Case Citation: (2017) ibclaw.in 1316 SC

PETITIONER:
ASSOCIATED ENGINEERING CO.

Vs.

RESPONDENT:
GOVERNMENT OF ANDHRA PRADESH AND ANR.

DATE OF JUDGMENT15/07/1991

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1992 AIR 232 1991 SCR (2) 924
1991 SCC (4) 93 JT 1991 (3) 123
1991 SCALE (2)50

ACT:
Arbitration Act, 1948: Sections 10, 14, 17, 33-Arbitrator-Jurisdiction-dispute of-Not within the award-To be decided outside the award-Ambiguity of such award-To be resolved by admitting extrinsic evidence-Jurisdiction cannot be widened by Arbitrator-He is bound by the recital in the contract-Conscious disregard of law or provisions of contract-Whether amounts to mala fide action and vitiates the award.

HEADNOTE:
Some disputes arose between the Respondent State and the Contractor in respect of the Cement concrete lining under an agreement in connection with the construction of Nagarjunasagar Dam. Arbitrator Umpire was appointed and the parties filed their pleading and documents before him. There were 15 claims apart from the general claim for cost and interest. The award made by the Umpire was filed before the Civil Court. The Civil Court made the award a rule of Court and passed a decree in terms of the award together with interest at 12% per annum from the date of the decree.

On appeal, the High Court set aside the decree in respect of three claims on the ground that the claims were not supported by the agreement between the parties and that the arbitrator had gone beyond the contract in awarding the claims, and confirmed the decree in respect of three other claims.

Aggrieved by the High Court's Judgment, both the Contractor and the State Government preferred appeals by special leave.

On behalf of the Contractor it was contended that since the Umpire made a non-speaking award and did not incorporate any document as part of the award except his reference to the contract, law did not permit interference by the Court with the award, and that the High Court exceeded its jurisdiction in interfering with a non-speaking award.

On behalf of the State Government it was contended that notwith-

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standing the brevity of his reasoning, the arbitrator had given a speaking award, but with errors of law and fact

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apparent on the face of it; and that he acted contrary to the contract, thereby exceeding his jurisdiction.

Dismissing the appeal of the Contractor and partly allowing the appeal of the State Government, this Court,

HELD: 1. The arbitrator cannot act arbitrarily, irrationally capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it. [938A-B]

2. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency. He commits misconduct if by his award he decides matters excluded by the agreement. A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award. [938C-E]

Mustill & Boyd's Commercial Arbitration, Second Edition, p. 64; Halsbury's Laws of England, Volume II, 4th Edn., para 622, referred to.

3. A dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be decided outside the award. An Umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. He cannot say that he does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. If he exceeded his jurisdiction by doing so, his award would be liable to be set aside. [938E-F]

Attorney General for Manitoba v. Kelly & Others, [1922] 1 AC 268, referred to.

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4.1 Evidence of matters not appearing on the face of the award would be admissible to decide whether the arbitrator travelled outside the bounds of the contract and thus exceeded his jurisdiction. In order to see what the jurisdiction of the arbitrator is, it is open to the Court to see what dispute was submitted to him. If that is not clear from the award, it is open to the Court to have recourse to outside sources. The Court can look at the affidavits and pleadings of parties; the Court can look at the agreement itself. [939A-B]

Bunge & Co. v. Dewar & Webb, [1921] 8 LI. L.Rep. 436(K.B.), referred to.

4.2. 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 a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under to the contract or dependent on the construction of the contract or to be determined within the award. The dispute

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as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. [939C-F]

M/s. Alopi Parshad & Sons Ltd. v. The Union of India, [1960] 2 SCR 793; Union of India v. Kishori Lal, AIR 1959 SC 1362; Renusagar Power Co. Ltd. v. General Electric Company, [1984] 4 SCC 679; Jivarajbhai v. Chintamanrao, AIR 1965 SC 214; Gobardhan Das v. Lachhmi Ram, AIR 1954 SC 689 and Thawardas v. Union of India, AIR 1955 SC 468, relied on.

Bunge & Co. v. Dewar & Webb, [1921] 8 LI. L. Rep. 436 (K.B.); Christopher Brown Ltd. v. Genossenschaft Oesterreichischer, [1954] 1 QB 8; Rex v. fulham, [1951] 2 K.B. 1; Falkingham v. Victorian Railways Commission, [1900] A.C. 452; Rex v. All Saints, Southampton, [1828] 7 B. & C. 785; Laing, Son & Co. Ltd. v. Eastcheap Dried Fruit Co., [1961] 1 LI. L. Rep. 142, 145 (Q.B.); Dalmia Dairy Industries Ltd. v. National Bank of Pakistan, [1978] 2 LI. L. Rep. 223 (C.A.); Heyman v. Darwins Ltd., [1942] A.C. 356; Omanhene v. Chief Obeng, AIR 1934 P.C. 185; F.R. Absalom Ltd. v. Great Western (London) Garden

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Village Society, Limited, [1933] AC 592 (HL) and M. Golodetz v. Schrier & Anr., [1947] 80 LI. L.Rep. 647, referred to.

5. In the instant case, the umpire decided matters strikingly outside his jurisdiction. He outstepped the confines of the contract. He wandered far outside the designated area. He diagressed far away from the allotted task. His error arose not by misreading or misconstruing or misunderstanding the contract, but by acting in excess of what was agreed. It was an error going to the root of his jurisdiction because he asked himself the wrong question, disregarded the contract and awarded in excess of his authority. In many respects, the award flew in the face of provisions of the contract to the contrary. The umpire acted unreasonable, irrationally and capriciously in ignoring the limits and the clear provisions of the contract. In awarding claims which are totally opposed to the provisions of the contract to which he made specific reference in allowing them, he has misdirected and misconducted himself by manifestly disregarding the limits of his jurisdiction and the bounds of the contract from which he derived his authority thereby acting ultra fines compromissi. [940A-D]

M.L. Sethi v. R.P. Kapur, AIR 1972 SC 2379; The managing Director, J. and K. Handicrafts v. M/s. Good Luck Carpets, AIR 1990 SC 864 and State of Andhra Pradesh & Anr. v. R.V. Rayanim, AIR 1990 SC 626, relied on.

Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 AC 147; Pearlman v. Keepers and Governors of Harrow School, [1979] 1 Q.B. 56 and Lee v. Showmen's Guild of Great Britain, [1952] 2 Q.B. 329, referred to.

Mustill & Boyd's Commercial Arbitration, Second Edition, p. 641 and Halsbury's Laws of England, 4th Edn., Vol. 2, para 622, referred to.

6.1. In the instant case, the contract did not postulate-in fact it prohibited-payment of any escalation under Claim No. III for napaslabs or Claim No. VI for extra lead of water or Claim No. IC for flattening of canal slopes or Claim No. II for escalation in labour charges otherwise than in terms of the formula prescribed by the contract.

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The umpire travelled totally outside the permissible territory and thus exceeded his jurisdiction in making the award under those claims. This is an error going to the root of his jurisdiction. As such, the High Court was right in holding that the arbitrator acted outside the contract

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in awarding the abovesaid claims. However, the High Court went wrong in confirming the decree in respect of Claim No. II relating to escalation in labour charges since a specific formula had been prescribed under Item 35, and the function of the umpire was to make an award in accordance with the formula; he had no jurisdiction to alter the same. [937C-D; 936F]

Jivarajbhai Ujamshi Sheth & Ors. v. Chintaman rao Balaji & Ors., AIR 1965 SC 214, relied on.

6.2. Claim No. IV relating to 'Refund of Excess hire charges of machinery and payment towards losses suffered as a result of poor performance of department machinery and also direction for the future' was rightly allowed by the arbitrator and his decision was rightly upheld by the High Court. The Government was, in terms of the contract, bound to compensate the contractor for the excess higher charges paid as a result of the poor performance of the machinery supplied by the Government. [937E-F]

6.3. As regards Claim No. VII(4) relating to 'Sand Conveyance' the arbitrator was right in stating that the diesel oil requirement should be taken as 0.35 lit for item No. 5 of statement (A) at page 59 of Agreement as indicated in the original tender and not as O.035 and price adjustment made accordingly. The High Court Court rightly upheld this claim. [937G-H; 938A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 338-339 of 1991.

From the Judgment and Order dated 28.12.85 of the Hyderabad High Court in OMA No. 456 of 1984 and CRP No. 2743 of 1984.

WITH

Civil Appeal Nos. 2692-930F 1991.

K.R. Choudhary for the Appellant.

K. Madhava Reddy, G. Prabhakar, T.V.S.N. Chari (N.P.) for the Respondents.

The Judgment of the Court was delivered by

THOMMEN. J. Leave granted in S.L.P. (C) Nos. 7071-72 of 1986.

These appeals are brought against the common judgment of the

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Andhra Pradesh High Court in O.M.A. No. 456 of 1984 and C.R.P. No. 2743 of 1984. The High Court set aside in part the common judgment of the Ist Additional Chief Judge, Civil Court at Hyderabad, in Original Suit No. 174 of 1983 and O.P. No. 49 of 1983 whereby he made the award of the umpire (hereinafter referred to as the 'umpire' or 'arbitrator') a rule of court and passed a decree in terms of the award together with interest on the principal amount awarded at the rate of 12 per cent per annum from the date of the decree. The High Court set aside the decree in respect of Claim Nos. III, Vi and IX and affirmed the decree for the other claims. The main appeal Nos. 338 & 339 of 1991 arising from S.L.P. (C) Nos. 1573 & 1574 of 1986 are by the Associated Engineering Co. (hereinafter referred to as 'the

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Contractor'). It challenges the judgment of the High Court setting aside the decree of the Civil Court in respect of Claim Nos. III, VI and IX. The other appeals arising from S.L.P. (C) Nos. 7071 & 7072 of 1986 are by the Government of Andhra Pradesh and they are against the judgment of the High Court confirming the decree of the Civil Court in respect of Claim Nos. II, IV and VII(4).

The High Court set aside Claim Nos. III, VI and IX on the ground that those claims were not supported by the agreement between parties and that the arbitrator travelled outside the contract in awarding those claims. While that portion of the judgment of the High Court is supported by the Government, the Contractor submits that the High Court exceeded its jurisdiction in interfering with non-speaking award. The Government challenges the judgment of the High Court in so far as it affirmed the findings of the Civil Court in respect of Claim Nos. II IV and VII(4) on the ground that the arbitrator awarded those claims totally unsupported by the contract.

Mr. A.B. Dewan, appearing for the Contractor, submits that the umpire made a non-speaking award. He did not incorporate any document as a part of the award, notwithstanding his reference to the contract. In the circumstances, counsel submits, the law does not permit interference by the Court with such an award.

Mr. K. Madhava Reddy, appearing for the Government, on the other hand, submits that the umpire made a speaking award with reference to the claims and he gave reasons for awarding those claims. It is true, counsel says, that the umpire made only brief reference to the provisions of the contract and his reasons for making the award. But notwithstanding the brevity of his reasoning, he has spoken sufficiently clearly as a result of which errors of law and fact have become

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apparent on the face of the award disclosing that the umpire acted contrary to, and unsupported by, contract, thereby exceeding his jurisdiction. He says that the umpire has referred to the contract not merely for the purpose of reciting or narrating his authority to hear the matter and resolve the dispute, but for incorporating it as a part of the award. In doing so, he exceeded the contract, not merely by misinterpreting it, but by travelling totally outside it, and by making an award without regard to and independent of the contract. A number of decision have been cited on either side in support of the respective contentions.

The award was made in respect of disputes which arose between the Government and the Contractor for the cement concrete lining under Agreement dated 20.1.1981 (as supplemented subsequently) in connection with the construction of Nagarjunasagar Dam. The parties filed their pleadings and documents before the arbitrator/umpire. There were 15 claims apart from the general claim for cost and interest. As stated earlier, we are concerned only with Claim Nos. III, VI and IX which are claims awarded by the umpire and decreed by the Civil Court, but set aside by the High Court, and with Claim Nos. II, IV and VII(4) which were awarded by the umpire and decreed by the Civil Court as well as by the High Court. The first set of claims respectively, are: 'Escalation on Napa Slabs'; 'Payment of Extra Lead for water; and, 'Extra Expenditure incurred due to flattening of canal slopes and consequent reduction in top width of banks used as roadway'. The other set of claims relate respectively to 'Labour Escalation'; 'Refund of excess Hire

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Charges of Machinery'; and' 'Stand conveyance'.

The umpire after reciting the background of the dispute which led to his entering upon reference on 16.12.82 to decide the dispute and the relevant agreement between the parties deals with the claims seriatim. As regards Claim No. III, he says:

> "I hereby declare and award and direct the respondent to compensate the claimants towards escalation in the cost of napaslabs calculated at Rs.4.25 (Rupees four and paise twenty five) per Sq. Met. of napa slab lining, under item 11 of schedule A of the agreement for the entire work and make payments accordingly".

The main criticism levelled by the Government against this award is that there was no provision in the contract for escalation of

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the cost or price of napa-slabs. The escalation provision in the contract related to labour, diesel oil, tyres and tubes, as provided in Item 35 thereof. There was no escalation provision in the contract as far as napa-slabs were concerned. The price for these slabs had been determined in the contract at Rs. 4.25 Per Sq. Met. and there was no provision for increase or decrease of that price. Both the parties to the contract were bound by that price and the arbitrator, therefore, had no jurisdiction to award any escalation in the price of napa-slabs. In the absence of any provision in the contract, the arbitrator had no jurisdiction to make an award for escalation. This contention of the Government was accepted by the High Court.

Mr. Dewan, appearing for the Contractor, is not in a position to refer to any provision of the contract allowing escalation for napa-slabs. All that he is in a position to refer to is Item 35 of the contract which refers to price adjustment for increase or decrease inthe cost. That item, as stated earlier, refers to various matters such as, diesel oil, labour, etc., but not to napa-slabs. On the other hand, at the end of that item, it is specifically stated 'no claims for price adjustment other than those provided herein, shall be entertained'. Furthermore, it is specifically provided in the contract 'the contractor shall have to make his own arrangements to obtain the napa-slabs as per standard specifications. The Department does not accept any responsibility either in handing over the quarries or procuring the napa-slabs or any other facilities. The contractor will not be entitled for any extra rate due to change in selection of quarries as above'. There is thus a specific prohibition against price adjustment or award for escalated cost in respect of any matter falling outside Item 35.

Mr. Dewan, however, submits that being a non-speaking award, the Court cannot examine the reasons. Mr. Madhava Reddy, appearing for the Government, submits that the award is not silent on the point. It speaks eloquently, though briefly. It is not merely in the recital or narrative portion of the award that the agreement is referred to, but in making the award under Claim No. III the agreement is specifically incorporated by directing payment for escalation on napa-slabs under Item 11 of Schedule A of the Agreement at the rate of Rs.4.25. The agreement is thus bodily incorporated into the award thereby disclosing an error apparent on its face and the total lack of the arbitrator's jurisdiction by reason of his going totally outside and opposed to the contract. This, counsel says, is revealed not by a construction of the contractual

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provisions, but by merely looking at the matters covered by the contract.

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Claim No. VI-Payment of Extra Lead for water.

This is what the arbitrator says:

> "I hereby declare and award and direct the Respondent to pay extra towards additional lead for water i.e. 3 K. Ms. over the specified lead of 2 K.Ms. in the agreement for items 4, 5, 6, 10 and 11 of Schedule A".

As regards this claim, Mr. Dewan reiterates his contention that the award is silent as to the reasons and, therefore, the Court should not interfere. Mr. Madhava Reddy on the other hand submits that the award speaks as to the reasons for allowing the claim for extra amount towards additional lead for water i.e. for 3 K.Ms. over and above the specified lead of 2 K.Ms. But counsel says, the agreement provides for no payment at all for any lead and much less for any additional lead. He refers to the specific provision of the agreement regarding water. He says that the Contractor had to make its own arrangements for supply of water at work site for all purposes including quarry. There is no provision in the contract for making any payment to the Contractor for the water brought by it to the site. In the absence of any such provision, counsel says, it is preposterous that the arbitrator should have awarded extra amount for additional lead for water. The contract specifically stated that it was the responsibility of the Contractor to make its on arrangements for the supply of water. The Government gave no assurance to the Contractor regarding the availability of water or the prices payable therefor. The umpire, therefore, had no jurisdiction to allow Claim No. VI. The High Court accepting the contention of the State reversed the Civil Court's decree as regards that claim and held" .....In view of unequivocal agreement that the contractor should make his own arrangements for supply of water for the purpose of curing, the award of compensation is outside the purview of the agreement and is vitiated".

> Claim No. IX-Extra expenditure incurred due to flattening of canal slopes and consequent reduction in top width of banks used as roadway.

Referring to this claim, this is what the award says:

> "I hereby declare and award and direct the respondent to pay the claimant for 50% of the work done on the napa slab lining on the left side slope of Canal at the extra rate of Rs.4.00 per Sq. Met of lining work".

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Rejecting the contentions of the Contractor and accepting those of the Government, the High Court held that the contract did not provide for any payment whatever for the maintenance of canal slopes and consequent deduction in top width of banks used as roadway. The High Court found that it was the responsibility of the Contractor to repair the banks and the contract contained no provision for payment of any amount towards the decrease in the width or otherwise. The High Court says '....the acceptance of claim on this score is beyond the purview of the agreement and as such vitiated'.

While counsel for the Contractor repeats his contentions regarding the award being silent as to reasons, Mr. Madhava Reddy submits that the contract provides for no payment whatever under Claim No. IX. On the other hand, it specifically states-

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"8(A) SITE FACILITIES-

Haul roads from batching plant site to the work site in the first instance will be formed by the Department as per site surveys per each batching plant site. These haul roads are fair weather roads only with hard passages at stream crossings. Formation of haul roads within the batching plant area, maintenance of all haul roads including those formed by the Department shall be the responsibility of the contractors. Existing roads and roads under the control of N.S. Project can be made use of by the Contractor. Any other haul roads required by the Contractor and not specified in plan shall be carried out by the Contractor at his cost.

8.(A) 1. WIDENING OF BANKS

The canal banks will be widened to 5 meters and 3 meters width respectively by the Department for right and left banks to facilitate transport of materials. The contractor however has to maintain the haul roads".

In the absence of any provision to pay for extra expenditure and in the light of the specific provision placing the sole responsibility for the maintenance of the haul roads on the Contractor, the arbitrator had no jurisdiction to award 50% at extra rate of Rs. 4 per Sq. Meter. The contract contains no provision for payment of any amount outside what is strictly specified under the clause. In the circumstances, Mr.

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Madhava Reddy says, the High Court was perfectly justified in coming to the conclusion, which it did, as regards the arbitrator acting outside his jurisdiction.

We shall now deal with the other set of claims, namely, Claim Nos. II, IV and VII(4) which had been awarded and decreed by both the courts below.

The arbitrator deals with Claim No. II as follows:

"The claim is admitted.

I hereby declare and award and direct the Respondents that due to the statutory revision of Minimum rates of wages payable to various categories of workers, the claimant is to be paid compensation as per the following formula:

$$Vs = \frac{P1}{100} \times R \left[\frac{(WSI-WSO)0.10}{WSO} + \frac{(WSSI-WSSO)0.10}{WSSO} - \frac{(WUSI-WUSO)0.8}{WUSO} \right]$$

Where Vs- Compensation payable due to statutory increase in Min. Wages of labour notified by the Government of A.P. after 22.10.1980 under the Min. Wages Act., 1948.

P-1. Percentage Labour component of each item of Work as per Appendix 9 at page 139 of Agreement.

R- Value of work done under each item of work during the period under review.

WSO- 11.15 (Daily Minimum wage in force on the date of Tender for skilled labour).

WSSO- 8.50 (Daily Minimum wage in force on the date of Tender for semiskilled labour).

WUSO- 5.65 (Daily Minimum wage in force on the date of Tender for unskilled labour).

WSI- Revised daily Min. wage as fixed by Govt. A.P. for skilled labour applicable for the period under review.

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WSSI- Revised daily Min. wage as fixed by Govt. of A.P. for semiskilled labour applicable for the period under review.

WUSI- Revised daily Min. wage as fixed by Govt. of A.P. for semiskilled labour applicable for the period under review.

WUSI- Revised daily Min. Wages as fixed by Government of A.P. for unskilled labour applicable for the period under review.

The above compensation is payable to the claimant for the work done after 23.12.80, the date of publication of G.O. No. 835 dated 18.12.80, till the completion of the work".

It is not seriously disputed that the observation "The claim is admitted" is only a reference to the arbitrator's decision to allow the claim and not as a concession or admission on the part of the Government. In fact from the pleadings it is quite clear that the Government had opposed every claim and there was no concession on its part.

Claim No. II had been, as seen above, elaborately dealt with by the arbitrator. On account of the statutory revision of minimum rates of wages payable to various categories of workers, the arbitrator made the award in respect of labour escalation. Escalation under this item is in fact, as stated above, provided for under the contract, but in terms thereof. The grievance of the Government is not because the umpire awarded escalation for labour, but because he allowed escalation otherwise than as provided under the contract. The contract under Item 35 provides-

'Increase or decrease in the cost due to labour shall be calculated quarterly in accordance with the following formula:

$$V1 = 0.75\ P1 \times \frac{R(i-i)}{100} \times \frac{}{10}$$

V1 = increase or decrease in the cost of work during the quarter under consideration due to changes in rates for labour.

R = the value of the work done in Rupees during the quarter under consideration

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1 = the average consumer price index for industrial workers (wholesale prices) for the quarter in which tenders were opened (as published in Nalgonda District by the Director of Bureau of Economics and Statistics, Andhra Pradesh).

P1 = Percentage of labour components (specified in schedule in appendix-9 of the item).

i = the average consumer price index for industrial workers (wholesale prices) for the quarter under consideration.

Price adjustment clause shall be applicable only for the work that is carried out within the stipulated time or extensions thereof as are not attributable to the contractor. No claims for price adjustment other than those provided herein, shall be entertained".

The contention of the Government is that the two formulae are totally different from each other as a result of which the arbitrator awarded very much more than what is

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warranted under the agreed formula. Mr. Madhava Reddy submits that it is true that the contractor was bound to pay minimum wages according to the relevant statutory provisions. In fact the contract contains a provision making it necessary for the Contractor to conform to all laws, regulations, bye-laws, ordinances, regulations, etc. But the fact that the Contractor necessarily had to pay enhanced rates of wages did not entitle it to claim any amount from the Government in excess of what had been strictly provided under the contract. A specific formula had been prescribed under Item 35, as seen above, and the function of the umpire was to make an award in accordance with that formula. He had no jurisdiction to alter the formula, which he has done, as seen from the award.

It is not disputed on behalf of the Contractor that the formula followed by the arbitrator, as seen from the award under Claim No. II, is different from the formula prescribed under the contract. But Mr. K.R. Chowdhury, one of the counsel appearing for the Contractor, points out that the contract provided for payment of all wages according to the current rates and, therefore, the arbitrator was well within his jurisdiction to make an award by adopting a formula in keeping with the enhanced rates of wages, and the High Court, he contends,

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rightly decreed the amounts under that claim in terms of the award.

We shall deal with Claim Nos. IV and VII(4) separately. But as regards Claim Nos. III, VI and IX, we are of the view that the High Court was right in stating that the arbitrator acted outside the contract in awarding those claims. For the very same reason we are of the view that the High Court was wrong in coming to the conclusion, which it did, regarding Claim No. II. We say so because there is no justification whatsoever for the arbitrator to act outside the contract.

These four claims are not payable under the contract. The contract does not postulate-in fact it prohibits payment of any escalation under Claim No. III for napa-slabs or Claim No. VI for extra lead of water or Claim No. IX for flattening of canal slopes or Claim No. II for escalation in labour charges otherwise than in terms of the formula prescribed by the contract. The conclusion is reached not by construction of the contract but by merely looking at the contract. The umpire travelled totally outside the permissible territory and thus exceeded his jurisdiction in making the award under those claims. This is an error going to the root of his jurisdiction: See Jivarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors., AIR 1965 SC 214. We are in complete agreement with Mr. Madhava Reddy's submissions on the point.

As regards Claim Novs. IV and VII(4), we see no merit in Mr. Madhava Reddy's contentions. Claim No. IV relates to 'Refund of excess hire charges of machinery and payment towards losses suffered as a result of poor performance of department machinery and also direction for the future'. This claim, was rightly allowed by the arbitrator and his decision was rightly upheld by High Court. The Government was, in terms of the contract, bound to compensate the Contractor for the excess higher charges paid as a result of the poor performance of the machinery supplied by the Government.

Claim No. VII(4) is as regards 'Sand Conveyance'. The arbitrator says-

"The diesel oil requirement shall be taken as 0.35

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lit for item No. 5 of statement (A) at page 59 of Agreement as indicated in the original tender and not as 0.035 and price adjustment made accordingly".

The arbitrator was, in our view, right in so stating and the High Court,

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in our view, rightly upheld this claim.

The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract; his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.

An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill & Boyd's Commercial Arbitration, Second Edition, p. 641). He commits misconduct if by his award he decides matters excluded by the agreement (see Halsbury's Laws of England, Volume II, Fourth Edition, Para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.

A dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be decided outside the award. An umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. He cannot say that he does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. It he exceeded his jurisdiction by so doing, his award would be liable to be set aside. As stated by Lord Parmoor:

".....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 he affects to decide is within the submission of the parties .....".

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Attorney-General for Manitoba v. Kelly & Others, [1922] 1 AC 268, 276.

Evidence of matters not appearing on the face of the award would be admissible to decide whether the arbitrator travelled outside the bounds of the contract and thus exceeded his jurisdiction. In order to see what the jurisdiction of the arbitrator is, it is open to the Court to see what dispute was submitted to him. If that is not clear from the award, it is open to the Court to have recourse to outside sources. The Court can look at the affidavits and pleadings of parties; the Court can look at the agreement itself. Bunge & Co. v. Dewar & Webb, [1921] 8 L1. L.Rep. 436(K.B.).

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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 a jurisdictional error. Such error going to his jurisdiction can he established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is something which arises 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 a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. See M/s. Alopi Parshad & Sons. Ltd. v. The Union of India, [1960] 2 SCR 793; Bunge & Co. v. Dewar & Webb., [1921] 8 L1. L. Rep. 436 (K.B.); Christopher Brown Ld. v. Genossenschaft Oesterreichischer, [1954] 1 QB 8; Rex v. Fulham, [1951] 2 K.B. 1; Falkingham v. Victorian Railways Commission, [1900] A.C. 452; Rex v. All Saints, Southampton, [1828] 7 B. & C. 785; Laing. Son & Ltd. v. Eastcheap Dried Fruit Co., [961] 1 L1.L. Rep. 142, 145 (Q.B.); Dalmia Dairy Industries Ltd. v. National Bank of Pakistan, [1978] 2 L1. L. Rep. 223 (C.A.); Heyman v. Darwing Ld., [1942] A.C. 356' Union of India v. kishorilal, AIR 1959 SC 1362; Renusager Power Co. Ltd. v. General Electric Company, [1984] 4 SCC 679; Jivarajbhai v. Chintamanrao, AIR 1965 SC 214; Gobardhan Das v. Lachhmi Ram, AIR 1954 SC 689, 692; Thawardas v. Union of India., AIR 1955 SC 468; Omanhene v. Chief Obeng, AIR 1934 P.C. 185, 188; F.R. Absalom. Ltd. v. Great Western London Garden Village Society. Limited, [1933] AC 592 (HL) and M. Golodetz
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v. Schrier & Anr., [1947] 80 L1. L. Rep. 647.

In the instant case, the umpire decided matters strikingly outside his jurisdiction. He outstepped the confines of the contract. He wandered far outside the designated area. He diagressed far away from the allotted task. His error arose not by misreading or misconstruing or misunderstanding the contract, but by acting in excess of what was agreed. It was an error going to the root of his jurisdiction because he asked himself the wrong question, disregarded the contract and awarded in excess of his authority. In many respects, the award flew in the face of provisions of the contract to the contrary. See the principles state in Anisminic Ltd. v. Foreign Compensation Commission., [1969] 2 AC 147; Pearlman v. Keepers and Governors of Harrow School, [1979] 1 Q.B. 56; Lee v. Showmen's Guild of Great Britain, [1952] 2 Q.B. 329; M.L. Sethi v. R.P. Kapur, AIR 1972 SC 2379; The Managing Director. J. and K. Handicrafts v. M/s. Good Luck Carpets, AIR 1990 SC 864 and State of Andhra Pradesh & Anr. v. R.V. Rayanim, AIR 1990 SC 626. See also Mustill & Boyd's Commercial Arbitration, Second Edition; Halsbury's Laws of England, Fourth Edition,Vol. 2.

The umpire, in our view, acted unreasonably, irrationally and capriciously in ignoring the limits and th clear provisions of the contract. In awarding claims which are totally opposed to the provisions of the contract to which he made specific reference in allowing them, he has misdirected and misconducted himself by manifestly disregarding the limits of his jurisdiction and the bounds

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of the contract from which he derived his authority thereby acting ultra fines compromissi.

In the circumstances, we affirm the judgment of the High Court under appeals except in respect of Claim No. II. Accordingly, the appeals of the contractor are dismissed; and, the appeals of the Government are allowed in respect of claim No. II. We do not, however make any order as to costs.

G.N. Appeals dismissed.

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JUDIS