

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) NO. 498/2006**

% **Judgment reserved on : January 13, 2009**
Judgment delivered on : January 28, 2009

Delhi Development Authority Appellant
Through : Mr. D.S. Mahendru, Advocate.

Versus

Sunder Lal Khatri & Sons Respondents
Through : Mr. Harish Malhotra, Sr. Advocate, with
Mr. Vipul Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. This is an appeal against the judgment of the learned Single Judge dated 16th March, 2006 dismissing the objections preferred by the appellant/Delhi Development Authority (for short 'DDA') to the award dated 1st August, 1992 passed by a Sole Arbitrator in favour of the respondent/Contractor.

2. The respondent/contractors M/s. Sunder Lal Khatri & Sons were awarded the contract for construction of 192 LIG Houses at Shalimar Bagh, Block No. A, Pocket-J vide Agreement No. 4/EE/DDV/80-

81. The work was to be completed by 8th May, 1981 but the same could not be completed even till the end of 1984. Ultimately, the contract was rescinded by the appellant/DDA on 1st December, 1984. The DDA also imposed penalty under clause 2 of the contract in January 1985. The respondent/contractor invoked the arbitration clause raising five claims, of which Claims No.4 and 5 are relevant and read as follows:-

"Claim No.4: Rs.15,00,000/- towards damages as the work could not be completed within the contract period of account of alleged failure on the part of respondents.

Claim No.5: Interest @ 18% pendentelite."

3. The appellant had also raised various counter claims, of which Counter Claim No.1 alone is relevant and the same reads as follows:-

"Counter Claim No.1: Rs.1,90,436/- levied as compensation under clause 2 of the agreement."

4. The Sole Arbitrator rendered his award dated 1st August, 1992 thereby allowing the claims of the Respondent/contractor to the extent noted by the learned Single Judge on page 3 of the impugned judgment, while the counter claims of the DDA/appellant were rejected, except counter claim no.6 towards material found short, which was adjusted while considering the respondents claim no.1.

5. The learned counsel for the appellant, Sh.D.S.Mahendru, in the present appeal has confined his pleas to the rejection of counter claim no.1, and the award on claim nos. 4 and 5.

6. In so far as the counter claim no.1 is concerned, the plea advanced by the learned counsel for the appellant is that as per the

law laid down by this Court in the case of **Delhi Development Authority vs. Bhagat Construction Co. (P) Ltd. and Anr.** 2004 (3) Arb. LR 548 (Delhi) (DB) the decision of the Superintending Engineer (S.E.) levying compensation under Clause 2 is not arbitrable but that the decision of the S.E. will not negate the power of the Arbitrator to decide the question as to who was responsible for the delay in deciding other claims/counter claims between the parties. The learned counsel for the appellant has submitted that even though the learned Single Judge had noticed the effect of the judgment, it was not properly applied in the present case.

7. We notice from the award that while discussing the counter claim no.1, the learned Arbitrator, in fact, has dismissed the counter claim of the DDA founded upon clause 2 of the Agreement. The reasoning of the learned Arbitrator in respect of the said counter claim is in the following words: -

“After carefully considering the documents filed before me and submission made by the parties, I conclude that compensation levied by the SE on 4.1.1985 was unjustified since that no action was taken by the respondents under clause 2 either during the course of execution of work or till rescission of the contract of 1.12.1984. Therefore, I disallow counter claim of the respondents.”

8. In our view, the learned Single Judge was not right in upholding the findings of the Arbitrator in respect of the counter claim no.1 because the passage extracted above clearly demonstrates that, in effect, the Arbitrator had arbitrated in respect of counter claim no.1, founded on clause 2, which was beyond his jurisdiction. Another judgment of this High Court in the case of **Delhi Development**

Authority vs. M/s. Sudhir Brothers, 1995(2) Arb.LR 306 (Delhi)

(DB) has been relied upon by the learned counsel for the respondent.

The relevant paragraphs 4 and 6 of the said judgment reads as under: -

“4. Our attention has been drawn to the arbitration clause and also the relevant clause which relates to exclusion of certain matters from the purview of arbitration. The relevant clause 2 in the arbitration agreement deals with the question of compensation and directs that the concerned engineer should decide this question and his decision is final. The arbitration clause opens with the words “Unless otherwise provided”. **In view of this language, it is obvious from the decision of the Supreme Court in Vishwanath Sood v. Union of India and another AIR 1989 SC 952, that the Arbitrator could not have gone into the merits of the levy of compensation by the engineer.** In that view of the matter, the DDA ought not to have requested the Arbitrator to include the said amount in the arbitration award. We are told by the counsel for the appellant/DDA the Arbitrator was in fact informed that he could not go into the matter on merits. In any event, the DDA committed a blunder in requesting. Arbitrator to formally include the above said amount as part of the award. Taking advantage of the said request, the contractor argued the question of levy on merits and obtained a decision from the Arbitrator in his favour.” **(emphasis supplied)**

“6.It will, therefore, be for the DDA to seek to recover the said amount of Rs.5,69,743 in whatever manner it is open to it and in case any such proceedings are taken, it will be open to the contractor to raise all defences that may be open to him in law to contend the levy is bad. In case, the DDA seeks to recover the said amount of compensation from the contractor it will be open to the contractor to file a suit and raise all such contentions as he may deem fit. We make it clear that the question of limitation will not be raised by either of the parties, in view of the above unfortunate procedure adopted by both parties.”

9. Thus, it is evident that the law on the issue is settled by the aforesaid two Division Bench judgments of this Court in the cases of

Delhi Development Authority vs. Bhagat Construction Co. (P)

Ltd. and Anr. (supra) **and Delhi Development Authority vs. M/s. Sudhir Brothers** (supra), and the Arbitrator could not have gone into the merits of the levy of compensation by the Engineer under clause 2. Consequently, we set aside the award of the Sole Arbitrator on Counter Claim No.1 and hold that in accordance with the paragraph 6 of the judgment in **Sudhir Brothers** (supra), it will be open to the DDA to either file a suit to recover the said amount, or upon adjustment of such amount by the DDA from the dues of the respondent arising from the contract in question, it will be open to the contractor to file a suit and such suit shall be disposed of in view of the law laid down in the paragraph 6 of the said judgment.

10. The second issue raised by the learned counsel for the appellant was in respect of claim no.4 where damages were awarded on account of delay on the part of the appellant/DDA.

11. The submission of learned counsel for the appellant/DDA is that the learned Arbitrator was obliged to give a reasoned award. He submits that the award in respect of claim no.4 cannot be said to be a reasoned award. In support of his submission, Ld. Counsel relied upon the decisions cited before the Learned Single Judge, particularly the Division Bench judgment of this court in **College of Vocational Studies Vs. S.S. Jaitley** AIR 1987 Delhi 134.

12. Learned Senior counsel for the respondent Mr. Malhotra submits that the learned Single Judge has rightly dealt with the issue by relying on various judgments of High Courts and the Supreme Court which state that once the thought process of the Arbitrator was discernible, that would provide sufficient reason for the award and

what reasons are sufficient in a particular case must depend on the facts of that case. He specifically referred to the decision of this Court in ***Bhagat Construction*** (*supra*) to submit that the Arbitrator is not obliged to disclose mathematical calculations in the award, and that if the award shows application of mind it is to be taken as correct.

13. The issue arising for determination in the present appeal is not whether the reasons assigned by the Arbitrator are sufficient or not. The issue raised by the appellant is even more basic i.e. whether, on a perusal of the award in respect of claim No.4 it could be said that the arbitrator has assigned any reasons whatsoever. The issue is also whether, in the facts of this case, the reasons as assigned bear a nexus with the finding arrived at by the arbitrator.

14. While examining the law laid down by various decisions on this aspect we may begin with the decision of a Division Bench of this Court in ***“DDA v. M/s Alkaram”*** AIR 1982 Delhi 365. There are two opinions rendered in this decision, one by Avadh Behari Rohatgi, J, and the other by Leila Seth, J. From the decision rendered by Leila Seth, J, it appears that the Court concluded that the award of the arbitrator was, as a matter of fact, a reasoned award. The challenge to the award on the ground of it being unreasoned was raised in the context of claim No.1(E). In his award the arbitrator gave the following reasons while awarding an amount of Rs.30,033.15 as against the claim of Rs.64,177.42:-

“During the discussion it became clear that there were irregular gaps between the top of the window frames and bottom of the concret beams. In order to hide these gaps aluminium angles both inside and outside

the window frames were fixed. As per nomenclature of the item in the agreement this operation is not provided for in the execution. However, payment of this gap has been made while taking the measurements of the area from outer to outer of the frame. Under these circumstances the net rate works out to be Rs.9.57p per metre length. The total length of the gaps involved in the claim works out to be 3138.26 metres and therefore the total value of the claim works out to be Rs.30,033.15p.”

15. The contention of the DDA was that the rate of Rs.9.75 per meter was arbitrary and was arrived at without any reasons. While dealing with the said challenge, Leila Seth, J, held as follows:

“42. There was material before him to establish that the price had risen substantially. He was justified in not accepting the calculations of either party and arriving at his own figure in accordance with the facts ascertained by him. He has not based his decision only on the claim of the contractor, as contended by learned counsel for the appellant.

43. In these circumstances I feel that the arbitrator was well within his jurisdiction to come to this conclusion. The question whether I would have come to the same conclusion or arrived at the same figures is not material. Once there is evidence, there is no apparent error and/or misconduct. I cannot go into the sufficiency of the evidence; nor is it necessary for the arbitrator to set out the actual calculation figures as worked out by him; his reasons, as mentioned, are adequate and clear; it is not essential for him to give a detailed reasoned decision indicating each minute step of his mental meanderings.”

16. From the aforesaid it is clear that **M/s Alkaram** (supra) was a decision where the Court found that reasons had been assigned by the arbitrator. Avadh Behari Rohatgi, J, in his opinion observed that what reasons are sufficient in any particular case must, of course, dependent upon the facts of the case. The reasons are not deficient merely because every process of reasoning is not set out. Reasons are

not insufficient merely because they fail to deal with every point raised before the arbitrator at the hearing. No universal generalization can be raised. Everything depends on the subject matter.

17. In ***MCD v. Jagan Nath Ashok Kumar*** AIR 1987 SC 2316, the Supreme Court gave a finding that the arbitrator had given reasons in support of his award. The question before the Court was whether reasonableness of the reasons in a speaking award is justiciable under Article 136 of the Constitution. The Court answered the issue by stating that the reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a proceeding under Article 136 of the Constitution. In the course of the judgment, while examining the award the Court observed that the reasons given by the Arbitrator appear to be reasonable and have rational nexus with the conclusion arrived at by him. The Supreme Court further observed:

“In our opinion, where reasons germane and relevant for the arbitrator to hold in the manner he did have been indicated, it cannot be said that it was unreasonable.”

18. A Division Bench of this Court in ***College of Vocational Studies v. S.S. Jaitely*** AIR 1987 Delhi 134 was called upon to examine the issue whether the award of the arbitrator could be said to be a reasoned and speaking award. The court, after examining various decisions held:

“19. Where under an agreement the arbitrator is required to give reasons for his award, he is not required to give a detailed judgment or detailed reasons. **By reasons it means that the award should be speaking one. In the reasoned award**

what is expected from the arbitrator is that he should indicate his mind whereby it can be ascertained as to how he has arrived at a particular conclusion. In case of reasoned award, the arbitrator is required to indicate the trend of his thought process but not his mental meanderings, the purpose of commercial arbitration, being speedy certainly and a cheaper remedy. When the finding of the arbitrator is based on no evidence, then certainly the Court can go into such finding and set aside such an award as being perverse. The arbitrator is entitled to decide rightly or wrongly but if an error of law appears on the face of the award, then the Court can interfere and set aside the award.” **(emphasis supplied)**

19. While dealing with **Alkaram** (supra), relied upon by the appellant College of Vocational Studies, the Court has observed as follows: -

“22. No doubt the arbitrator is not required to give the detailed reasons but the requirement is that he must indicate his mind as to how he has arrived at a particular finding. We are not examining the reasonableness of the reasons, but whether the Arbitrator has given any reason. In our view the arbitrator has not given any reasons for coming to the aforesaid conclusions. The said DDA case (supra) was in fact a case of a reasoned award and one of the points was, whether there was any evidence in support of the reasons/conclusions of the arbitrator. For instance in that case, the arbitrator on each claim gave his award and then, thereafter stated his reasons for arriving at a particular finding. The claim No.1 was justified to the extent of Rs.30,033.15. Under this claim the length of the gaps was worked out to 3138.26 metres and the rate of payment of filling the gaps was worked out at Rs.9.57 per metre. So there were reasons for arriving at such a conclusion. So is the case with regard to the other claims. This is not the case with regard to the present award.”

20. Considering the facts of the case in hand, we consider it appropriate to reproduce the finding returned by the Division Bench in **S.S. Jaitley** (supra) in relation to claim No.B for Rs.3,43,280.94 and Claim No.B1 for Rs.92,271/- made by the contractor relating to the final

bill for various structures and valuation of the material, tool, plans, which were allegedly confiscated by the appellant at the time of recession of the contract. The award of the arbitrator on the aforesaid two claims read as follows:

“I have meticulously gone through the aforesaid exhibits and the contractual stipulations pertaining to them, and have also analysed the rates for extra items which are in dispute and have arrived at the conclusion that the Claimants are entitled to receive an amount of Rs.2,91,518.63 only against these claims. I, therefore, award an amount of Rs.2,91,518.63 (Rupees two lakhs ninety one thousand, five hundred eighteen and paise sixty three only) against claims ‘B’ and B-1 of the Claimants.”

21. It was the contention of the appellant, inter alia, that the arbitrator had not given any reasons whatsoever for awarding a sum of Rs.2,91,518.63 against the appellant. It was also contended that in adjudicating upon the claims B & B-1 of the contractor, it was not a mere matter of computation and that no evidence was led by the contractor as to the rates of tool and plants, and as such the arbitrator could not himself have finalized the rates of the tools and plants. The Court accepted the aforesaid submission of the appellant and has held as follows:

“28. A bare reading of the finding against these two claims B and B-1, will show that the arbitrator has merely given his conclusions and verdict without giving any reasons. 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. There must be some rational nexus between the two indicated in the award. The arbitrator may not set out every process of reasoning or may not deal with every point raised but must, when he is called upon to give reasons,

to tell the ‘reason’ why he came to the particular conclusion. It is not possible for us to find out as to how and why the arbitrator has arrived at the said figure of Rs.2,91,518.63. During the course of arguments, we asked Mr. Watel to tell us even now, as to how this amount of Rs.2,91,518.63 had been worked out. Even he could not tell us how this amount had been worked out by the arbitrator. There is no indication of the mind of the arbitrator in arriving at such a conclusion in awarding this amount of Rs.2,91,518.63. We are of the view that these findings against claims B and B-1 are without any reason, whatsoever, and as such the arbitrator has not only misconducted the arbitration proceedings but has exceeded the terms of reference under which he was required to give reasons for his findings.....”
(emphasis supplied)

22. We may at this stage itself notice that the learned Single Judge does not even appear to have undertaken an exercise to satisfy himself as to how the amount awarded in favour of the respondent under Claim No.4 had been worked out. Even before us, no such attempt has been made by the respondent.

23. The aforesaid legal principles have consistently been applied by this Court in various other decisions including in **Union of India v. Shree Shankar Vijay Timber Industries** 2003(3) Arb. LR 206 (Delhi) and **Anant Raj Agencies v. Delhi Development Authority** 1998 VI AD (Delhi) 924.

24. In **Anant Raj Agencies** (supra) Dr. M.K. Sharma, J, (as his lordship then was) examined various authorities on the subject including the decision in **College of Vocational Studies** (supra) and held as follows:

“9. In the aforesaid decisions it has been held by this court that although the arbitrator is

not required to give detailed reasons and is not expected to write judgments as are rendered by court of law but at the same time the arbitrator must mention the basis on which he reached his conclusions. Division Bench decision of this court in College of Vocational Studies (supra) also laid down that reasons being the links on the material documentary or oral evidence being adduced before the arbitrator on which certain inferences are drawn and conclusions are made there must be some rational nexus between the two indicated in the award. It was further held in the said decision that the arbitrator may not set out every process of reasoning or may not deal with every point raised but must, when he is called upon to give reasons, to tell the "reason" why he came to the particular conclusion."

25. The Court also considered the various decisions relied upon by the petitioner to support the award by arguing that the arbitrator is not bound to give any arithmetic calculation as to how he has arrived at a particular sum of the claim, nor is he required to give a detailed judgment and that he is only required to indicate the chain of his thought process. The Court, while dealing with the aforesaid argument held as follows:

"11. There is no dispute with regard to the aforesaid proposition of law laid down by the various decisions of this court as also of the other High Courts and by now the extent of power and jurisdiction of the Court to interfere with the award of the Arbitrator is well settled. Although the arbitrator is not required to write a detailed judgment as is required in a court of law wherever he is required to give reasons for his award the arbitrator has to give reasons for his award. The arbitrator may not also set out every process of reasoning or may not deal with every point raised but he must set out the reasons as to why he has come to the particular conclusion. If the arbitrator while coming to his conclusions ignores some important documents that would also amount to misconduct which calls for interference by a court.

12. The arbitrator has held that there was no delay on the part of the petitioner in carrying out the work but the contract had to be

extended as the work could not be completed and for such delay the petitioner cannot be blamed. The arbitrator has held that since there was no delay on the part of the petitioner the petitioner is required to be compensated for the additional expenditure incurred by him. Although the arbitrator in his findings has not spelt out the nature of additional expenditure for which compensation has been awarded by him but on a reading of the award in respect of the said claim it appears that such additional expenditure was incurred by the petitioner on establishment and other overheads. **However, while assessing the compensation at Rs.1,03,661/- the arbitrator has not given any specific reasons or criteria as to how and on what basis he has assessed the compensation at Rs.1,03,661/- and that is left to surmises and conjectures by the parties and by the court.** The counsel for the petitioner tried to give an Explanation for the aforesaid assessment relying on the claims statement of the petitioner. In the light of the submissions I have also perused the claim statement of the petitioner in respect of claim No.4 including the basis for claiming a sum of Rs.5,18,300/-. The Explanation sought to be given by the petitioner was also on the basis of the total amount of contract which was fixed at Rs.36,58,654/-. **The arbitrator has not indicated his thought process in the aforesaid award as to how he has arrived at the aforesaid assessment.** It is disclosed from the records that up to 17.5.1985 gross work executed by the petitioner was Rs.29,45,941/- as against the gross amount of the final bill in respect of the aforesaid contract of Rs.31,63,887/-. Thus the work to the tune of Rs.2,17,146/- was carried out after 17.5.1985. It is not indicated in the award of the arbitrator as to whether this important aspect was at all considered by the arbitrator. **Thus I am constrained to observe that the arbitrator failed to give any discernible reason for arriving at the conclusion that the petitioner would be entitled to receive an amount of Rs.1,03,661/-. Since the arbitrator has failed to mention the basis on which he reached the aforesaid conclusion and also failed to set out the reasons and as to how he had acted to give the award in respect of the aforesaid claim, the award is liable to be set aside, which I hereby do. The same is remitted to the Arbitrator for re-consideration.**"(emphasis supplied).

26. We are in agreement with the approach adopted in the aforesaid decision.

27. We may now deal with the decision of this Court in **Bhagat Construction Co.** (supra), which is relied upon by the respondent to submit that the arbitrator need not disclose the mathematical calculations in the award. There can be no quarrel with the proposition that the arbitrator is not obliged to write a detailed judgment by examining each and every argument and plea of the parties. He may not set out every process of reasoning, but he must set out the reasons as to why he has come to a particular conclusion. As observed in **Alkaram** (supra) and again in **College of Vocational Studies** (supra) the arbitrator is not required to disclose his mental meanderings. However, the Arbitrator is certainly required to disclose and indicate the trend of his thought process, and also to satisfy the elementary demand of the parties to deliver “the reason why” a particular conclusion has been arrived at by the arbitrator.

28. In **Bhagat Construction Co.** (supra) the Division Bench noticed the earlier decision in **College of Vocational Studies** (supra) and proceeded to examine the award before it. From the decision of the Division Bench it is seen that the Division Bench concluded that the award was a reasoned award, inasmuch as, in the first 5 pages of the award the arbitrator had dealt with the reasons for arriving at a finding that delay was attributable to the appellant. The arbitrator had stated that the supply of cement, steel, shortage of funds, design of development work were the major factors which had contributed to the

non performance of the agreement within the stipulated period and had resulted in prolongation of the contract and these factors were attributable to the appellant DDA.

29. While rejecting the contention of the DDA that the aforesaid award did not indicate the reason on the basis of which the arbitrator arrived at the quantum of damages awarded in favour of the respondent, the Division Bench held:

“11. Therefore, it cannot be said that any missing link was there or the claim of Rs.3,50,000 on account of increase in price of bricks, which was given to Rs. 2,25,734 was without any basis.

12. The well settled principle of law is that the Arbitrator need not to disclose the mathematical calculations in the Award. If the Award shows the application of mind and a view which is plausible by the Arbitrator, it can be taken as correct.”

30. Therefore, it appears that the Division Bench, in fact, proceeded on the basis that the arbitrator while making the award under Claim No.2 gave his reasons. It, therefore, appears to us that the decision in **Bhagat Construction Co.** (supra), which is also a decision of a Division Bench of this Court has to be construed as a decision rendered in the peculiar facts of that case, and it cannot be said to lay down a ratio different from **College of Vocational Studies** (supra). That decision has consistently been applied by this Court and even in **Bhagat Construction Co.** (supra) the same has not been doubted or descented from.

31. The Calcutta High Court in a judgment reported as **Union of India V. Royal Construction**, (2002) 1 CHN 13, after taking note of

various decisions of the High Court and Supreme Court has observed as follows:-

“20. The law as it appears from the above authorities and especially the two last ones referred to above is as follows:-

- (1) To make a reasoned award the arbitrator has to make his mind known on the basis which he has acted.
- (2) Statement of reasons is not the same thing as the giving of a detailed judgment.
- (3) Reasons are short and intelligible indications of the arbitrator’s mind, no more.
- (4) The reasons must have such connection with the conclusions reached by the arbitrator as to show that the arbitrator has not acted irrelevantly, unreasonably or capriciously.
- (5) The reasons should deal with the substantial points raised in the reference.”

32. We are of the view that the aforesaid statement of the law correctly summarizes the legal position. However, we may hasten to add that the High Court in that case held that the award, which did not contain the reasons for arriving at the awarded amount, could not be said to be lacking in reasons, as it was not necessary for the Arbitrator to disclose the same. The Court observed:-

“.....When awards used to be made without reasons, the courts said that the courts have no duty or power to probe into the mental process of the arbitrator. Now that reasons are being given, the law becomes this, that the court shall examine only that part of the mind of the arbitrator which he chooses to lay bare before the court, but about the rest the court shall not exhibit an undue inquisitiveness.”

33. While we agree with the summary of the law contained in para 20 of the aforesaid decision, we express our respectful disagreement with the said decision in its conclusion. This observation, in our view, may be correct in a case where the Arbitrator, who has no such obligation-statutory or contractual, to give reasons, chooses to give only part reasons in his award. However, where an Arbitrator is either contractually or statutorily obliged to give reasons, it cannot be that he may give reasons in his award for awarding/rejecting some of the claims/counter claims, and give no reasons for the rest of the claims/counter claims. Similarly, it cannot be that he will give reasons only partly, by stating the reasons (like in this case), justifying the examination of the claim on its merits, but not give reasons for arriving at the amount computed and awarded by him in respect of the claim.

34. It is the obligation to give reasons cast on the Arbitrator, which provides parties with comfort and assurance that the award would be free from arbitrariness, illegality, non-application of mind and corruption. This obligation is all the more essential as there are very limited grounds for interference with the arbitrator's award. Such an assurance becomes all the more pertinent where the parties have, while entering into an arbitration agreement, not named a specific individual person/persons to act as arbitrator(s). Therefore, when such an obligation is cast on the Arbitrator he cannot, only partly, discharge this obligation, and choose not to give reasons in respect of some part or aspects of the award. Merely because parties may have

contractually agreed to resolve their disputes through arbitration, it does not mean that they are not entitled to be informed of the reasons on the basis of which the Arbitrator makes the award, and that they should suffer “clueless” as to the reasons why they have been condemned by the arbitrator, particularly where they have expressly made it obligatory for the Arbitrator to give a reasoned award.

35. From the arbitral award itself, it is seen that the claim no.4 was quantified at Rs.15 lakhs. However, vide letter dated 1st April, 1992, the details of the claim had been magnified to Rs.16,55,595/- by the claimant. The Arbitrator had awarded a sum of Rs.12.25 lakhs to the claimant. The Arbitrator arrived at a finding that the delay was not attributable to the Contractor but to the appellant/DDA. Thereafter upon arriving at such a finding the Arbitrator computed damages in the following terms: -

“After carefully considering the documents placed before me it is observed that the work was delayed due to the acts of respondents and the claimants are therefore entitled to compensation. From the details filed by the claimants it is observed that the claim is on account of idle establishment, idle T&P and due to price rise during period based on cost indices. Since the claimants have already been compensated due to increase in minimum wages and increase in the price of bricks under claim No.2, I decide that the claimants are entitled to further compensation due to prolongation of the contract period as they were required to keep their establishment, T&P etc. throughout the period of execution and the market price of various materials had increased during the period. I therefore award a sum of Rs.12.25 lacs to the claimants on account of this claim.”

36. A perusal of the above computation of damages shows that the Arbitrator has loosely and generally referred to documents without

specifying any particular document. The Arbitrator has also referred to idle establishment, idle T&P expenses claimed to have been incurred during the period of delay and the price rise based on cost indices. The Arbitrator has also noticed that under claim no.2 increase in minimum wages and the price of bricks had already been awarded to the claimant. Nevertheless, the Arbitrator has awarded the amount of Rs.12.15 lakhs under the said claim.

37. The reason given by the Arbitrator that the delay was attributable to the appellant and not to the respondent would undoubtedly give the Arbitrator the justification to examine claim no.4 on its merits. However, in our view, that cannot be said to be a sufficient reason to arrive at the computation of the amount awarded as damages. The obligation to make a reasoned award, in our view, would also include the obligation to give at least some reason in the award for arriving at the awarded amount. It should be discernible from a speaking award as to on what basis the Arbitrator has arrived at the quantification of the amount. No doubt, the Arbitrator is not expected to give detailed reasons or disclose the mathematical calculations in the award to demonstrate how the exact amount awarded has been worked out. Nevertheless, that would not relieve the Arbitrator of his obligation to, at least, indicate in the award the aspects, evidence and material taken by him into consideration while awarding any particular amount against any claim. It is not disclosed as to how the arbitrator has travelled the last mile-from the point he came to the conclusion that the respondent/claimant was entitled to

claim damages on account of the delays and defaults of the appellant/DDA, to the point he arrived at the awarded amount of Rs.12.50 lakhs.

38. From the award of the Arbitrator, it is seen that the appellant had contended that the respondent had failed to produce any documents, and they had also failed to prove on record the actual damages suffered by them. In our view, it was obligatory for the arbitrator, particularly in the light of the aforesaid stand of the appellant, to have at least recorded his finding with regard to the documents and evidence produced by the respondent in support of this claim. It is also not clear whether he has accepted the documents/evidence, if any, produced by the respondent *per se*, or the same has been examined by him with due application of mind. We find the award of the Arbitrator to be totally unreasoned on the quantification of damages. Even if we assume that the delay is attributable to the appellant, no reason, much less, a worthwhile reason, has been given as to how the figure of Rs.12.25 lakhs has been arrived at. Apart from saying that the documents have been carefully considered, no reference whatsoever has been made by any other documents by the Arbitrator. In our view, the Arbitrator's thought process for computing the damages is not discernible in the award itself. The facts of this case are *para materia* with **College of Vocational Studies** (supra). The failure to give reasons for computation of the awarded amount, in our view, constitutes legal misconduct on the part of the Arbitrator.

39. The finding of the learned Single Judge to the effect that “*detailed reasons have been given while dealing with each claim/counter claim of the parties*” is not possible to sustain as no reason, whatsoever, has been given for arriving at the figure of Rs.12.25 lakhs as damages. We, therefore, set aside the award of the Learned Arbitrator as being devoid of reasons in so far as claim no. 4 is concerned. The judgment of the learned single Judge on this aspect is also set aside.

40. The only other argument urged by the appellant is with regard to grant of interest @ 16% *pendente lite* p.a. and @ 18% p.a. from the date of making of the award till the date of payment or decree, whichever is earlier. On this aspect as well, the learned Single Judge has upheld the award of the arbitrator. In our view, the award of interest *pendent lite* @ 16% p.a. appears to be justified considering the period during which the contract was performed and the award was made. The rate of inflation and, consequently, the rate of interest during those days was substantially high. However, the rates of interest as is well known, have substantially declined over the years with moderate single digit inflation. In our view, the grant of interest @ 18% p.a. from the date of the award is, therefore, excessive and the same is accordingly reduced from 18% per annum to 12% p.a. from the date of award till realization. To the aforesaid extent, the judgment of the learned Single Judge is set aside, and the award of the Arbitrator modified accordingly.

41. Since we have set aside the claim in respect of claim No.4 as being without reasons, we direct the appellant to appoint a fresh arbitrator to examine claim No.4 of the respondent on the basis of the existing arbitration record and to make a fresh reasoned award in respect of the said claim. The arbitrator be appointed by the appointing authority, namely, the engineer member, DDA, within six weeks from the date of receipt of copy of this order. Upon intimation being received from the newly appointed arbitrator, the Registry of this Court shall forward the arbitration record to the arbitrator for proceeding in the matter. The arbitrator appointed pursuant to this Judgment will announce his award not later than 4 months from the first hearing. With these directions, the appeal stands disposed off.

(VIPIN SANGHI)
JUDGE

(MUKUL MUDGAL)
JUDGE

January 28, 2009
Sk/rsk/dp