.88 (42,370.00)*
27.	Extra lift measured by surveyor	7(b)	1, 25,642.00	13, 96,128.67	10, 47,096.50 (125,642.00)*
28.	Idle labor (non supply of plans)	9(a)	1, 45,575.00	1, 45,575.00	Nil
29.	Idle labor (for want of site)	9(c)	75,450.00	76,850.00	Nil
30.	Idle labor (due to stoppage of work and restriction of working area)	9(b) & (d)	2, 61,205.00	3, 89,288.00	194,644.00
31.	Repairing road damaged by cyclone	10(iii)	10,640.00	10,640.00	Nil
32.	Reconstruction of Embossment	10(vii)	25,370.00	25,370.00	25,370.00
33.	Wire fencing	13	1, 05,000.00	27,315.00	Nil
34.	Electricity supply to work site and colony	6(b)	72,000.00	72,000.00	Nil
			28, 32,128.30		13, 93,373.50

38. [Note : The figures shown by (*) in the column 'Award by Arbitrator', refer to the maximum that could have been awarded by the Arbitrator having regard to claim that was not barred by limitation].

39. Thus the total amount awarded by the Arbitrator against claims which were not barred by limitation was only Rs.13, 93,373.50. The award to this extent is not open to challenge. This part of the award does not suffer from any legal misconduct. There is also no error apparent on the face of the award in respect of the amount. It is not open to challenge.

40. The scope of interference is limited. In Hindustan Construction Co. Ltd. vs. Governor of Orissa - (1995) 3 SCC 8, this Court held:

> "It is well known that the court while considering the question whether the award should be set aside, does not examine that question as an appellant court. While exercising the said power, the court cannot re appreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in section 30 of the Act."

41. In Hindustan Tea Co. vs. M/s K. Sashikant & Co. - 1986 (Supp.) SCC 506, this Court observed thus:

> "The Award is reasoned one. The objections which have been raised against the Award are such that they cannot indeed be taken into consideration within the limited ambit of challenge admissible under the scheme of the Arbitration Act. Under the law, the Arbitrator is made the final arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts."

42. Therefore, the Award of the Arbitrator has to be upheld to an extent of Rs.13, 93,373.50.

43. In view of the foregoing, we allow these appeals in part, set aside the judgment of the High Court and direct a decree in terms of the award for a sum of Rs.13, 93,373.50 with interest at the rate of 12% P.A. from 1.8.1977 to date of award (28.11.1986) and at the rate of 6% P.A. thereafter, that is from 29.11.1986 till date of payment. Parties to bear their respective costs.

Cases Referred

[1] *AIR 1961 SC 1236*
[2] *(1988) 2 SCC 0338*

[3] *(1993) 4 SCC 0338*
[4] *(1999) 2 SCC 0571*