M.K. Shah Engineers And Contractors vs State Of Madhya Pradesh on 5 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 950, 1999 (2) SCC 594, 1999 AIR SCW 519, 1999 (1) SCALE 272, 1999 (1) LRI 273, 1999 (1) ADSC 630, 1999 (1) ARBI LR 646, 1999 ADSC 1 630, (1999) 1 JT 315 (SC), 1999 (1) UJ (SC) 450, (1999) 1 ARBILR 646, (2000) 1 MAD LW 28, (1999) 1 SUPREME 344, (1999) 1 RECCIVR 650, (1999) 2 ICC 403, (1999) 1 SCALE 272, (1999) 1 CURCC 82, (1999) 2 JAB LJ 57, (1999) 2 MAD LJ 19

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Bench: Sujata V. Manohar, R.C. Lahoti

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           CASE NO.:
Appeal (civil)  5961 of 1983

PETITIONER:
M.K. SHAH ENGINEERS AND CONTRACTORS

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 05/02/1999

BENCH:
SUJATA V. MANOHAR & R.C. LAHOTI

JUDGMENT:
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JUDGMENT 1999 (1) SCR 419 The Judgment of the Court was delivered by R.C. LAHOTI, J. These two civil appeals have been preferred by two contractors feeling aggrieved by the orders of trial court upholding the objections preferred by the respondent-State under Sections 16 and 30 of the Arbitration Act, 1940 and setting aside the awards given by the Ar- bitrator which orders have been maintained in revision by the High Court of Madhya Pradesh. The facts of the two cases are similar and the ques-tions of law arising for decision are common. The two appeals have been heard analogously and are being disposed of by this common order.

2. The disputes relating to the two contracts are referable to con- struction of Barna Main Dam across River Barna, a tributary of Narmada near Bhopal. The entire work was divided into five groups namely 1 to 5. The main dam came under groups 1 and 2 consisting of blocks 1 to 23. Contract for construction of group No. 1 consisting of block numbers 1 to 10 was given to M/s. M.K. Shah, Engineers and Contractors, the appellant in Civil Appeal No. 5961 of 1983. Contract for construction of group No. 2 consisting of block numbers 11 to 23 was entered into with M/s.

Chabal-das & Sons, Contractors. It appears that both the contractors could not complete the work assigned to them and disputes arose between them and the respondent-State. The contracts were terminated in between and the remaining parts of the work were got executed through other agencies.

3. The contracts entered into with the two contractors by the respon-dent- State of MP have an arbitration clause around which centers the controversy arising for decision in the two appeals. The same is extracted and reproduced hereunder.

> "3.5.29: DECISION OF SUPERINTENDING ENGINEER TO BE FINAL EXCEPT WHERE OTHERWISE SPECIFIED IN THE CONTRACT "The decision of the Superintending Engineer of the Circle for the time being in respect of all questions and disputes relating to the meaning of the specifications designs drawing and, instructions here-in-before mentioned and as to the quality of workman ship or material used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications estimates, instructions orders or those conditions or otherwise concerning the work of execution or failure to execute the same, whether arising during the progress of the work or after the completion or aban-donment thereof, shall be final.
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> Provided that if any party to the contract is dissatisfied with the final decision of the Superintending Engineer, in respect of any matter, he may, within 28 days after receiving the notice of such decision give notice in writing to the Superintending Engineer, requiring that the matter may be referred to arbitrator and fur-nishing detailed particulars of the dispute or difference and specifying clearly the point at issue, if any party fails to give such notice within 28 days as stipulated above, the decision of the Superintending Engineer, already given shall be conclusive, final and binding on the parties.
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> In case an arbitration is to be held it shall be effected by an arbitrator to be appointed by the State Government out of panel of three names suggested by the State Government to the contrac-tor, who shall give concurrence within a period of one month from the date of the communication. In case the contractor does not communicate the concurrence, the State Government shall appoint an arbitrator whose decision shall be conclusive final and binding on the parties. If the work under the contract has not been completed when a dispute is referred to arbitrator work shall continue during the arbitration proceedings if it is reasonably possible and no payment due to contractor should be withheld on account of arbitration proceedings unless it is required by the arbitrator."

4. Hereafter the facts of the two cases have a little different narration and hence are stated separately.

5. C.A. No. 5961/83 : M/s. M.K. Shah stated the disputes and referred them to the Superintending Engineer, Barna Project Circle, Bari from time to time for his final decision. The Superintending Engineer kept the disputes pending for a long time and observed silence for over a year without having intimated his decision to the contractor. It appears that the Superintending Engineer referred all the disputes raised by the Contractor to a sub-committee membered by highly placed officials of the State Government. Making a note of all such facts the contractor on 27.10.1972 addressed a communication to the Chief Secretary, the Secretary to Government (Irrigation Department), the Engineer-in- Chief, the Superin- tending Engineer, and the Secretary Central Board Major Project lodging a strong protest to the action of the Superintending Engineer having delegated his function of taking decision in terms of the contract to the sub-committee. He submitted that the Superintending Engineer had there-by rendered himself incapable of taking the decision under the contract and therefore it was necessary to appoint an arbitrator and refer the disputes raised by the contractor for his decision. A list of disputes raised by the contractor was annexed with the letter with a request to take steps in the direction of appointment of an arbitrator.

(5.1.) On 11.1.74 the Deputy Secretary to Government of MP (Irriga-tion Department) acting `by order and in the name of Governor of Madhya Pradesh' appointed Shri W.V. Oak, Chairman M.P. Electricity Board Jabalpur as the sole arbitrator for deciding the disputes between M/s. M.K. Shah Engineers and Contractors and the Government of Madhya Pradesh. The opening sentence of the letter states that the State Government in consultation with M/s. M.K. Shah Engineers and Contractors were pleased to appoint Shri W.V. Oak as the sole arbitrators as per clause 3.3.29 of the contract document for the arbitration of the disputes between the contrac-tors and the Government in respect of the work awarded to M/s. M.K. Shah vide the contract in question. The language of the letter clearly suggests that the Government of Madhya Pradesh having deliberated over the issue, was agreeable to arbitration and that was with the consent of the contractor.

(5.2.) Shri W.V. Oak, the arbitrator entered upon the reference. The Government of Madhya Pradesh appeared before the arbitrator but raised a preliminary objection to the legality of the arbitration by submitting that it was not in accordance with the arbitration clause and the claims put forth by the contractor were not arbitrable inasmuch as they were not preceded by a decision by the Superintending Engineer in accordance with clause 3.3.29. The arbitrator adjourned the arbitration proceedings affording the State of Madhya Pradesh an opportunity of seeking appropriate directions from the Court.

(5.3.) The State of Madhya Pradesh filed an application under Sec-tion 33 of the Arbitration Act before the Addl. District Judge, Bhopal seeking an adjudication that the items of claim put forth by the contractor before the arbitrator were beyond the scope of the arbitration clause and a declaration to that effect was sought for and prayed.

(5.4.) During the pendency of the application, Shri W.V. Oak expired on 26.6.75. The State of M.P. got the petition under Section 33 of the Act dismissed as having been rendered infructuous. The contractor then served a notice on the State of Madhya Pradesh on 13.8.75 for filling up the vacancy in the office of arbitrator. As the State of Madhya Pradesh failed to comply, a petition under Section 8(2) of the Act was filed by the petitioner before the Addl. District Judge, Bhopal. On being noticed,

the State of Madhya Pradesh proposed a panel of three names. The court allowed the petition and appointed Shri G.H. Sanghvi retired Chief En-gineer (Irrigation Department) as an arbitrator for deciding the disputes previously referred to late Shri W.V. Oak. The order of the Court dated 25.11.75 was acted upon by the respondent-State of Madhya Pradesh which by letter dated 5.5.77/19.5.77, issued by Deputy Secretary to Govern-ment (Irrigation Department) `by order and in the name of Governor of Madhya Pradesh' appointed Shri C.M. Sanghvi as sole arbitrator to decide the disputes. The letter opens with a statement that the State Government were pleased to accord sanction in the case in which Shri C.H. Sanghvi had been appointed as an arbitrator to decide the disputes between M/s. M.K. Shah and the Government of Madhya Pradesh.

(5.5.) The arbitrator Shri Sanghvi concluded the arbitration proceed-ings and made an award on 26.9.78. The award is a non- speaking one. The contractor had put forth claims aggregating to over Rs. 62 lacs while the respondent-State of MP had raised a debit against the contractor of over Rs. 28 lacs. There were also counter claims made by the respondent-State of M.P. on account of loss of revenue and interest on capital which was locked-up in incomplete works.

(5.6.) The operative part of the award reads as under : "I make and state the award as below :-

> The respondents, the State of Madhya Pradesh, will pay the claimants, M./s. M.K. Shah, the following :
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> (a) Rs. 15,09,131
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> (b) Amount to be calculated
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> (c) Rs. 5,28,752 (Rupees five lakhs, twenty eight thousand, seven hundred fifty two) returned to the claimants (Rupees fifteen lakhs, nine thousand, one hundred and thir-ty one only) in full settlement of claims, counter claims, debit and credits on both the sides;

Simple interest @ 8% calcu-lated (Eight percent) per annum on the amount of item (a) above from 9.3.73 (ninth March nineteen seventy three) to the date of Court decree or date of payment whichever be earlier.

Being security deposit of the claimants, lying with the respon-dents (Rs. 5,28,700 in Rs. 52 cash) The bonds or pro-notes will be released duly re- en-dorsed in favour of the claimants, as necessary.

The parties will bear their own costs."

6. C.A. 5962/83 : M/s. Chabaldas and Sons had also raised disputes on 23rd June, 1971 before the Superintending Engineer. The claims were rejected by the Executive Engineer, Barna project on 26.7.71. The com-munication made by him to the contractor clearly states that the com-munication was under

the directions of the Superintending Engineer, Barna project. On 7.8.71 the contractor raised several disputes annexing a statement thereof with his letter and seeking reference of the disputes for adjudication by arbitration as per clause 3.3.29 of the agreement. There were certain talks for amicable settlement which turned out to be fruitless. The respondent- State of Madhya Pradesh having failed to appoint an arbitrator, the petitioner moved an application under Section 20 of the Act before the Additional District Judge, Bhopal. On 28.11.1973, the Deputy Secretary of Government of Madhya Pradesh (Irrigation Department) sent a communication to the petitioner informing that the State Government in consultation with the contractor were pleased to appoint Shri K.L. Pandey, a retired judge of Madhya Pradesh as the sole arbitrator for the arbitration of the disputes between the contractor and the Government of Madhya Pradesh in respect of the works covered by the contract entered into between the two. The Communication is `by order and in the name of the Governor of Madhya Pradesh'.

(6.1.) Shri K.L. Pandey entered upon the reference. Before him also a preliminary objection to the maintainability of the arbitration proceeding was taken up submitting that the same was not preceded by Superintending Engineer's decision under clause 3.3.29 whereafter only and within 28 days the arbitration could have been demanded. A petition under Section 33 of the Arbitration Act was filed before the court seeking determination of the effect of arbitration clause and inviting adjudication by the court on the plea of the State of Madhya Pradesh that the disputes raised by the contractor were not arbitrable in view of the arbitration clause.

(6.2.) During the pendency of the above said petition, Shri K.L. Pandey expired. The contractor M/s. Chabaldas & Sons made a demand for filling up the vacancy. The Government of Madhya Pradesh acceded with the request and on 26.11.77 appointed Shri C.H. Sanghvi, a sole arbitrator in place of Shri K.L. Pandey. This letter is also signed by Deputy Secretary of Government of Madhya Pradesh, (Irrigation Department) `by order and in the name of the Governor of Madhya Pradesh'.

(6.3.) The contractor had put forth claims exceeding Rs. 70 lacs while the respondent-State had raised a debit of over Rs. 50 lacs against the contractor and had also preferred counter-claims. The award dated 26.9.1978 is a non-speaking award, operative part whereof reads as under:

"I make and state the award as below : The respondents, the State of Madhya Pradesh, will pay the claimants, M/s. Chabaldas and Sons, the following :

(a) Rs. 13,50,342 (Rupees Thirteen Lakhs, fifty thousand, three hundred and forty two only)

(b) Amount to be calculated.

(c) Security deposit of Rs. 5,15,500 (Five lakhs, fifteen thousand and five hundred only) in the form of Bank Guarantees.

in full settlement of claims, counter claims, debits and credits on both the sides.

Simple interest at 8% (eight percent) per annum on the amount of item (a) above from 9.3.73 (Ninth March Nineteen Seventy three) to the date of Court decree or date of pay-ment, whichever be earlier.

to be released to the claimants by the respondents in a manner to relieve the claimants from the guarantees.

(d) The parties will bear their own costs."

7. A perusal of the orders of the trial court, as maintained by the High Court, goes to show that the two were of the opinion that the questions and the disputes falling within the scope of Clause 3.3.29 were required to be referred for the decision of the Superintending Engineer of the Circle whose decision was agreed by the parties to be treated as final. If any of the parties was aggrieved by such final decision of the Superin-tending Engineer, then, within a period of 28 days from the date of receipt of the decision of the Superintending Engineer the party must serve a notice in writing to the Superintending Engineer setting out particulars of the dispute or difference and clearly specifying the points at issue demand-ing a reference to arbitrator. Failure to lay challenge to the decision of the Superintending Engineer by notice served within 28 days results in attach- ing a finality and conclusiveness to the decision of the Superintending Engineer. Both have formed an opinion that the Superintending Engineer having given no decision, the applicability of the arbitration clause was not attracted and therefore the demand for reference to arbitration, the refer-ence and the proceedings, of arbitration held subsequent thereto were all incompetent and void. They have also formed an opinion that the award being a non-speaking one, it was not possible to find out as to how much part thereof was vitiated for non-compliance with clause 3.3.29 and the valid and invalid parts being inseparable, the entire award was liable to be set aside followed by remitting the reference back to the arbitrator. It has also been held that there being no contract, usage or custom sustaining the award of interest by the arbitrator, the award to the extent to which it allows interest for pre-reference period was also liable to be set aside.

8: Shri G.L. Sanghi, learned senior counsel for the appellant in C.A. No. 5962 of 1983 and Shri M.K. Shah, the appellant in C.A. No. 5961 of 1983 appearing in person, have both attacked the legality of the orders of the High Court and the trial court submitting that the approach adopted by the two courts was basically wrong. It was also submitted that the State of M.P. had submitted to arbitration and thereby acquiesced in the arbitra- tion proceedings and hence should not have been heard raising objection to the maintainability of the reference to arbitration in the manner in which it has been done.

9. It is well-settled that an arbitration award is not vitiated merely because the arbitrator has not given item-wise award and has chosen to give a lumpsum award. A lumpsum award is not a bad

award. So also it is well- settled that an award need not formally express the decision of the arbitrator on each matter of difference nor is it necessary for the award to be a speaking one. It will be presumed that the award disposes of finally all the matters in difference (see - State of Rajasthan v. M/s. R.S. Sharma and Co., [1988] 4 SCC 353, State of Orissa & Ors. v. M/s. Lall Brothers, AIR (1988) SC 2018, Firm Madanlal Roshallal Mahajan v. Hukumchand Mills Ltd., Indore, AIR (1967) SC 1030, Smt. Santa Sila Devi & Anr. v. Dhirendra Nath Sen and Ors., AIR (1963) SC 1677. The principle issue for decision is what is the effect of absence of decision by the Superintending Engineer proceeding the demand for reference and commencement of arbitration proceedings.

10. The part of the clause in question is called a certification or finality clause in legal terminology. Hudson on Building and Engineering Contracts (Tenth Edition; at pp. 437-438) deals with the clause as under :

> "Where, therefore, a contract provides for some matter to be dealt with by a certificate or approval, and by virtue of the prin-ciples discussed in Section 3, above, such certificate is final be-tween the parties, the question still may arise whether an arbitrator appointed under the contract is bound by any approval or certifi-cate which may have been given or can, by his award, supply the deficieny where the certifier has failed or refused to issue the certificate to which either party claims to be entitled. In all such cases it is necessary to consider carefully the precise terms of the certificate clause and the arbitration clause, and to decide whether on its true construction the latter was intended to confer the necessary power to override the certifier upon the arbitrator".
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> ".....once the courts are satisfied that an arbitrator has juris-diction to go into a matter, they will not, in the absence of a clearly expressed intention, allow his findings to be emasculated by any failure of the parties specifically to make the necessary procedural provisions to enable him to give substantive effect to his decision, or by formal difficulties created by the specific provisions of the contract relating to the original certifier's decisions".

(10.1) At pp. 470-471, Hudson, while summarising the discussion on approval and certificates states that an unreasonable refusal by the certifier to give his consideration to the matter upon which he is required to certify, constitutes a classification of cases by itself. In our opinion, such class of cases would not exclude judicial determination of the disputes by the arbitrator or the court, as the case may be.

(10.2) At pp. 504, 853-855, Hudson has dealt with Scott v. Avery type of arbitration clause, according to which the certificate of an architect or valuer is a condition precedent of the contractor's right of action. The courts will give effect to the condition unless (i) the condition has been waived, or (ii) the party seeking to set it up has somehow disentitled himself from doing so.

11. Russel opines in Arbitration (Twentieth Edition, at page 324) :-

"Where certificate is a condition precedent -

In arbitrations under building and like contracts, the issue of an architect's or engineer's certificate is often made a condition precedent to a contractor's right to payment for work done by him. If in such a case there is a general reference of a dispute arising out of a refusal to issue a certificate, and the arbitrator determines that a certificate ought to have been given, he will normally have power to order payment for the amount for which the certificate should have been given".

12. We find ourselves in entire agreement with the law so stated by Hudson and Russell.

13. It was submitted by Dr. Ashok Chitale, learned senior counsel appearing for the respondent-State of M.P. that the appellant- contractors are bound by the terms of the clause 3.3.29 voluntarily entered into by them. A decision by the Superintending Engineer is a condition precedent of the initiation of the arbitration proceedings for it is the decision of the Superintending Engineer which alone will be the subject- matter of chal- lenge before the arbitrator and that too if raised within a period of 28 days, the contractual time bar, calculated from the date of decision by the Superintending Engineer, we find it difficult to agree.

14. In Halsbury's Laws of England (Fourth Edition) Volume 2, vide paras 652, 654, at pp. 363, 365 the law is so stated. The arbitration agreements may contain a clause which requires a certain act to be com-pleted within a specified period and which provides that if that act is not done either the claim or the ability to commence an arbitration will be barred. Such clauses are sometimes known as `Atlantic Shipping' clauses. The consequences of the expiry of a contractual limitation period before the completion of the specific act may however be avoided in three circumstances : (i) if the Court exercises its discretion statutorily conferred on it, to extend the period to avoid undue hardship; (ii) if the arbitration clause confers a discretion on the arbitrator to extend the period and he exercises it; (iii) if the conduct of the either party precludes his relying on the time bar against the claimant.

15. In C.A. No. 5961/83, the case of M/s. M.K. Shah the disputes were raised and stated by the contractor to the Superintending Engineer calling for latter's decision. However, the Superintending Engineer instead of taking a decision by himself, referred the disputes to a sub-committee. There may be nothing wrong in the Superintending Engineer having chosen to solicit the opinion of a sub-committee membered by highly placed officials of the State Government for his own advantage and thereafter taking a decision by himself. The nature of function performed by the Superintending Engineer under the first part of clause 3.3.29 is not judicial. However, the fact remains that the Superintending Engineer unreasonably delayed the decision and in spite of persuasion and protests by the con-tractor, did not promptly take and communicate his decision on the dis-putes. The State Government ultimately yielded to the demand of the contractor by appointing an arbitrator. Once the arbitrator commenced the arbitration proceedings, the State of M.P. gave a second thought and receded its steps by choosing to raise an objection to the maintainability of the arbitration. The arbitrator allowed time to the Government of Madhya Pradesh for securing a judicial pronouncement on its objection under section 33 of the Act. The State of M.P. initiated proceedings under Section 33 of the Act, but did not pursue the same. Rather it agreed to the appointment of a

new arbitrator in place of the previous one.

16. In C.A. No. 5962/83, in the case of M/s. Chabaldas & Sons also, the situation is more or less similar. The appellants had stated the disputes demanding decision by the Superintending Engineer. The letter dated 26.7.1971 by the Executive Engineer, Barna Dam Division conveyed to the appellants that it was the decision of the Superintending Engineer to not to accept the claim preferred by the appellants. On 7.8.1971 the appellants addressed a letter to the Superintending Engineer clearly stating that the appellants were not satisfied "with your final decision", i.e., the decision by the Superintending Engineer. The Superintending Engineer never stated that the decision conveyed to the appellants rejecting their claims was not a decision by the Superintending Engineer. In either case the position does not improve for the respondent. If the claim was rejected by the Superin-tending Engineer as communicated by the Executive Engineer in his letter dated 26.7.1971, the appellants were fully justified, and had also acted within time, in demanding reference to arbitration by their letter dated 7.8.1971. It the decision was by the Executive Engineer and not by the Superintending Engineer, then the respondent-State cannot take shelter behind clause 3.3.29 inasmuch as the respondent must thank itself for a situation created by its own Superintending Engineer who instead of acting himself consistently with clause 3.3.29 made-over the dispute to the Execu-tive Engineer for decision.

(16.1) In any case the appellant approached the Court for appoint-ment of arbitrator under Section 20 of the Act. The State of M.P. yielded to the appellants demand by voluntarily appointing an arbitrator. There also an objection to the maintainability of the arbitration proceedings was taken up as a second thought and then given up followed by appointment of a new arbitrator in place of the previous one.

17. No one can be permitted to take advantage of one's own wrong. The respondent-State of M.P. cannot and could not have been heard to plead denial of the two appellant's right to seek reference to arbitration for non-compliance with the earlier part of clause 3.3.29. In the case of M/s. Chabaldas & Sons, the clause was complied with. Alternatively, even if it was not complied with in the case of M/s. Chabaldas & Sons, but certainly in the case of M/s. M.K. Shah, the fault for non-compliance lies with the respondent-State of M.P. through its officials. The plea of bar, if any, created by the earlier part of Clause 3.3.29 cannot be permitted to be set up by a party which itself has been responsible for frustrating the operation thereof. It will be travesty of justice if the appellants for the fault of the respondents are denied right to have recourse to the remedy of arbitration. A closer scrutiny of Clause 3.3.29 clearly suggests that the parties intended to enter into an arbitration agreement for deciding all questions and disputes arising between them through arbitrator and there-by excluding the jurisdiction of ordinary civil courts. Such reference to arbitration is required to be preceded by a decision of the Superintending Engineer and a challenge to such decision within 28 days by the party feeling aggrieved therewith. The steps preceding the coming into operation of the arbitration clause though essential are capable of being waived and if one party has by its own conduct or the conduct of its officials disabled such preceding steps being taken, it will be deemed that the procedural pre-requisites were waived. The party at fault cannot be permitted to set up the bar of non-performance of pre-requisite obligation so as to exclude the applicability and operation of the arbitration clause.

18. The subsequent conduct of the respondent in voluntarily agreeing to the appointment of the arbitrators in both the cases and not pursuing their objections under Section 33 of the Arbitration Act amounts to waiver on their part of the plea of non-compliance with the earlier part of clause 3.3.29, if only there was such non-compliance . The respondent-State of M.P. has acquiesced in the appointment of arbitrators and the proceedings for settlement of disputes by arbitration. The respondent cannot be per- mitted to turn around and plead invalidity or non-maintainability of arbitra-tion proceedings by reference to clause 3.3.29.

19. For the foregoing reasons, we are of the opinion that the trial court and the High Court were not justified in setting aside the awards and remitting them back for decision afresh by the arbitrator on the ground of non-compliance with the earlier part of clause 3.3.29. The award except to the extent to which it allows interest, was not liable to be interfered with by the Court.

20. So far as the award of interest by the arbitrator is concerned, the law had been settled by the decision of this Court in State of Orissa v. B.N. Agarawala, [1997] 2 SCC 469. Admittedly, the reference in the cases at hand was made before August 19, 1981 when the Interest Act of 1839 was in force. Interest could not have been awarded in the absence of statute, contract, usage or custom. Therefore, the interest for the pre-reference period was liable to be set aside and has been rightly set aside by the trial court.

21. Now remains the question as to the award of interest for the period for which the references were pending before the Arbitrator. In Abadhuta Jena's case [1988] 1 SCR 253 (Three-Judges Bench) it was held that the arbitrator to whom the reference is made without the intervention of the court does not have jurisdiction to award interest pendente lite. The correctness of this view was assailed in Secretary (Irrigation Department) Government of Orissa and Ors v. G.C. Roy, AIR (1992) SC 732 (Five-Judges Bench). The view of the law taken in Abadhuta Jena's case on the power of the arbitrator to award interest for the period for which the reference was pending before the arbitrator was over-ruled in G.C. Roy's case. However, their Lordships observed (vide para 47) - "even though we have held that the decision in Jena's case does not lay down good law, we would like to direct that our decision shall only be prospective in operation, which means that this decision shall not entitle any party nor shall it empower any court to re-open proceedings which have already become final. In other words, the law declared herein shall apply only to pending Proceedings". G.C. Roy's case was decided on 12.12.91.

(21.1) Jena's case and G.C. Roy's case, both were considered by this Court in Hindu Construction Company Ltd. v. State of J & K, AIR (1992) SC 2192. The arbitrator by his award dated 24.10.1972, had awarded interest at the rate of 6% p.a. from the date of reference (6.12.68) to date of payment or decree, whichever is earlier. By its judgment dated 28.8.92, vide para 5, this court following the decision in G.C. Roy's case held that the principle of Section 34 of the CPC which provides both for awarding of interest pendente lite as well as for the post decree period is applicable to proceedings before the arbitrator though the section as such may not apply. The award of interest as made by the arbitrator was upheld by this Court.

(21.2.) In the cases at hand the awards have not been made rule of the court so far and are being so made by this court today. The award of interest pendente lite by the arbitrator deserves to be sustained.

22. Both the appeals are allowed. The Impugned Judgments of the High Court and the trial court - both are set aside in both the appeals. Instead it is directed that both the awards dated 26.9.1978 shall be made rule of the court subject to the modification that the contractor-claimants shall not be entitled to interest up to the date of the reference i.e. 11.1.74 in the case of M/s. M.K. Shah, Engineers and Contractors and 28.11.73 in the case of M/s. Chabaldas and Sons. Let the decrees be drawn according-ly. Both the appeals stand disposed of. No order as to costs.