

CALCUTTA HIGH COURT

Arbn. Jupiter General Insce. Co. Ltd

Vs.

Corporation of Calcutta

Award No. 360 of 1954

(P.B. Mukharji, J.)

27.04.1956

ORDER

P.B. Mukharji, J.

1. This is an application by Jupiter General Insurance Company Limited to set aside an award by Sir Rupendra Coomar Mitter dated 12-4-1955 and to declare it null and void.
2. The dispute is between the applicant, an Insurance Company, and the Corporation of Calcutta, It arises out of a policy of insurance No. C. T. 890 which the Corporation of Calcutta took out on 19-4-1952 whereby the Insurance Company, agreed to indemnify the Corporation up to a limit; of Rs. 1,50,000/- against any loss of money occasioned by robbery, theft, or any other cause whatever, whilst in transit.
3. What happened was that on 3-12-1952, a bag containing cheques of the value of Rs. 2,36,179-13-6 and cash amounting to Rs. 28,694-7-6 was removed at about 12 noon by an undetected thief from the office table of Bhupendra Krishna Sinha, a general clerk employed in the Treasurer's Department of the Corporation of Calcutta. Payment of the cheques was stopped and the moneys covered by such cheques were recovered by the Corporation of Calcutta from the drawees. But the cash money amounting to Rs. 28,694-7-6 could not be recovered. The Corporation demanded this money from the Insurance Company under the policy. The insurance company disputed the claim.
4. The dispute was referred to two Arbitrators at first, each being a nominee of the respective disputants. These Arbitrators disagreed. The dispute thereafter was referred to the umpirage off-Sir Rupendra Coomar Mitter.
5. The umpire by his award held that the Corporation of Calcutta was entitled to recover the said sum of Rs. 23,694-7-6 in respect of the claim against the Insurance Company under the said Policy. That is clause 12 "A" of his award. The umpire also settled and awarded the "osts of the reference of the award and umpirage at the sum of Rs. 11,098/- which the Insurance Company was directed and ordered to pay to the Corporation of Calcutta. That is Clause 12"E" of the

award.

6. The grounds for setting aside the award are set out in sub-paras (a) to (i) of Para 30 of the petition. Mr. P. Mukherjee learned Counsel appearing For the applicant, however, has urged only three grounds (b), (f) and (h). He has abandoned all other grounds and which fact is here recorded.

7. Two outstanding points of very great importance arise for determination in this application. The first is whether the Corporation has any power under the Statute of the Calcutta Municipal Act, 1923 or the Calcutta Municipal Act, 1951 to refer any matter to arbitration and whether the arbitration clause in the Policy of Insurance is 'ultra vires' such Calcutta Municipal Act and, therefore, void. It is on that ground the first objection is made that an award founded upon a void arbitration agreement is also void. The second point of importance is whether the award is bad on the face of it. Another ground of objection is that the Umpire in his Award has not separately answered the specific issues raised before him.

8. I shall take up first the major question whether the Corporation of Calcutta has the statutory power to refer disputes to arbitration in this case.

9. The Insurance policy itself contained the Arbitration Clause whose material portion is as follows :

"If any dispute arises as to whether the company is liable under this policy or as to the amount of its liability such dispute shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single Arbitrator to the decision of two disinterested persons as Arbitrators of whom one shall be appointed in writing by each of the parties * * In case of disagreement between the Arbitrators the difference shall be referred to the decision of an Umpire who shall have been employed by them in writing before entering into the reference and he shall sit on the arbitration and preside over the reference * *. The cost of the reference and of the award shall be in the discretion of the Arbitrators or Umpire making the award and it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such Arbitrators or Umpire of the amount of the loss disputed shall be first obtained".

It will be clear from this agreement containing the arbitration clause that any dispute regarding liability or amount under the policy has to be referred to arbitration. It is also clear from this arbitration clause that the award of the Arbitrators or Umpire on the amount is a condition precedent even to a right of action or suit upon the policy. That means no suit or action on the Policy will be competent without the Award qualifying the damage so that, obtaining of the Award in this case is an integral part of the right of suit or action. This is a well-known and standard arbitration clause almost universally appearing in contracts of insurance policy throughout the world.

10. The applicant appeared before the Arbitrators and filed its statement without any protest

whatever. Then when the Arbitrators disagreed the matter was sent up before the Umpire also without any protest from the applicant. Throughout the proceedings before the Arbitrators or the Umpire, the applicant, at no stage raised the objection that the Corporation had no statutory power to submit to arbitration although it was the Insurance Company which had this arbitration clause incorporated in their own contract of the insurance policy. It is now said that the award and the entire proceedings before the Arbitrators and the Umpire are void, invalid and of no effect and a nullity because of the absence of the statutory power of the Corporation to adopt arbitration as a method of composing the dispute between it and' any other party. Mr. H.N. Sanyal, learned counsel For the Corporation contended in these circumstances that the Insurance Company cannot-be heard on that objection.

11. It is necessary to state at the outset that Courts do not favor this kind of contention and conduct of an applicant who participates in arbitration proceedings without protest and fully avails of the entire arbitration proceedings and then when he sees that the award has gone against him he comes forward to challenge the whole of the arbitration proceedings as without jurisdiction on the ground of a known disability of a party. That view of the Court is ably stated by the Editor of the 15th Edition of Russell on the Law of Arbitration at page 295 in the following terms :

"Although a party may by reason of some disability be legally incapable of submitting matters to arbitration that fact is not one that can be raised as a ground for disputing the award by other parties to a reference who were aware of the disability. If one of the parties is incapable the objection should be taken to the submission. A party will not be permitted to lie by and join in the submission and then if it suite its purpose attack the award on that ground. The presumption in the absence of proof to the contrary will be that the party complaining was aware of the disability when the submission was made".

12. There is no doubt that in this case that the Insurance Company know or should have known of the statutory disability of the Corporation if any, first because a person is supposed to know the law and ignorance of law is no excuse, secondly because the Insurance Company does not even say in the petition that it did not know of this alleged disability and thirdly because the presumption that it knew is not rebutted by any circumstances.

13. The leading case on the point is Ex parte 'Wylde (1860) 30 LJ Bcy. 10, in respect of a bankrupt governed by a Victorian Statute, the Bankrupt Law Consolidation Act 1849. It is also a case of statutory disability, although of a person and not a Corporation, but nevertheless as the other part' joined in the submission to arbitration in spite of the disability and participated in the arbitration, it was held he could not challenge the Award on that ground of statutory disability of the party to submit disputes to arbitration. In that case the son of a bankrupt took up a bill for 'the honour of the bankrupt and claimed to prove or the amount in the bankruptcy. A. dispute as to his right was referred to arbitration and the award was against his claim. He then pleaded that the Award was bad on the ground that no consent to his reference was obtained under the-Statute. The noble Lord Chancellor at page 12 of that Report noticed this argument made at the Bar in that case and gave his Lordship's decision on that point in the following terms :

"And secondly that the award was void by the operation of Section 153 of the Bankrupt

Law Consolidation Act 12 and 13 Victoria, C. 106, which enacts that with leave of the Court first obtained and subject to such conditions, if any, as the Court shall think fit to direct, the assignees may submit to arbitration any difference or dispute between the assignees and any other person for or on account or by reason of any thing relating to the estate or effects of the bankrupt. It is admitted that in this case the submission to arbitration of the difference between the claimants and the assignees was without the leave of the Court first obtained for that purpose. But I am of opinion that it is not competent to the claimants now to make this objection. He agreed to the arbitration; he attended the arbitration; he adduced evidence before the Arbitrator; and by his counsel he argued that he was entitled to the award. He actually took up the award in the hope that it might be in his favour; and if this had been so there can be no doubt that he would have been admitted to prove his claim against the estate without further difficulty. A number of authorities to which might be added *Tree v. Sangster*¹, were cited to show that the want of the leave of the Court would not invalidate the award although it might subject the assignees to penal liability for submitting such a difference to arbitration without the leave of the Court. But the ground on which I proceed is that the claimant cannot now be heard to make the objection. Having acted fully under the submission and taken a chance of having an award in his favour he cannot now seek to get rid of the award against him on account of an informality in the submission, even if this objection might have prevailed if taken in due time. The cases of '*Jones v. Poweh*²', and '*Wrightson v. Bywater*³', are expressly in point".

14. It will be seen from this case what the Court does. It does not decide the question of competence of the reference. In fact it does not at all go into the question of statutory disability and when the statute creates disability in this respect, there is no difference between a person and a Corporation. It does not say that there can be any estoppel against Statute or consent will create Statutory capacity where there is none, as indeed no Court can say it either in respect of a person or a Corporation. In the words of the Lord Chancellor which I have just quoted the Court says "The claimant cannot now be heard to make the objection...even if the objection might have prevailed if taken in due time". In other words the measure of the Court's attitude is that it disallows the party to urge his point at all, so that it has no more any occasion to decide it. In such cases what the Court does is not to pronounce on question whether the award or the arbitration proceeding was void taut it prevents the point being taken by a party to challenge the award if toeing aware of the disability of the other party he did not take such objection on that ground at the stage when the matter was referred or submitted to arbitration. There is no reason why such principle should not be applied here.

15. But the statutory capacity of the Corporation of Calcutta to refer disputes to arbitration is a larger question and must also be decided on its merits. The Policy of Insurance in this case containing the arbitration clause was issued on 28-4-1952 when the Calcutta Municipal Act, 1923 was in operation. But the theft occurred on 3-12-1952, and the Corporation made its claim before the Insurance Company by a letter dated 27th/29th December 1952, so that by the time the matter came up before the Arbitrators and the Umpire the new Calcutta Municipal Act, 1951 had come into operation. In fact, the

¹(1857) 2 CB NS 1

³(1838) 6 Dowl PC 359

²(1838) 6 Dowl PC 483

Calcutta Municipal Act of 1951 came into operation on 1-5-1952 within two days after the issue of the said Policy. Fortunately, however, there is very little, if any, difference between these two Statutes on this particular point, so that unnecessary complications between difference in the provisions of these two Statutes on other points, are not involved in deciding the issue of the statutory capacity of the Corporation to refer disputes to arbitration.

16. It is plain that neither the Calcutta Municipal Act, 1951 nor the Calcutta Municipal Act of 1923 grants express power to the Corporation to refer disputes to arbitration. Such power, if any For the Corporation has to be found either by construction of certain provisions in the Statute or by the necessary implication that follows therefrom. An analysis of the relevant provisions of the Calcutta Municipal Act, 1951 or 1923 will, therefore, be necessary for a proper determination of this point.

17. The most relevant section is Section 110, Calcutta Municipal Act, 1951 as amended by the Calcutta Municipal (Amendment) Act, 1953 which corresponds materially with Section 67, Calcutta Municipal Act of 1923 and is in these terms :

"Subject to the provisions of this Act, the Corporation may enter into and perform all such contracts as it may consider necessary or expedient under or for any purpose of this Act". Therefore the question here is, first, whether the Corporation could enter into a policy of insurance insuring itself against loss of its money. I have no doubt in my mind that the Corporation can and has the statutory capacity to enter into a contract or policy of insurance insuring itself against loss of its money as being one of tire contracts necessary and expedient under and For the purpose of the Municipal Act. The Corporation has the Municipal Fund in its possession, and the Corporation holds such fund in trust For the purposes of this Act. It has the duty to put all the money that it realizes to the credit of such Municipal Fund and to send it to the State Bank of India under a special account kept as "the account of the Municipal Fund of the City of Calcutta". That is the effect of Sections 115 and 116, Calcutta Municipal Act of 1951 corresponding to Sections 80 and 82 Calcutta Municipal Act of 1923.

18. I deduce from this statutory duty of realizing moneys and holding such moneys as the Municipal Fund in trust For the city of Calcutta all necessary and implied powers in the Corporation, to ensure the safety of such moneys or Fund. I consider insurance to be a method of insuring the safety of such Fund and the Corporation, therefore, must have implied powers to insure its own fund against any risk of loss by theft or any other cause during the period when such money remains in its custody and until it reaches the Bank or otherwise lawfully disposed of.

19. From this it follows that the Corporation can enter into a contract of insurance in order to effect such insurance. If, therefore, a contract of the policy of insurance contains the usual and standard clause for arbitration, the Corporation must by necessary implication have the power to enter into such contract. If the Corporation has. the power to insure its Fund against loss, then it

must have all corollary powers and incidental powers to effectuate such insurance by entering into a contract of insurance containing an arbitration clause.

20. The doctrine of incidental powers is a doctrine of great importance in a statutory Corporation. No Statute can be so devised as to give a complete charter with exhaustive enumeration of all necessary powers. That is beyond the range of possibility. It is neither practicable nor desirable. In fact, the Municipal Statute in this case does not give any express power to the Corporation even to insure. It gives the Corporation the power to send its moneys to the State Bank of India. Is it going to be said that such moneys should be sent to the State Bank of India without any protection against its loss on the transit ? For my part I have no hesitation whatever in my mind that the answer to that question is in the negative. Such power will be implied.

21. The learned counsel For the Insurance Company based his whole argument on the fact that there is no express power given by the Statute to the Corporation of Calcutta to refer disputes to arbitration. The argument can be rendered plausible by the view that a public corporation like the City Corporation of Calcutta should have its dispute settled by the public Courts of the land and not by private arbitration. But the fallacy of that argument is to treat the capacity to refer to arbitration as an independent capacity, independent of the capacity to enter into a contract For the purposes of the Act.

22. I am, however, of the opinion that capacity to refer disputes to arbitration is a concomitant of the capacity to enter into a contract. Arbitration is not an independent power. It is an incident of contract. There can be no arbitration without a contract. Arbitration in that sense is ancillary. One goes to arbitration to settle a dispute. It is an agreed method of settling a dispute. Arbitration therefore depends on the capacity to enter into an agreement or a contract. The Corporation has the power expressly granted by Statute to enter into any contract necessary or expedient For the purpose of the Act. If the purpose of the Act includes arrangement for safety of its funds under the Act and to enter into contract for that purpose I do not see any reason why such capacity to enter into contracts should be limited only to contracts without the clause of arbitration. Arbitration, except when imposed by Statute, is always a matter of contract. Wherever therefore there is power to contract there is power to go to arbitration. Power includes the means to become powerful. In Hailsham's Edition of Halsbury's Laws of England Volume 1, para 1073 at page 625 he expresses this proposition of law by saying :

"The capacity to make a submission is coextensive with the capacity to contract. Every person capable of entering into a contract may be a party to a submission. Conversely he who cannot contract cannot make a submission; and in the case of persons whose capacity to contract is restricted the power of making a submission is, in the same manner and to the same extent, limited".

23. This principle has also been followed in India, in the case '*Soudamini v. Gopal Chandra*⁴', The doctrine that the power to submit to arbitration is coextensive with the power to contract is further elaborated in Rupsell on the Law of Arbitration 15th Edn. p. 60 where it is stated :

"Corporations are subject to restrictions in many cases with regard to contracts and these restrictions will apply equally to submissions to arbitrations. Thus if a corporation can only validly contract under its common seal a submission must be

⁴1915 Cal 745 (747, 748) (AIR V2)

under seal in order to be binding. The restrictions and requirements in each case depend the nature of the Corporation and the Statutes or Regulations by which it is governed and the particular class of contract in question".

24. I am therefore satisfied that the Corporation of Calcutta has statutory power to enter into contracts necessary and expedient For the purposes of the Calcutta Municipal Act and as an incident of such Statutory power and by necessary implication it is competent to refer disputes arising out of such contracts to private arbitration if that is a bargain in the contract. I hold that the corporation has Statutory capacity to enter into a contract of insurance to secure and protect its funds under a policy of insurance and to refer disputes there under to arbitration as contemplated in the arbitration clause forming a part of the, very contract of insurance itself. This conclusion does no violence to the well-settled theory that the Corporation is a creature of the Statute and, its functions and powers are to be found within the four corners of such Statute. This wholesome doctrine must always be understood and applied with the equally wholesome doctrine of incidental powers and necessary implication.

25. Learned counsel For the applicant then developed his argument by bringing in the analogy of the Indian Companies Act. The point of this argument which I shall characterize as argument by comparison is this Section 389 Indian Companies Act, 1956, corresponding to Section 152, Indian Companies Act of 1913 gives express power to a company to refer differences to arbitration by written agreement in accordance with the Arbitration Act, 1940. It was said that if the power to contract included the power to enter into an arbitration agreement, then Section 46, Indian Companies Act of 1956 corresponding to Section 88 of the last Indian Companies Act which gave power to the companies to enter into contracts should have been enough, and there was no need For the express statutory provision giving companies power to refer disputes to arbitration. This argument is seductive, but does not convince me. It does not convince me for two reasons : First because the fact that; express power to go to arbitration is now given does not prove that it could not follow from the power to enter into contracts and therefore it may just as well be a provision for abundant caution. It appears to be all the more so because there were conflicting decisions on companies in respect of arbitration on this point. So historically the express Statutory power to a company to go to arbitration might have been called for because originally a proviso of Section 30, Indian Arbitration Act, 1699 exempted Joint Stock Companies Act from the application of the said Act until repealed by the Indian Companies Act 1913 and because the old Companies Act of 1882 contained a self-contained code of arbitration for companies. It is common knowledge that the capacity of the Corporation of Calcutta to go to arbitration has never been questioned although the Corporation of Calcutta in practice has gone to numerous arbitrations and therefore there was no historic reason to make express provision for arbitration in the case of the Corporation of Calcutta as in the case of the Indian Companies Act. Secondly I am not convinced myself that arguments by analogy are helpful and I do not consider that the construction of one Statute should be made in the light of construction of another Statute, specially when, subject to the Indian Companies Act the entire management of a company depends on its private memorandum and articles of association with the freedom and choice that they involve including powers of amendments of articles and memorandum whereas in the case of a statutory corporation it depends on the language and scope of a public Statute where the principles of freedom of choice and amendments are far more restricted. I am therefore unable to

interpret the provisions of the Calcutta Municipal Act in the light and history of the provisions of Company legislation.

26. It was contended on behalf of the applicant that Sections 585, 586 and 587, Calcutta Municipal Act of 1951 corresponding to Sections 537, 538 and 539, Calcutta Municipal Act of 1923 contemplate only suits by or against Corporation. As I have already said these sections do not and in fact no section of the Calcutta Municipal Act does expressly use the word arbitration, in support of its contention the applicant also urged that the expression "legal proceeding" appearing in those sections does not include arbitration proceeding. Reliance was placed on the decision of Chatterjee, J. in '*Babulal Dhandhania v. Messrs. Gauttam and Co*⁵'; (F). There the question was whether the word "proceeding" in Section 69(3) Partnership Act of 1932 included an arbitration proceeding, and it was held on a construction of that particular section of the Partnership Act that it did not include a reference to arbitration without the intervention of a Court. But the essence of that decision really is against the contention of the applicant because the learned Judge at page 394 says :

"A word like "proceeding" may have several or different meanings and its exact meaning can be determined by its association with other words. The language used is not very clear and in case of any doubt or obscurity the right of a person under a valid and binding contract to refer to a private forum For the determination of his disputes should not be taken away and a new obligation or penalty ought not to be imposed on him so as to bar the exercise of his right in the absence of explicit language in the Statute, compelling the Court to decide against such reference to arbitration".

27. In other words the learned Judge held that an unregistered partnership although unable to file a suit in Court was competent to refer a matter to arbitration. It was also made clear in that case that the word "proceeding" was a word with many meanings whose construction in an individual case depended on the context in which it occurred. How true that is may be made clear from a contract reference from the statement of the law appearing in Volume 14A of Corpus Juris page 787, para 2864 where it is stated :

"As an incident to its capacity to sue or be sued where a Corporation sues or is sued, it occupies the same position as a natural person sui juris and may take any step that an individual might take under like circumstances to bring the action to final judgment. Accordingly it has power to submit to a reference. '*Alexander Canal Co. v. Swan*⁶', (G)".

28. There it was held that the capacity to sue or be sued included the capacity of the Corporation to refer the subject matter of the suit to arbitration. The point, therefore, is that the context in every Statute, its scope and language are important determining factors as well as the circumstances in which the question arises.

29. The overriding circumstance in this case is a particular arbitration clause in a contract for insurance. The arbitration clause is such in this case that even a right of action or suit

⁵ AIR 1950 Cal391

⁶(1847) 12 Law Ed. 60

cannot be exercised by the Corporation without the quantum of the loss being first decided by an award as a condition precedent. Therefore, in these circumstances the award would be considered as an enabling stage and therefore a part of the right of action or suit expressly granted by the Statute.

30. Now about the actual scope and language of a section like Section 585, Calcutta Municipal Act of 1951 corresponding to Section 537, Calcutta Municipal Act of 1923 a glance at that section will show a statutory provision such as this :

"The Corporation may institute and prosecute any suit or withdraw from or compromise any suit or claim * * * which, has been instituted or made in the name of the Corporation." (Section 585(g), Calcutta Municipal Act, 1951).

The question therefore arises, if the Corporation is given the power to compromise any "claim" then why it should not have the power to compromise a claim by the method of arbitration ?

31. The other statutory provision is contained in Section 585(d), Calcutta Municipal Act, 1951, where it is stated :

"The Corporation may withdraw or compromise any claim against any person in respect of a penalty payable under a contract entered into with such person by the Commissioner on behalf of the Corporation."

32. The penalty payable under the contract in this case is the loss suffered by the Corporation by the theft. If the statute gave the Corporation power to compromise any claim arising on such point then I do not see why such "compromise" cannot be construed to include compromise by the method of arbitration without the formalities of a regular suit or action in a Court of law as being normally a cheaper and more expeditious course. As pointed out by Chatterjee, J. in the case quoted above that the word 'proceeding' or 'legal proceeding' has many meanings and as stated in Corpus Juris which I have already quoted power to sue may include proceedings by way of arbitration. After all arbitration is a "legal proceeding" in the sense that it is a proceeding recognized by the laws of the land and by the Arbitration Act of 1940. If "legal proceeding" is to be construed in its ordinary meaning then it should include all lawful proceedings whether by way of action or suit in a Court of law or any other proceeding like arbitration permitted by law or Statute. It is in the sense that I think the word legal proceeding should normally be understood, and it is only when the context indicates that it should be understood in a mitigated sense then it might succeed in excluding arbitration from legal proceeding. This was exactly what was done in AIR 1950 Calcutta 391 (F). The mitigated sense was taken in that case For the simple reason that Section 59, Partnership Act in that particular case was a kind of an inhibition, because it prevented an unregistered firm to file a suit, and therefore such a penal provision was not allowed to be extended to operate as a bar on arbitration proceedings. The context of Section 585, Calcutta Municipal Act of 1951 as well as Section 537, Calcutta Municipal Act of 1923 appears to indicate that the word legal proceedings should be construed to include arbitration proceedings.

33. The next objection taken to the award is that it is bad because there is error on the face of it.

The argument is that the umpire in this case referred only to Clause (C) of the Policy and ignored the other terms and conditions of the Policy. It is, therefore, said that there is an error on the face of it. It is also contended that the word "transit" in Clause (C) has been misunderstood and misconstrued by the Umpire. In support of the contention that an error in construction is an error on the face of the Award, reliance was placed on first, the case of *Absalom Ltd. v. Great Western London Garden Village Society Ltd.*⁷, secondly on *Sett Thawardas Pherumal v. Union of India*⁸, and, thirdly, on the well known case of *Landauer v. Asser*⁹, Learned counsel For the applicant also relied on the statement of the Law in Russell on Arbitration, 15th Edn. 270 where these cases are cited.

34. I am satisfied that neither on the particular facts of this case nor on the law as laid down in those cases, there is any error on the face of the Award before me. My first reason is that it is incorrect in fact to say that the Umpire in this case relied only on Clause (C) of the Policy . In fact, the reference to Clause (C) of the Policy appears in para. 2, which is a recital in the Award and not the operative part of the Award. Even in the recital when one comes to para. 5, the Umpire correctly stated that "difference arose between the parties as to the liability of the Company under the said Policy of Insurance" without stating that such difference was on any particular term or condition of the Policy. Scanning the Award it is plain that paras. 1 to 11 are only narrative and recitals. Paragraph 12 alone is the operative part of the Award and in paragraph 12A of the Award the amount is adjudged "under the Policy" without relying on any particular term and condition of the Policy. No legal proposition or point of law or construction is set out in the operative part of the Award in this case. Therefore, the basic argument of the applicant that the umpire considered only Clause (C) of the Policy and nothing else is, therefore, entirely erroneous. Reference in the recital does not incorporate a document as to form part of the Award. That is settled law and well-established In a long line of Privy Council cases as the *Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd.*¹⁰, *Saleh Mahomed Umer Dossal v. Nathoomal Kessamal*¹¹, and *Durga Prasad v. Sewkishendas*¹², My second reason is that the principle that construction, if wrong, can be an error on the face of the Award on the basis of the decisions in 1933 AC 592; 1955 SC 463 ((S) AIR V 42) and (1905) 2 KB 134, does not apply to this case before me For the simple reason that the construction of the terms and conditions of the Policy is itself a specific question submitted to the Arbitrators and the Umpire in this case and such construction is not incidental. Some issues were framed before the Arbitrators and/or the Umpire which the petitioners themselves set out in para. 38(f) of the petition. Issue 6 as stated there distinctly submitted this question for determination to the Umpire:

"Can the Corporation claim the money alleged to be lost from the Company under the terms and conditions of the Policy of Insurance ?" This is a specific question on the terms and conditions of the Policy and their construction and having regard to the language of Arbitration Clause itself which I have quoted elsewhere where the liability of the Company under the Policy is a matter of arbitration, it is plain that the question of construction although a question of law was specifically submitted to the Arbitrator and the Umpire in this case. When this is done, as I

⁷(1933) AC 592 (601 and 611)

⁹(1905) 2 KB 184

¹¹ AIR 1927 PC 164

⁸1955 SC 468 ((S) AIR V 42)

¹⁰ AIR 1923 PC 66

¹² AIR 1949 PC 334 .

hold it has been done in this case, the erroneous construction by the Umpire is not a ground for challenging the Award. The Arbitrator or the Umpire can be judge of fact as

well as of law. If the Arbitrator or the Umpire makes an error of law on the point of law submitted to him and on which a Court of law might have come to a different construction, that is no ground for setting aside the Award. That is how I read the well-known decision of the Privy Council in AIR 1923 PC 66, where incidentally Lord Dunedin delivering the judgment of the Judicial Committee distinguished *Landauer v. Asser* making the significant observation at p. 69 :

"In that case the legal proposition was stated in terms on which the Award proceeded. In the present case no legal proposition at all is stated as a ground of the Award. The reference to the letters is only in the narrative." Of the same view is the decision of the Privy Council in AIR 1949 PC 334 and of S.R. Das, J. in *Durga v. Anardeyi*¹³,

35. For these reasons both on facts and on law I hold in this case that there is no error on the face of the Award.

36. The last objection that the Umpire did not specifically answer the different issues as framed was not finally pressed before me. As I read the law, I do not consider that the provisions of the Civil Procedure Code regarding the formal framing of issues or their formal determination separately is a procedure at all enjoined as compulsory in an arbitration proceeding. After all, the whole question or point of dispute before the Umpire was whether the Insurance Company under the terms and conditions of the Policy of Insurance was liable to the Corporation to compensate For the loss which the Corporation had suffered by theft of its money. It was clearly and expressly held by the Umpire in Para. 12A of the Award that the Insurance Company was liable For the sum of Rs. 28,694-7-6 under the said Policy. That was the whole of the dispute and that was decided by the Umpire. That I consider to be enough. Even if answers to the other issues were necessary, the failure to answer them would not be a ground of such gravity as to make the Award liable to be set aside because the whole dispute was decided by adjudging the liability of the Insurance Company to the Corporation For the specific sum under the Policy. It would at best amount, in my view, to an irregularity in arbitration proceeding not sufficient to set aside the Award in this case. I am, however, of opinion in this casa that the very decision determining the liability of the Insurance Company for a specific amount involved the determination of these other issues although such determination was not formally expressed in the Award, for unless Issues 1, 2, 3, 4 and 5 were found in the affirmative, Issue No. 6 could not have been decided in the way that the Umpire had done. Therefore, I hold in this case that by determining Issue No. 6 the Umpire has also decided all the other five issues. On these grounds, I overrule this objection.

37. All the objections having failed the application is dismissed with costs.
Application dismissed.

¹³ AIR 1947 Cal 75