KERALA HIGH COURT

State of Kerala

Vs

Raveendranathan

MFA 129,131 of 1982

(Kochu Thommen and Balakrishnan, JJ.)

10.11.1986

JUDGMENT

Kochu Thommen, J.

1. These appeals are brought by the State of Kerala and the Superintending Engineer, Irrigation Central Circle, Trichur, from the judgments of the learned Subordinate Judge, Trivandrum rejecting their objections and making each of the six awards of the arbitrator a rule of court. The award in each case was made by the Chi, f Engineer (Arbitration) of the Government of Kerala to whom disputes were referred in terms of the arbitration clause contained in the agreement dated 10-2-1977 entered into between the appellants (the "State") and the respondent (the "Contractor"). Clause 24 of that agreement, so far as it is material, reads: -

> "24 Arbitration:- In case of any dispute or difference between the parties to the contract either during the progress or after the completion of the works or after the determination abandonment, or breach of the contract, as to the interpretation of the contract, or as to any matter or thing arising thereunder.....: then either party shall forthwith give to the other notice of such dispute or difference and such dispute or difference shall be and is hereby referred to the arbitration of the Government Arbitrator for dealing with arbitration cases, Trivandrum, mentioned in the `Articles of Agreement' (hereinafter called the `arbitrator') and the award of such arbitrator shall be final and binding on the parties.

(emphasis supplied)

Each award concerns a separate "reach" of the ASE work for the construction of sea wall. In terms of the agreement dated 10-2-1977, the Contractor was bound to complete the work within twelve months from 4-4-1977 which was the date on which the site was handed over to him. However, since he was not in a position to complete the work in anyone of these reaches within the stipulated time, i.e., on or before 3-4-1978, he sought and obtained in each case extension of time till 31-8-1979 by which date the work in all the reaches was completed. Extension of time was sought and obtained by the Contractor on the definite undertaking that he would not claim

any extra rates-i.e., over and above the agreed rates-for the work executed by him during the period subsequent to 3-4-1978 (see Exts. R9 to R11).

2. Disputes arose between the parties by reason of the State's refusal to settle some of the claims raised by the Contractor. The statement of claims filed by the Contractor before the arbitrator contained various claims out of which one of them was for payment in excess of the agreed rates for the work executed by him during the period subsequent to 3-4-1978. This was objected to by the State. In its statement of defense filed before the arbitrator it was specifically stated that the contract between the parties did not postulate any extra payment for the work executed subsequent to the expiry of the original period of the contract and that the Contractor had by his declaration undertaken not to claim any extra rate for the work executed by him during the extended period commencing on 4-4-1978. Exts. R9 to R11 containing the declaration of the Contractor in each case were specifically referred to in the statement of defense. The arbitrator rejected all the claims of the Contractor except his claim for extra rates during the extended period. Each award provides:-

> "Claims (a) to (c):- The respondents shall pay the claimant a Twelve and a half (121/2) per cent increase over the agreed rates for all items of work carried out after 3-4-1978 ....."

(emphasis supplied)

3. Against the award the State filed objections before the learned Subordinate Judge and prayed that it be set aside principally on the ground that the arbitrator exceeded his jurisdiction in so far as he made an award for payment of extra rates for the work executed after 3-4-1978, notwithstanding the specific undertaking of the Contractor not to claim any payment in excess of the agreed rates. By the judgments under challenge, the objections of The State against each award were rejected by the court below on the ground that the court had no jurisdiction to consider the evidence and enquire into the merits of the case because it was a non-speaking award and no document was incorporated in it.

4. The award does not speak except to one fact. It says that extra rates have to be paid for the work done after 3-4-1978. It gives no reasons. No document is specifically incorporated in it. The question is whether evidence of matters not appearing on the face of the award is admissible in order to consider whether, as contended by the State, the arbitrator has acted in excess of or without jurisdiction and if so is the award liable to be set aside by the court. Before we deal with that question, we shall briefly consider to what extent courts generally interfere with an arbitrator's award.

5. It is settled law that, subject to certain well recognised exceptions, an arbitrator is the sole and final judge of all questions of law and facts referred to him for his decision. This principle was enunciated by Williams, J. in *Hodgkinson v. Fernis*[1], and repeatedly followed in a long line of decisions. He says:-

> ".....The law has for may years been settled and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a

[2]140 Eng. Rep. (Common Pleas) 712

> lawyer or a layman, be is constituted the sole and final judge of all questions both of law and of fact..... The only exceptions to that rule, are, cases where the award is the result of corruption or fraud and one other, which, though it is to be regretted, is now, I think, firmly established, viz. where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established."

(emphasis supplied)

Referring to that principle, Lord Dunedin observes in *Champsey Co. v. Jivraj Balloo Co*[3]*.,*

> ".....An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator staling the reasons for his judgment some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is and then going to the contract on which the parties` rights depend to see if that contention is sound."

(emphasis supplied)

This principle has been affirmed by the Supreme Court in a number of cases. In *N. Chellappan v. K.S.E.B*[4]*.,* Mathew J. states:

> ".....It is only when a proposition of law is stated in the award and which is the basis of the award and that is erroneous, can the award be set aside or remitted on the ground of error of law apparent on the face of the record.
>
> .....
>
> An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.....The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law."

See *Firm Saleh Mohamed v. Nathoomal*[5]*, M/s. Alopi Parshad v. Union of India*[6]*, Iftikhar Ahmed v. Syed Maharban Ali*[7]*, Alwaye Municipality v. Kochunni and Company*[8]*, F.A.C.T. Ltd. v. Vellappally Brothers*[9]*,* and the decisions cited therein.

6. It is a well accepted principle that the decision of an arbitrator on a point of law specifically referred to him is final and it is generally not subject to review by courts.

[3] AIR 1923 P.C. 66 [5] AIR 1927 P.C. 164 [7] AIR 1974 SC 749

[4] AIR 1975 SC 230, 235 [6] AIR 1960 SC 588 [8]1982 K.L.J. 236 : 1982 K.L.T. 669
[9] I.L.R. 1983 (1) Ker. 48

If,however, such question of law arose only incidentally, his decision on the point is not final and the jurisdiction of the civil court is not ousted: *F.R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd*[10]*., Dalmia Dairy Industries Ltd. v. National Bank of Pakistan*[11]*, M/s Tarapore and Co. v. Cochin Shipyard Ltd. Cochin*[12]*,* and *Renusager Power Co. Ltd. v. General Electric Company*[13]*,*

7. Referring to *Government of Kalantan v. Duff Development Co*[14]*.,* Lord Warrington of Clyffe says in *F.R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd*[15]*.,* "..... I think it is clear that this case decides that, in order to come within the rule that a decision of an arbitrator on a point of law is final, it must be shown that the point is specifically referred. It recognizes the distinction between cases in which a question of law is specifically referred for decision and those in which such a question is involved incidentally,....." (emphasis supplied) Where the question is involved only incidentally, an award can be set aside if the mistake in law is apparent on the face of the award. A question of law which is not specifically referred for the decision of the arbitrator may arise incidentally when it becomes material in the decision of the matters referred to him. Referring to such a question, the Privy Council in *Attorney General for Manitoba v. Kelly*[16]*,* stated:

> "Where a question of law has not specifically been referred to an umpire, but to material in the decision of matters which have bean referred to him and he makes a mistake, apparent on the face of the award, an award can be set aside on the ground that it contains an error of law apparent on the face of the award,....."

(emphasis supplied)

8. A question of law is not specifically referred, when what is referred is a composite question of law and fact. In such a case there is no express submission of law on the basis of undisputed facts. On the other hand there is a specific reference on a question of law:

> "when what is referred to the arbitrator is not the whole question, whether involving both fact or law, but only some specific question of law in express terms as the separate question submitted, that is to say, where a point of law is submitted as such, that is, as a point of law, which is all that the arbitrator is required to decide, no fact being, queed that submission, in dispute.....": Per Lord Wright in *F.R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd*[17]*.,*

This is what was pointed out by Viscount Cave L.C. in *Government of Kalantan v. Duff Development Co*[18]*.,*:

> "..... But where a question of construction is the very thing referred for arbitration, then the decision of the arbitrator upon that point cannot be set aside by the Court only because the Court would itself heve come to a

101933 A.C. 592 [12] AIR 1984 SC 1072 [14](1923) A.C. 395 (H.L)
[11](1978) 2 Lloyd's Rep. 223 (C.A) [13] AIR 1985 SC 1156 [15]1933 A.C. 592
[16](1922) 1 A.C. 268, 283 (P.C) [18](1923) A.C. 395 (H.L)

[17]1933 A.C. 592

different conclusion....."

In *King and Duvean, In re*[19] Channell, J. stated:

> "..... , it is equally clear that if a specific question of law is submitted to an arbitrator for his decision and be does decide it, the fact that the decision is erroneous does not make the award bad on its face so as to permit of its being set aside....."

This principle has been followed in a number of decisions both in England and in India. See *M/s Tarapore and Co. v. Cochin Shipyard Ltd. Cochin*[20], and the decisions cited therein.

9. There is, however, high authority for the proposition that, even when a question of law is specifically referred to the arbitrator, his decision on the point is liable to be set aside when it is net only erroneous in the sense that the court would have come to a different conclusion, but it appears on the face of the award that it is vitiated by illegality, as, for example, when he decided on evidence which was inadmissible or on principles of construction not countenanced by law. Viscount Cave L.C. in *Government of Kalantan v. Duff Development Co*[21]., stated:

> "..... The reference, therefore, was a reference as to construction.
> If this be so. I think it follows that. unless it appears on the face of the award that the arbitrator has proceeded on principles which were wrong in law, his conclusions as to the construction of the deed must be accepted. No doubt an award may be set aside for an error of law appearing on the face of it and no doubt a question of construction is (generally speaking) a question of law. But where a question of construction is the very thing referred for arbitration, then she decision of the arbitrator upon that point cannot be set aside by the Court only because the Court would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally-for instance, that he has decided on evidence which in law was not admissible or on principles of construction which the law does not countenance, than there is error in law which may be ground for setting aside the award, but the mere dissent of the Court from the arbitrator`s conclusion on construction is not enough for that purpose....."

(emphasis supplied)

This distinction between the two types of errors appearing on the face of the award, i.e., a "mere error" and an error resulting in illegality or nullity, was perhaps in the mind of Lord Halsbury, L.C. when be said in *Adams v. Great North of Scotland Railway Co*[22]., that where the parties had selected their arbitrator, they should show:

> "a great deal more than mere error on the part of the arbitrator in the conclusion at which be has arrived before the Court can interfere with his

[19](1913) 2 K.B. 32, 36
[20] AIR 1984 SC 1072
[21](1923) A.C. 395 (H.L)
[22](1891) A.C. 31, 39 (H.L)

award ....."

(emphasis supplied)

Lord Macmillan had perhaps the same distinction in mind when he spoke of an "essential error" in *Heyman v. Darwins Ltd*[23]*.,* This distinction was noticed by Lord Russell of Killowen in *F.R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd*[23]*.,* So did Bose, J. in *Thawardas v. Union of India*[24]*,* where he said:-

> "If a question of law is specifically referred and it is evident that the parties desire to have a decision from the arbitrator about that rather than one from the Courts, then the Courts will not interfere, though even there, there is authority for the view that the Courts will interfere if it is apparent that the arbitrator has acted illegally in reaching his decision, that is to say, if he has decided on inadmissible evidence or on principles of construction that the law does not countenance or something of that nature....."

It would thus ex hypothesis appear that in an appropriate case where the error is not one in the sense that the court would have taken a different view, but is so fundamental as to result in illegality or nullity, the decision of the arbitrator, although on a point of law of specific submission, is liable to judicial review.

10. It is well settled that a dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be determined outside the award. Whatever the arbitrator may or may not have stated in the award about his jurisdiction (unless the question of the jurisdiction arise in relation to the construction of the contract as regards its meaning and effect and not its existence or validity and that was itself a matter specifically referred to him: *F.R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd.*[25]*, M/s Tarapore and Co. v. Cochin Shipyard Ltd. Cochin*[26]*,* and *Renusager Power Co. Ltd. v. General Electric Company*[27]*,* that is still a matter for decision by the civil court..

11. In *Attorney General for Manitoba v. Kelly*[28]*,* Lord Parmoor pointed out:

> ".....It would be impossible to allow an umpire to arrogate to himself jurisdiction over a question which, on the true. construction of the submission, was not referred to him, An umpire cannot widen the area of his jurisdiction by holding, contrary to the fact, that the matter which be affects to decide is within the submission of the parties....."

12. An arbitrator cannot say that he does not care what the contract sans He is bound by it. It must bear his decision. He cannot decide outside its bounds. If he did, he exceeded his jurisdiction and the award would be liable to he set aside: *M/s. Alopi Parshad v. Union of India*[29]*,* and *Bunge and Co. v. Deward Webb,*

[22](1942) A.C. 356, 371 [24] AIR 1955 SC 468 [26] AIR 1984 SC 1072
[23]1933 A.C. 592 (H.L) [25]1933 A.C. 592 (H.L) [27] AIR 1985 SC 1156
[28](1922) 1 A.C. 268, 283 (P.C)
[29] AIR 1960 SC 588(1921) 8 L.I.L. Rep. 436 (K.B)

13. Evidence of matters not appearing on the face of the award is admissible to decide whether the arbitrator went outside the contract and thus exceeded his jurisdiction. On this aspect, the Master of the Rolls observes in *Bunge and Co. v. Deward Webb*[30]*,*

> ".....In order to see what the jurisdiction is the Court can always look to see what the dispute submitted was. This is one of the things commercial arbitrators very seldom set out clearly and it is necessary to find what was the dispute from outside sources. It is competent to the Court to do so. Here we have an affidavit by ..... the respondents, in which be says:
> '.....'
> It is quite clear what the dispute was from that affidavit. There is an affidavit by the other side, but that part of this affidavit is not contradicted....."

(emphasis supplied)

14. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction, but if he wanders outside the contract and deals with matters not allotted to him, he commits an error going to his jurisdiction. The latter can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something arising under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is something outside the award or outside whatever may he said about it in the award. Devlin, J. refers to this principle in *Christopher Brown Ltd. v. Genoseenschaft Deeterreich Ischar*[31]*,*:

> ".....I think that such evidence was clearly admissible. It would be admissible, I think, to resolve the ambiguity in the award itself, but better ground for admitting it is that the nature of the dispute is something which has to be determined outside the award and outside whatever may be said about it in the award. What is said or implied about it in the award is not conclusive one way or the other, it is a fact which has to be proved by evidence extrinsic to the award....."

(emphasis supplied)

See *Leing, Son and Co. Ltd. v. Eastcheap Dried Fruit Co*[32]*.,* and *Dalmia Dairy Industries Ltd. v. National Bank of Pakistan*[33]*,* See also Russell on Arbitration, 20th Edn., page 427 and Michael J. Mustill and Stewart C. Boyd on Commercial Arbitration, 1982, pp. 497-498.

15. Where the parties have agreed to submit to arbitration any dispute arising out of the contract, they submit themselves to every dispute, except a dispute whether there was ever a contract at all. If there was no contract, there was no arbitration clause. As stated by Viscount Simon L.C. in *Heyman v. Darwins Ltd.*[34]*,*

> ".....If the dispute is whether the contract which contains the clause has ever been entered into as all, that issue cannot go to arbitration under the

[30](1921) 8 L.I.L. Rep. 436 (K.B)
[31]1954, 1 Q.B. 8
[32](1961) 1 Ll.L. Rep. 142, 145 (Q.B)
[33](1978) 2 Lloyd's Rep. 223 (C.A)

[34](1942) A.C. 356 (H.L.) : (1942) 1 All ER 337 (H.L)

clause, for the party who denies that he has ever entered into the contract is thereby denying that he has ever joined in the submission. Similarly, if one party to the alleged contract is contending that it is void ab initio (because, for example, the making of such a contract is illegal), the arbitration clause cannot operate, for on this view the clause itself also is void. But, in a situation where the parties are at one in asserting that they entered into a binding contract, but a difference has arisen between them whether there has been a breach by one side or the other, or whether circumstances have arisen which have discharged one or both parties from further performance, such differences should be regarded as differences which have arisen `in respect of', or `with regard to', or `under' the contract and an arbitration clause which uses these, or similar, expressions should be construed accordingly."

Adopting the same distinction, Lord Macmillan stated:

".....If it appears that the dispute is whether there has ever been a binding contract between the parties, such a dispute cannot be covered by an arbitration clause in the challenged contract. If there has never been a contract at all, there has never been as part of it an agreement to arbitrate. The greater includes inc less. Further, a claim to set aside a contract on such grounds as fraud, duress or essential error cannot be the subject-matter of a reference under an arbitration clause in the contract sought to be set aside. ....." (ibid pages 370 to 371)

(emphasis supplied)

The Supreme Court in *Union of India v. Kishorilal*[35], and in a number of other cases quoted these passages with approval and recognised the distinction between a dispute as to the existence or validity of the contract and a dispute arising under or in respect of the contract. See *Naihati Jute Mills v. Khyalirsa*[36], *Damodar Valley v. K.K. Kar*[37], and *Renusager Power Co. Ltd. v. General Electric Company*[38],

16. In *Jivarajbhai v. Chintamanrao*[39], Shah, J., speaking for the majority, pointed out that if the arbitrator exceeded his jurisdiction by straying outside the bounds of the contract, his award was liable to be set aside and that was a question for the civil court to decide. He stated:

"..... By assuming that he was entitled to include, beside the value of the four items as mentioned in paragraph 13 (of the partnership agreement), some amount by way of appreciation in the value of those items, the arbitrator purported to set at nought the specific directions given in that behalf

.....But the arbitrator has in the present case expressly stated in his award that in arriving at his valuation, he has included the depreciation and appreciation of the property, outstanding and dead-stock and in so doing in our judgment the arbitrator has travelled outside the jurisdiction and the award is on that account liable to be set aside. The question is not one of interpretation of paragraph 13 of the partnership agreement but of ascertaining the limits of his jurisdiction. The primary duty of the arbitrator under the

deed of reference

[35] AIR 1959 SC 1362 [37] AIR 1974 SC 158 [39] AIR 1965 SC 214
[36] AIR 1968 SC 522 [38] AIR 1985 SC 1156

> 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 the manner provided by paragraph 13 of the partnership agreement."
> (emphasis supplied)

Hidayatullah J., in a separate but concurring judgment, pointed out that the arbitrator derived his authority from the reference. The arbitrator by include to appreciation and depreciation in the valuation of the properties exceeded his jurisdiction and it was not a question of his having merely interpreted the partnership agreement for himself. A partnership agreement was as much binding upon the parties as upon the arbitrator himself. Goodwill was one of the matters covered by the partnership agreement with reference to which, the dispute was referred to the arbitrator. The arbitrator determined the goodwill otherwise than as postulated under the agreement. He thus exceeded his jurisdiction.

17. In *M/s. Alopi Parshad v. Union of India*[40], the arbitrator awarded amounts on the basis of quantum meruit, despite the express terms of the contract and thus acted outside the contract. Setting aside the award, the Supreme Court stated:

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

(ibid 593)

See also *Gobardhan Das v. Lachhmi Ram*[41], and *Thawardas v. Union of India*[42],

18. These decisions show that where the dispute goes to the root of the arbitrator's jurisdiction (as in the case of an award without a valid contract or an award outside the express terms of the contract), the arbitrator cannot finally determine his jurisdiction, however wide the arbitration clause may be and extrinsic evidence can be let in to establish the illegality. It would ex hypothesis appear that, even when the question of law as to his jurisdiction has been specifically referred to him, his derision on the point is only tentative and subject to review by the civil court. In such a case also, it would seem that, because of the very nature of the dispute, evidence extrinsic to the award can be called in aid, despite the specific reference, to prove that the error went to the root of the jurisdiction of the arbitrator and his award is therefore a nullity and is liable to be set aside.

19. On the other hand, if the answer to the question of law specifically referred to the

[40] AIR 1960 SC 588 [42] AIR 1955 SC 468

[41] AIR 1954 SC 689, 692

arbitrator (although touching on his jurisdiction) depends on the construction of the contract as regards its meaning and effect, as distinguished from its existence or validity and the arbitration clause is wide enough to include any question arising under or relating to the contract, the decision of the arbitrator is not tentative, but final. This was the position in *M/s Tarapore and Co. v. Cochin Shipyard Ltd. Cochin*[43]*,*

20. In that case, the dispute arose as to the construction of the contract. The question of law-albeit "touching upon the jurisdiction of the arbitrator"-which was specifically referred to the arbitrator was whether the disputed claim for compensation for increase in the cost of imported pile driving equipment and technical know-how fees would be covered by clause 40 (the arbitration clause) which was wide enough to include "any other questions, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract". This called for the construction of not only the arbitration clause, but all the relevant substantive clauses of the agreement. The dispute was not whether the contract was entered into at all or whether it was void ab initio or whether it existed in relation to the claim. The parties were at one in asserting that they entered into a binding contract which was in existence at the relevant time, but their difference was whether in terms of the contract the claim was maintainable. This is precisely the distinction between a dispute as to the existence or validity of the contract (an error going to jurisdiction) on the one hand and a dispute which arises "in respect of" or "with regard to" or "under" the contract calling for the construction of the contract (an error within jurisdiction) on the other hand.

21. To sum up: An arbitrator is the final judge except where the award is vitiated by corruption or fraud or other illegality or where be makes an error of law apparent on the face of the award. If he erroneously decides on a point of law specifically referred to him as a separate and distinct question. his award is ordinarily beyond judicial scrutiny. On the other band, if what is referred to him is a composite question of law and fact and an error of law appears on the face of the award, his decision is liable to be interfered with by the civil court. Where, however, the error of law goes to his jurisdiction, as distinguished from an error within jurisdiction, extrinsic evidence can be called in aid to prove the illegality. Even, when there had been a specific reference to the arbitrator on a question of law and his error is one that can be characterized as an essential or fundamental error, being an error touching on the very existence or validity of the contract and therefore affecting the very jurisdiction of the arbitrator to enter upon the reference (i.e., an error going to the jurisdiction) the decision of the arbitrator would ex hypothesis be tentative and not immune from judicial scrutiny. The same is the position where the arbitrator entered upon a valid reference, but in the course of the enquiry transgressed the confines of the contract and thus the limits of his jurisdiction. In both these cases the error is essential or fundamental and goes to his jurisdiction and ex hypothesis the award is liable to be set aside, even by recourse to extrinsic evidence, the specific reference notwithstanding.

22. No question of law as to the jurisdiction of the arbitrator was, in the instant case, specifically referred to him. The whole dispute between the, parties was as to the amounts due to the contractor under various items of claim. All this is clear from the

[43] AIR 1984 SC 1072

arbitration clause which we have extracted above and from the pleadings of the parties before the

arbitrator. Pleadings can be looked into:

> "For the purpose of ascertaining whether any specific question of law was in dispute and was referred to the arbitrator for his decision."

F.*R. Abasalom Ltd. v. Great Western (London) Garden Village Society Ltd*[44]*.,* See also *Bunge and Co. v. Deward Webb*[45]*,*

23. The objection raised by the State against the claim made by the Contractor was not one pertaining to the construction of the contract or to the maintainability of the claim in terms of the contract, but to the existence of the contract itself in relation to the claim. According to the State, there was no contract between the parties to support such a claim and in respect of it, there was no submission to arbitration. An action to enforce such award, in the words of Lord Goddard, C. J ,:

"will fail for the very good reason that there was,no submission."*M. Golodetz v. Schrier and another*[46]*,*

24. The award of the arbitrator is strikingly outside his jurisdiction. He has far out stepped the confines of the contract, wandered far outside the designated area and digressed far away from his allotted task. It is not merely a case of determination otherwise than as prescribed under the agreement, as in *Jivarajbhai v. Chintamanrao*[47]*,* or, in excess of what was coatractually stipulated, as in *M/s. Alopi Parshad v. Union of India*[48]*,* but an award without contract to support it and in the face of the clear and unequivocal declaration of the Contractor that he would raise no claim whatever for extra payment for work done after 3-4-1978. The award flew in the face of the Contractor's undertaking. The award had no basis whatever. The arbitrator thus clearly exceeded his jurisdiction. See the principle enunciated in *Anisminic Ltd. v. Foreign Compensation Commission*[49]*, Pearlman v. Keepers and Governors of Harrow School*[50]*, Lee v. The Showman`s Guild of Great Britain*[51]*,* and *M.L. Sethi v. R.P. Kapur*[52]*,*

25. The arbitrator has acted most unreasonably, irrationally and capriciously in ignoring the limits of the contract and the categoric undertaking contained in Exts. R9 to R11 to which his attention had been specifically drawn by the State in the objections filed before him. In ignoring all this and in awarding extra rates for the period subsequent to 3-4-1978, the arbitrator has misdirected and misconducted himself by acting ultra fines compromises and has committed "an essential" or fundamental error in manifest disregard of the evidence before him and the confines of his own authority: *Omanhena v. Chief Obeng*[53]*, Khusiram v. Mathuradass*[54]*, David Taylor and Son, Ltd. v. Barnett*[55]*, Gobardhan Das v. Lachhmi Ram*[56]*, Thawardas v. Union of India*[57]*, Heyman v. Darwins Ltd*[58]*., M/s. Alopi Parshad v. Union of India*[59]*,*

[44]1933 A.C. 592 (H.L)
[45] (1921) 8 L.I.L. Rep. 436 (K.B)
[46](1947) 80 LI.L. Rep. 647 (K.B)
[47] AIR 1965 SC 214
[48] AIR 1960 SC 588
[49](1969) 2 A.C. 147
[50](1979) 1 Q.B. 56
[51](1952) 2 Q.B. 329
[52] AIR 1972 S C. 2379
[53] AIR 1934 P.C. 185, 188
[54](1947-48) 52 Cal.W.N. 826
[55](1953) 1 All E.R. 843 (CA)
[56] AIR 1954 SC 689, 692
[57] AIR 1955 SC 468
[58](1942) A.C. 356, 371
[59] AIR 1960 SC 588,

Jivarajbhai v. Chintamanrao[60]*, K.P. Poulose v. State of Kerala*[61]*,* and *Orissa Mining Corpn. v.*

P.V. Rawlley[62]*,*

26. In the circumstances, we set aside the judgments under appeal and the awards of the arbitrator shall accordingly stand sat aside. The appeals are allowed in the above terms. The State is entitled to-costs throughout. Allowed. The learned counsel for the respondent-Contractor makes an oral application under Article 134A of the Constitution of India for leave to appeal to the Supreme Court. In our view, these cases do not involve any substantial question of law of general importance which needs to be decided by the Supreme Court. The leave sought is accordingly refused.

Leave refused.

[60] AIR 1965 SC 214

[61] A.I.R 1975 SC 1259

[62] A,I.R. 1977 SC 2014