

U.P. State Bridge Corporation Ltd. Vs Union of India

Court: Delhi High Court

Date of Decision: Jan. 13, 2012

Acts Referred: Arbitration Act, 1940 " Section 30, 33

Citation: (2012) 4 AD 181

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Vivekanand, for the Appellant; Amitabh Marwaha, for the Respondent

Judgement

Anil Kumar, J.

This order shall dispose of the claimant/petitioner's objections against the award dated 19th March, 1997 passed by Shri

S.K. Khanna, Chief Engineer (Designs) in the matter of U P State Bridge Corporation vs. Union of India regarding the construction of a flyover at

the I.P. Estate intersection. The petitioner contended that it is a Government owned company incorporated under the Indian Companies Act, 1956

having its registered office at Lucknow, U.P., and branch offices all over India including Delhi and Ghaziabad.

2. The respondent, Public Works Department of Delhi, Government of NCT of Delhi invited tenders for the construction of the flyover bridge at

I.P. Estate intersection, New Delhi. In response to the invitation of tenders, the petitioner submitted his tender which was accepted and the work

was awarded to the petitioner by letter dated 6th January, 1981. The stipulated period of completion was 16th months and the work was to be

completed by 12th May, 1982 commencing from 13th January, 1981. A formal agreement bearing No. 1/EE/FOP/AG/D IV/80-81 was executed

between the petitioner and the respondent which was to be governed by the general conditions of contract, providing for settlement of all claims,

disputes arising out of and relating to the said contract, by way of arbitration under clause 25 of the contract.

3. The petitioner contended that the work was of significant nature on account of the ASIAD 1982 and therefore was executed by the petitioner

on priority basis. The operations of the bridge was put to use and opened for the traffic by the respondent in July 1982. According to the

petitioner, the respondent, however, had accorded the completion of the work on 21st October, 1982 and the time was extended without levying

any penalty.

4. The assertion of the petitioner is that during the course of the execution of the work, allegedly many extra/substituted/additional items and

quantities of the work were executed which were not contemplated under the agreement for the construction of the flyover and consequently

disputes arose between the parties which were referred to various Arbitrators by the respondent since 1983 and lastly to Shri S.K. Khanna, Chief

Engineer (Designs), CPWD, New Delhi vide letter dated 7th August, 1989 who entered upon reference on 19th January, 1990 and made and

published the award on 19th March, 1997.

5. Pursuant to the notice of filing of the award by the Arbitrator in the High Court which was allegedly received by the petitioner on 27th October,

1990, the petitioner has filed objections in respect of 42 items of disputes involving an amount of Rs. 81,86,498/-. The Arbitrator has awarded a

sum of Rs. 5,92,672/- in respect of the claims of the petitioner bearing No. 3, 7, 8, 9, 11, 15, 23, 29, 30, 31, 34, 41 and 42 (vi) to (viii).

According to the petitioner, no amount has been awarded against the claim Nos. 1, 2, 5, 6, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25,

26, 27, 28, 32, 33, 35, 36, 37, 38, 38A, 39 and 40. The petitioner has challenged the award on the ground that the Arbitrator had mis-conducted

himself during the proceedings, as he had ignored the petitioner's documents placed on record. The award is also challenged on the ground of

being contrary to the basic conditions of the contract between the parties and it is argued that there are many errors apparent on the very face of

the record. The award is also impugned on the ground that only conclusions have been given by the Arbitrator and no reasons for arriving at the

said conclusions has been noted down. The inferences given in the award are without disclosing his mind and the award is contrary to the pleas and

contentions of the petitioner in respect of many claims. The award is also challenged on the ground that the award is inconsistent and is contrary in

respect of various claims.

6. The objections raised by the petitioner are contested by the respondent contending inter alia that the objections raised do not satisfy the

ingredients of Section 30 of Indian Arbitration Act, 1940. The respondents have relied on the proposition that the jurisdiction of the court to

interfere with an award of the Arbitrator's is a limited one and it is not open to the court to attempt to probe the mental process by which the

Arbitrator has reached his conclusion. It is further contended that it is not open to the court to re-assess the evidence to find out whether the

Arbitrator has committed an error or to decide the question of adequacy of the findings, as the court cannot sit in appeal on the conclusions of the

Arbitrator by re-examining and re-appreciating the evidence considered by the Arbitrator. It is also asserted by the respondent that the court

cannot substitute its own evaluations of the conclusions of the law or fact to come to the conclusion that the Arbitrator had acted contrary to the

bargain of the parties. Emphasis has also been laid on the contention that if, on a view taken of a contract, the decision of the Arbitrator on certain

amounts awarded is a possible view, though perhaps not the only correct view, the award cannot be examined by the court nor can the court

examine the reasonableness of the reasons given therein. It is also contended that the Arbitrator has clearly indicated his mental process though not

giving a very detailed and elaborate reasons in the award. It is asserted that this court is not to disturb this mental evaluation by substituting its own

conclusion as they do not reveal, or disclose, any illegalities whatsoever and rather it reflects the firm grasp of the issues referred to by the learned

Arbitrator during his adjudication.

7. The learned counsel for the petitioner has relied on *College of Vocational Studies Vs. S.S. Jaitley*, AIR 1987 Del 134 ; *Jajodia (Overseas) Pvt.*

Ltd. Vs. Industrial Development Corporation of Orissa Ltd., ; *S.N. Mukherjee Vs. Union of India*, *M.L. Jaggi Vs. Mahanagar Telephones Nigam*

Ltd. and others, and *Jai Singh Vs. DDA and Others*, to contend that the arbitrator has only given his conclusions and has not disclosed the mental

process which ultimately culminated in the said conclusions and has also not given the reasons for the same. Therefore it is contended that the

award is contrary to clause 25 of the Arbitration Agreement and is hence, liable to be set aside.

8. Per contra the learned counsel for the respondent has relied on *Union of India Vs. Ms. Kundra Shoes* CS (OS) No. 1257-A of 2000 and *M/s.*

Kundra Shoes Vs. Union of India CS (OS) No. 516 A of 2000,; *India Metals Vs. Union of India* 2006 4 AD (D.H.C.) 555 : 2006 (88) DRJ

430; *D.D.A. Vs. Bhagat Construction Co. Pvt. Ltd.*, ; *M/s Housing & Urban Development Vs. M/s DSA Engineers (Bombay)* 2004 7 AD (Del)

418 : 113 (2004) DLT 744 (DB); *Delhi Development Authority Vs. Bhagat Construction Co.(P) Ltd. & Anr.* 2004 (3) Arb. LR 548 (Del) (DB);

Delhi Development Authority Vs. Wee Aar Constructive Builders and Another, ; *Delhi Development Authority Vs. Saraswati Construction Co.*, ;

Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, ; *State of Rajasthan Vs. Puri Construction Co. Ltd. and Another*, ;

Arosan Enterprises Ltd. Vs. Union of India & Anr. 1999 8 AD (S.C.) 273 : *M/s. Arosan Enterprises Ltd. Vs. Union of India and Another*, and

U.P. State Electricity Board Vs. Searsole Chemicals Ltd. 2001 2 AD (S.C.) 346 U.P. State Electricity Board Vs. M/s. Searsole Chemicals Ltd., .

9. Detailed arguments have been heard on behalf of the parties. This is not disputed by either of the parties that under Clause 25 of the agreement,

the Arbitrator was under an obligation to give his reasons for his findings and the award. The petitioner has raised this plea in his objections in para

10(iv). In reply to the objections it is not denied that under Clause 25 of the agreement the arbitrator was under an obligation to give his reasons

for the findings. What is instead stated by the respondent is that the arbitrator has given a reasoned award. The allegation on behalf of the

petitioner, that the arbitrator has only given conclusions and not disclosed the reason, or his mental process, as to how he had arrived at the

conclusions is rather not specifically denied. According to the respondent the arbitrator has made a reasoned award and has also disclosed his

reasoning and mental process. Thus what is to be seen and examined is whether the arbitrator has indeed given the "reasons" while allowing the

claims in the award.

10. The Oxford English Dictionary defines "reason" as a cause, explanation or justification or as a good or obvious cause to do something or as

logic or a premise of an argument in support of a belief. The Webster's Dictionary defines "reason" as the cause that makes a phenomenon

intelligible. A Single Judge of this Court while dealing with as to what would constitute "reason" in Jai Singh (Supra) in paragraphs 5 & 6 had held

as under:-

5. The Oxford's English Dictionary defines reason as a cause, explanation or justification or as a good or obvious cause to do something or as

logic or a premise of an argument in support of a belief. The Black's Law Dictionary defines reason as a faculty of mind by which it distinguishes

truth from falsehood, good from evil and which enables the possessor to deduce inferences from facts or from propositions. Webster's Dictionary

also defines reason as the cause that makes a phenomenon intelligible.

6. Reason is the foundation, explanation, consideration, rationale or a ground for an action. It is the statement of a fact employed as an argument to

justify or condemn some act. It is a fact or circumstance forming a ground or motive leading or sufficient to lead a person to reject or adopt some

course of action or belief.

11. Though an arbitrator is not required to give a detailed judgment just like a Civil Court, what is expected of the arbitrator at the very least is that

he must cull out the trend of his thought process. Thus where there is no detailed note justifying the amounts allowed by the arbitrator, it will not

amount to a misconduct and on this ground alone the award given by the arbitrator is not liable to be set aside. However, it is imperative that an

award should contain the basic reasoning from which it would be possible to ascertain as to logically how an arbitrator has arrived at a particular

conclusion. The reason indicates the thought process of the person giving the reasons and provides an insight into the rationale behind it.

12. In *College of Vocational Studies* (supra) it was held that from a reasoned award it should be possible to ascertain as to logically how an

arbitrator has arrived at a particular conclusion. The reason denotes the thought process of the person giving the reasons. In the said judgment it

was further held that mere conclusions and verdict would not be sufficient and that the reasons are the links on the material, documentary or oral

evidence, adduced before the arbitrator on which certain inferences are drawn and conclusions are made and therefore there should be some

rational nexus between the two indicated in the award. In *Jajodia (Overseas) Pvt. Ltd* (supra) the Supreme Court had held that merely giving

answers to the claims and the issues raised between the parties would not constitute the reasons and such an award will not be a speaking and

reasoned award. The Supreme Court in *S.M. Mukherjee* (supra) had elaborated on the requirement to state reasons in the award including

recording of clear and explicit reasons.

13. The judgments relied on by the learned counsel for the respondents on the other hand do not militate against the proposition contended by the

petitioners, regarding the issue of what are reasons and whether by merely giving reasons to the claims or the conclusions on the basis of the record

would tantamount to reasons.

14. In *Kundra Shoes* (supra) by relying on *S. Harcharan Singh Vs. Union of India*, it was rather held that if an interpretation to a particular clause

of agreement is given by the arbitrator, such an interpretation although may be erroneous is final and binding and the Court does not have the

power to upset the finding. However, if the arbitrator passes an award by ignoring the stipulation and prohibition contained in the agreement, then

the arbitrator travels beyond his jurisdiction. It was further held that there are limits for judicial reviewability and that the Courts exercise limited

jurisdiction in proceedings for setting aside an award u/s 30 of the Act. Even if it is presumed that there is an error in the inferences of an arbitrator,

the same shall be error within his jurisdiction and the Court will not substitute its decision with the decision of an arbitrator who has considered all

the materials which are relied on by the parties.

15. In India Metals (supra) which is relied on by the respondent, the Court had held that an official who is appointed as an arbitrator by name will

continue after his retirement, unless it is specifically agreed or at the time of reference it is so stipulated that after retirement, the arbitrator shall not

be entitled to continue with the reference. The Court, however, had not dealt with the issue of what would constitute as "reasons" by an arbitrator.

In Bhagat Construction Co. Pvt. Ltd (supra) the arbitrator had awarded a sum of Rs. 3,50,000/- from the claim of Rs. 16,60,000/- and the

arbitrator had not disclosed the basis or the mental process for arriving at such a figure. It was held that the arbitrator was well versed in the matter

before him as a Former Director General of CPWD and he was not required to write a detailed judgment, as the Judges do. In Housing & Urban

Development (supra) it was held that when parties have chosen a forum other than the normal forum of Civil Court and have chosen to have their

dispute decided by an arbitral forum, the Court should be reluctant to substitute its opinion with that of the arbitrator.

16. In Bhagat Construction Co. (P) Ltd (supra) the Court had held that if the award shows application of mind it is to be taken as correct and the

arbitrator does not need to disclose the mathematical conclusions in the award. It was further held that the Court would not substitute its own

opinion with that of the arbitrator. In the instant matter it was again reiterated that the arbitrator need not disclose the mathematical calculations in

the award because if the award shows the application of mind, then the view which is plausible according to the arbitrator shall be taken as correct.

In the instant case the award comprises of 25 pages and in the first five pages the arbitrator has dealt with the reasons for arriving at a finding, that

the delay was attributable to the appellant and other reasons.

17. In Wee Aar Constructive Builders & Anr (supra) a Division Bench of this Court had held that when the parties choose the forum to refer their

disputes to be adjudicated not by the Civil Court by a suit, the Court while exercising its appellate power will not substitute its opinion with that of

the arbitrator. Similarly in Saraswati Construction Co & Anr (supra) it was held that the arbitrator was a retired Director of CPWD and was

conversant with the directions and that the Court while exercising the appellate jurisdiction will not substitute its opinion with that of the arbitrator. If

the clauses in the contract are open to two plausible interpretations it is legitimate for the arbitrator to accept one or the other available

interpretation. In Jagan Nath Ashok Kumar & Anr (supra) the Supreme Court had held that in commercial activities the endeavour should be to

uphold the awards of the skilled persons when the parties themselves have selected to decide the questions at issue between them. If the arbitrator

has acted within the terms of his submission and has not violated any of the rules of what is so often called natural justice, the Courts should be

slow indeed to set aside the award. Similarly in Puri Construction Company Ltd (supra) it was held that if the arbitrators have not taken into

consideration any matter outside the scope of reference and the arbitrator has adjudicated the disputes and differences covered by the written

agreement nor has any extraneous matter been taken into consideration by the arbitrator and the arbitrators have referred to and relied upon the

material on record, then it cannot be reasonably contended that there was no basis whatsoever to the findings made by the arbitrators upon the

consideration of the material on record. The dispute whether the arbitrator had given a reasonable award or not was not considered by the Court

nor was the award set aside on the ground that the award was not a reasonable award. In Arosan Enterprises Ltd (supra) it was held that mere

fixation of a period of delivery or a time in regard thereto does not by itself make the time as the essence of the contract. It was further held that the

agreement has to be considered in its entirety and on proper appreciation of the intent and purport of the clauses incorporated therein. In Searsole

Chemicals Ltd (supra) it was held that if on the basis of the pleadings and evidence two views are possible, then the view taken by the arbitrator

would prevail.

18. It is well established that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a

decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be

remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may

make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without

having regard to the factual situation and circumstances in both the cases. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. Vs.

N.R. Vairamani and Anr. 2004 9 AD (S.C.) 556 : AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual

situation. In the judgment the Supreme Court had observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which

reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of

their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be

construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy

discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words

of statutes; their words are not to be interpreted as statutes.

19. Under claim Nos. 1 and 2, the petitioner had claimed a sum of Rs. 12.22 lakh and Rs. 5.14 lakh regarding additional length and number of

piles respectively. The Arbitrator has not awarded any amount. The Arbitrator has relied on clause 2.4.3 and 2.4.4 while denying the same. These

clauses of the agreement contemplate that the design of foundation had to be modified to suit the properties of the soil encountered and revealed

and nothing extra was to be paid for the same. The Arbitrator has also noticed para 7.5 on page 281. The Arbitrator has rejected the said claims

of the petitioner stating that the test piles were cast in January 1981 and the test was done in August 1981 and that the results were submitted in

September 1981. The respondent has contended that in letter dated 06.01.1981 it was made clear that the acceptance of the designs submitted by

the petitioner was to be subject to approval of the Delhi Urban Arts Commission and the petitioner was liable to carry out any modification or

alterations. Under condition 4.3, in the event of any discrepancy or contradiction amongst various specifications, the conditions stipulated in the

additional conditions of the tender had to prevail. In the circumstances it is contended that the petitioners plea that the design of 1.2 m and 76 cm

dia 15 m deep board piles was not subject to further modifications is not correct and is wholly misconceived. The petitioner was liable to carry out

all the modifications as desired by the Ministry of Shipping and Transport and therefore the petitioner was not entitled for any additional

compensation. It was not admitted that the change/modification was not due to actual soil properties barred on account of over cautiousness and

intention to provide more soundness and the strength/load bearing capacity than actually required as per site conditions. The contention that the

work was completed in a hurry being time bound and so the claim could not be made earlier was also rejected. The plea of petitioner that the

design was not modified to suit the properties of the soil actually met but for other consideration was not accepted either. The plea that the 0.76

cm dia number of piles were increased from 32 to 44 on theoretical basis without any justification or without conducting actual tests at the site was

also not accepted. The plea of the petitioner that the designs submitted by the petitioner was based on formula and nothing wrong was found with

the same, has not been accepted as well. The arbitrator is the Chief Engineer (Design) CPWD, New Delhi and is a skilled person and

consequently he was required to give reasons for not accepting the pleas of the petitioner. The Arbitrator has considered clauses 2.4.3 and 2.4.4

and para 7.5, while denying the claim of the petitioners, however, he has failed to explain how, and why they do not support the pleas of the

petitioner, as no reasons for the same have been given. The arbitrator has only given his conclusions and not disclosed the reason, his mind and

mental process, as to how he had arrived at the conclusions.

20. Regarding claim No. 3 the contention of the claimant for recovery of Rs. 1.35 lakhs from the claimant's final bill was held to be unjustified

though it was stated that the dispute related to only the initial load test and there was no dispute about the actual test which was done for each

diametric pile. The claim, however, consists of two parts one relates to refund of an amount of Rs. 1.35 lakhs recovered by the respondent for not

doing two initial load tests and the other which was on account of expenses allegedly incurred by the petitioner in casting the additional anchor piles

for the lateral test. No reason has been given for allowing part of the claim and not allowing the later part of the claim.

21. The claim No. 4 which pertain to retaining the walls from 2.7 metres to 4.45 metres high as well, was rejected by the arbitrator. The claim had

been rejected on the ground that the data of Oberoi Flyover has no relevancy to the subject case. Merely stating that it is not relevant will not

constitute a bonafide reason. If some reason is given by the arbitrator then the Court cannot go into the sufficiency of the reason. However, in the

circumstances, by merely saying that a particular data is not relevant, will not constitute a valid explanation and does not clarify the inference that

are drawn from it nor does it not make the act of rejecting the data and consequently the claim intelligible. Hence it cannot be held to constitute

reasons"" and it would only amount to a conclusion.

22. In respect of claim No. 5 the arbitrator has held that keeping the arguments of both the parties in view nothing is payable. This is also a

conclusion without disclosing any reason. The arbitrator does not disclose as to due to which argument or contention of which of the parties the

claim is rejected, i.e. whether the argument of the claimant is not acceptable or is it the argument of the respondent that is acceptable. The claimant

had contended that he suffered and incurred additional expenses and losses on account of the increase in the length of via duct portion of the

bridge on both the sides and that the amounts were claimed on the actual rate basis. Reasons are links between the materials on which certain

conclusions are based and the actual conclusions are arrived at. From the award it is apparent that the arbitrator has merely given the conclusions.

The arbitrator had to decide the disputes in accordance with the material on record and the legal rights between the parties and not what the

learned arbitrator considered as fair and reasonable.

23. Similarly in respect of claim No. 6 the arbitrator has only referred to the rival pleas and contentions of the parties. The learned counsel for the

claimant/petitioner has pointed out that the arbitrator's decision was that while making the reinforcement in wearing course, the petitioner was

asked to do welding instead of binding with wire for joining different ends of the steel reinforcement. However, in the contract there was no

provision for welding. The arbitrator could have rejected the claim on the ground that the agreement does not contemplate any welding nor were

any rates supplied or for some other reasons, but what is stated instead is that on considering the arguments by the parties, it was agreed that the

welding of the steel mesh should be done and, therefore, the claim is rejected. However, this alone does not disclose any reason for arriving at the

said conclusion. Reasons reveal the grounds on which the arbitrator reaches the conclusions which obviously affect the interest of the parties

concerned. The rationale behind the requirement of reasons is that reasons assure that the arbitrator has applied his mind and has not acted

capriciously. While rejecting the claim No. 6 it is just not apparent as to what are the reasons for rejecting the same. It is not evident from the

conclusion of the arbitrator, whether anything beyond the terms of the agreement was not payable or whether the welding would also be included

in the type and part of the work which was to be carried on and, therefore, was not to be considered as an additional item or some other reason.

Apparently no reasons have been given by the Arbitrator and only a conclusion is arrived at.

24. In respect of claim Nos. 7 & 8 though amounts have been awarded, however, the reasons given are that on ""considering the arguments of the

two parties and the fact that the claimant did not deny the amount of Rs. 3 lakhs and considering the fact that railing provided was heavy and

ornamental, an amount of Rs. 1.2 lakhs"" was awarded. Even as regards claim No. 8 the arbitrator has given an amount of Rs. 75,000/- which has

been awarded without giving any reasons except for narrating certain facts.

25. In respect of claim No. 9 an amount of Rs. 3750/- was awarded considering the arguments of the parties, but what exactly was the argument

has not been detailed. The claim was not only for failure on the part of the respondent in not shifting the water main but also for shifting the water

main incurred by the petitioner which also included the delayed in the shifting which caused the machinery of the petitioner to remain idle.

Apparently no reasons have been given in the award. For Claim No. 10 the arbitrator has held that he has considered the argument and that the

claim is not tenable and is, therefore, rejected. However, it has not been spelt out as to what the reason are for rejecting the claim. Even with

regards to this claim it is apparent that only the conclusion has been given by the arbitrator and not the reasons for the same.

26. From the perusal of claim No. 11 it appears that on consideration of the details it was found that certain elements had not been considered by

the respondent in his analysis and therefore an amount of Rs. 5000/- was awarded to the claimant. However, again what elements were not

considered has not been spelt out. Though the amount claimed was Rs. 23 lakhs, no reason has been given for awarding an amount of Rs. 5000/-

even though the arbitrator who was an expert was not required to give the mathematical details, however, some reason for arriving at the said

amount ought to have been given by him.

27. Claim Nos. 12, 13, 14, 16 & 18 were rejected by only stipulating that the arguments of both the parties were considered and that nothing is

payable. Again it is glaringly apparent that there is complete lack of reasons.

28. In respect of claim No. 15 an amount of Rs. 44,500/- against the claimed amount of Rs. 1.86 lakhs was awarded only on the basis of

respective arguments. Here again no reasons have been given. It is not even detailed as to which arguments were accepted and which arguments

were not accepted. The Arbitrator had merely given his conclusions without a thread of any reason of any type.

29. Claim Nos. 19, 20 and 21 had been rejected on the ground that it is not possible to accept the claim of the claimants which was for providing

and laying RCC 150 mm diameter, brick work in roadside drain manhole and for using mild for steel in RCC. Regarding claim No. 22 for Rs.

12,660/- it was observed that the analysis of the rates filed by the respondent was found to be in order and, therefore, the claim was rejected. The

petitioner has contended that no evidence of market rate of aluminum strip is deduced and included by the respondent in their rate or produced or

filed before the arbitrator and in the circumstances how the analysis of the rates by the respondent could have been accepted has not been

explained. Apparently no reasons have been given. The learned counsel for the respondent is also unable to show as to what would constitute

"reasons" on the basis of which the claims have been rejected.

30. In respect of claim No. 23 an amount of Rs. 780/- was awarded on the basis of the arguments of the claimant; Claim No. 24 was rejected on

the basis of the arguments of both the parties; claim No. 25 was rejected considering the arguments; claim No. 26 for Rs. 57,960/- was not

considered justified; Claim No. 27 was rejected on considering the arguments of both the parties and observing that the claimant could not supply

computation of quantities; claim No. 28 was rejected considering the arguments; as regards claim No. 29 an amount of Rs. 10,000/- was awarded

on the basis of the contention of the claimant, however, no reasons are apparent in any of these claims for either awarding or rejecting the claim or

awarding a part of the amount to the claimant. Which arguments were accepted and for what reasons, should have been spelt out by the

Arbitrator. Under claim No. 30 an amount of Rs. 40,000/- was awarded for the claim of Rs. 61,784/-, for claim No. 31 an amount of Rs. 6000/-

was awarded for an amount claimed of Rs. 12,920/-. For Claim No. 32 nothing was awarded on the ground that the work was not done

according to the requirement; the claim No. 33 was rejected considering the argument of both the parties; for claim No. 34 for a sum of Rs.

44,015/- claimed, an amount of Rs. 40,000/- was awarded considering the respective arguments; for claim No. 35 for Rs. 40,000/- the claim was

rejected considering the respective submission of the parties; for claim No. 36 the claim of Rs. 9,216/- was rejected considering the respective

submissions and on the ground that the deductions made by the respondent was found to be in order; claim No. 37 was rejected on the ground

that the contention of the respondent was held to be valid; claim Nos. 38A and 38B were also rejected on the ground that the amounts paid by the

respondent were found to be in order; claim No. 39 for Rs. 2759/- was rejected as the deduction given by the respondents was considered to be

justified; Claim No. 40 was also rejected as it was not considered to be justified and in order and for claim No. 42 an amount of Rs. 3,400/- was

awarded considering the argument and submissions made by both the parties. In all the claims no reasons have been given except for stipulating

that the arguments of the parties have been considered or that the deductions made by one of the parties are justified. Obviously there must be

reasons for holding the deductions made by one of the parties to be acceptable. It is apparent that no reasons have been given and merely

conclusions have been arrived at by the Arbitrator.

31. Similarly in respect of claim No. 42 which comprised of a number of sub claims either they have been rejected or some amount has been

awarded without even disclosing as to what was considered in some of the sub claims. It is simply stated that the amount is either awarded or

rejected. The claims if rejected, were not considered to be justified. This is apparent in the facts and circumstances that no reasons at all has been

given in the entire award for the various claims and sub claims while rejecting or awarding some of the amounts. Merely stating that the claims are

not in terms of the agreement or has not been established or that the arguments of the parties have been considered or that it is not based on the

material on record before the arbitrator do not indicate any reasons for arriving at the said conclusions. The arbitrator has just given his conclusions

of either allowing or disallowing the claim. The conclusions of the arbitrator in the facts and circumstances cannot be construed to be intelligible.

Such an award cannot be construed to be in term"s of Clause 25 of the agreement" which categorically contemplates that the arbitrator should give

a reasoned award. The arbitrator had a duty to decide the dispute in accordance with the legal rights of the parties and the material on record

rather than what he considered fair and reasonable. Therefore, in the totality of facts and circumstances the award is not in consonance with Clause

25 of the arbitration agreement between the parties which contemplates that the arbitrator shall give a reasoned award. Hence, the entire award

given by the arbitrator dated 19th March, 1997 is liable to be set aside.

32. For the foregoing reasons, the objections of the UP State Bridge Corporation Ltd. under Sections 30 & 33 of the Arbitration Act, 1940 are

allowed. Consequently, the award dated 19th March, 1997 passed by Sh. S.K. Khana, Chief Engineer (Design) Arbitrator is set aside as the

same is without reasons. The matter is remanded for fresh decisions with reasons in terms of the Arbitration Agreement between the parties.

Learned counsel for the parties on instructions has stated that the Chief Engineer, Sh. S.K. Khanna, who had acted as an Arbitrator has since

expired. In the facts and circumstances, the matter is to be referred to Sh. Deepak Narain, Retd. A.D.G. CPWD of B-9/6295, Basant Kunj, New

Delhi-110070, (Mob: 9811357748) to adjudicate the disputes between the parties. The counsels for both the parties do not object to Mr.

Deepak Narain being appointed as Arbitrator after the demise of Sh. S.K. Khanna, Chief Engineer (Design). The Arbitrator shall give his reasoned

award within a period of four months from the date of entering upon the reference. The Arbitrator shall be entitled to charge his fees in accordance

with CPWD Scheduled rates of fee which will be shared by the parties equally. The parties are directed to appear before Sh. Deepak Narain on

06.02.2012 at 1600 hours.

With these directions the petition is disposed of. Considering the facts and circumstances, the parties are left to bear their own costs. Dasti to the

parties.