Supreme Court of India
Raipur Development Authority ... vs Chokhamal Contractors Etc. Etc on 4 May, 1989
Equivalent citations: 1990 AIR 1426, 1989 SCR (3) 144
Author: E Venkataramiah
Bench: Pathak, R.S. (Cj), Venkataramiah, E.S. (J), Misra Rangnath, Venkatachalliah, M.N. (J), Ojha, N.D. (J)

PETITIONER:
RAIPUR DEVELOPMENT AUTHORITY ETC. ETC.

Vs.

RESPONDENT:
CHOKHAMAL CONTRACTORS ETC. ETC.

DATE OF JUDGMENT04/05/1989

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
PATHAK, R.S. (CJ)
MISRA RANGNATH
VENKATACHALLIAH, M.N. (J)
OJHA, N.D. (J)

CITATION:
1990 AIR 1426 1989 SCR (3) 144
1989 SCC (2) 721 JT 1989 (2) 285
1989 SCALE (1)1279
CITATOR INFO :
RF 1990 SC1984 (33)
D 1991 SC 945 (6)
F 1992 SC 732 (2)

ACT:
Arbitration Act , 1940: Sections 16(1)(c), 20, 21 and 30(c), 32--Award--Whether liable to be set aside on ground that no reasons have been given--Necessity to give reasons where statute or Court orders.

Government Contracts: Government and their instrumentalities--Should as matter of policy and public interest--Ensure that arbitration clause provides for speaking awards by arbitrators.

Administrative Law: Natural justice--Principles of--Furnishing reasons in support of decision--Not applicable to cases arising under the law of arbitration which is intended for settlement of private disputes.

Practice And Procedure: Courts should be slow in taking decisions which will have effect of shaking rights/titles which have been rounded on particular interpretation of law.

HEADNOTE:

The common question arising in the instant cases which was referred to this larger Bench is whether an award passed under the provisions of the Arbitration Act, 1940 is liable either to be remitted under section 16(1)(c) of the Act or liable to be set aside under section 30(c) thereof merely on the ground that no reasons have been given by the arbitrator or umpire, as the case may be, in support of the award.

It was urged that (i) subsequent to 1976 there has been a qualitative change in the law of arbitration and that it has become necessary to insist upon the arbitrator or the umpire to give reasons in support of the award passed by him unless the parties to the dispute have agreed that no reasons need be given by the arbitrator or umpire for his decision; (ii) since under section 16(1)(c) of the Act the legality of an award can be questioned in Court on the basis of an error apparent on the face of an award, the only way of ensuring that an award is in accordance with law is by insisting upon the arbitrator or umpire to give reasons for the award and (iii) an arbitrator or an umpire discharges a judicial function while functioning as an arbitrator or an umpire under the Act, and, therefore, is under an obligation to observe rules of natural justice while discharging his duties, (iv) that the concept of natural justice had undergone a great deal of change in recent years, and the requirement of giving

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reasons for a decision should be treated as a new rule of natural justice.

While answering the question in the negative and remitting the cases to the Division Bench for disposal in accordance with law, this Court,

HELD: (1) The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons, and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. [161C-D]

(2) The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under section 20 or section 21 or section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so. [161D-E]

(1) University of New South Wales v. Max Cooper & Sons Pty. Ltd. 35 Australian Law Reports p. 219; (2) Hodgkinson v. Fernie & Anr., [1857] 3 C.B. (N.S.) 189=140 English Reports p. 712; (3) Champsey Bhara & Company v. Jivraj Balloo Spinning and Weaving Company Ltd., A.I.R. 1923 Privy

Council 66, (4); Seth Thawardas Pherumal v. The Union of India, [1955] 2 S.C.R. 48 (5) Jivarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors., [1964] 5 SCR 480 (6) Bungo Steel Furniture Pvt. Ltd. v. Union of India, [1967] 1 SCR 633, (7) State of Rajasthan v. M/s. R.S. Sharma & Cp [1988] 4 SCC 353, referred to.

(3) The people in India as in other parts of the world such as England, U.S.A. and Australia have become accustomed to the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards for a long time. They have attached more importance to the element of finality of the awards than their legality. [178D]

(4) Courts should be slow in taking decisions which will have the effect of shaking rights and titles which have been rounded through a long time upon the conviction that a particular interpretation of law is the legal and proper one and is one which will not be departed from. [179C-D]

Brownsea Havel Properties v. Pooje Corporation, [1958] Ch. 74 (C.A.), referred to.

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(5) Even after the passing of the English Arbitration Act, 1979 unless a court requires the arbitrator to give reasons for the award, an award is not liable to be set aside merely on the ground that no reasons have been given in support of it. [180A-B]

(6) The foundation of any arbitration proceeding is the existence of an arbitration agreement between the persons who are parties to the dispute. It is not as if people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of submission requiring the arbitrators to give reasons in support of the award. But there may be many transactions in which parties to the dispute may not relish the disclosure of the reasons for the award. [151 E]

Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd. lndore, [1967] 1 S.C.R. 105; N. Chelapan v. Secretary, Kerala State Electricity Board & Anr., [1975] 2 S.C.R. 811, referred to.

(7) The two well recognised principles of natural justice are (i) that a Judge or an arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased (nemo judex in cause sua); and (ii) that the parties to dispute should be given adequate notice and opportunity to be heard by the authority (audi alteram partem). Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law. [171C]

(10) Payyavula Vengamma v. Payyavule Kasanna & Ors.,

[1953] S.C.R. 119; (11) Harvey v. Shelton, [1844] 7 Bear. 455 at p. 462; (12) Haigh v. Haigh. [1861] 31 L.J. Ch. 420; (13) Som Datt Datta v. Union of India & Ors ., [1969] 2 S.C.R. 177; (14) Bhagat Payyavula v. The Union of India & Ors., [1967] 3 S.C.R. 302; (15) Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr., [1976] Supp. S.C.R. 489; (16) Associated Cement Companies Ltd. v.P.N. Sharma & Anr., [1965] 2 S.C.R. 366; (16) A.K. Kraipak JUDGMENT:

ferred to.

(8) A distinction has to be made between statutory arbitrations and private arbitrations. What applies general- ly to settlement of disputes by authorities governed by public law need not be extended to a11 cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes. [178A-B] Rohtas Industries Ltd. & Anr. v. Rohtas Industries Staff Union & Ors., [1976] 3 S.C.R. 12, referred to. (9) It is no doubt true that in the decisions pertaining to Administrative Law, this Court in cases has observed that the giving of reasons in an administrative decisions is a rule of natural justice by an extension of the prevailing rule. It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law. [179D-E] (10) The trappings of a body which discharges judicial functions and required to act In accordance with law with their concomitant obligations for reasoned decisions, are not attracted to a private adjudication of the nature of arbitration as the latter is not supposed to exert the State's sovereign judicial power. [180F-G] (11) It will not be justifiable for Governments or their instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. Governments and their instrumentalities should, as a matter of policy and public and private inter- est if not as a compulsion of law-ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitration, the requirement of speaking awards is expressly stipulated and ensured. It is for Governments and their instrumentalities to ensure in future this re- quirement as a matter of policy in the larger public inter- est. Any lapse in that behalf might lend itself to or per- haps justify the legitimate criticism that Government failed to provide against possible prejudice to public-interest. [181B-D] (12) A decision on the question involves a question of legislative policy which should be left to the decision of Parliament. It is significant that although nearly a decade ago the Indian Law Commission submitted its report on the law of arbitration specifically mentioning therein that there was no necessity to amend the law of arbitration requiring the arbitrator to give reasons, Parliament has not chosen to take any step in the direction of the amendment of the law of arbitration. [178H; 179G-H] (13) In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards, it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside. [178G] & CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3 137-39 of 1985 etc. etc. From the Judgment and Order dated 10.4.1985 of the Madhya Pradesh High Court in Misc. Appeal Nos. 176 to 178 of 1983.

F.S. Nariman, G.L. Sanghi, Aspi Chimoi, A.L. Pandiya, Rajan Karanjawala, S.C. Sharma, Ms. Meenakshi Arora, Manik Karanjawala, N. Nettar, G.S. Narayana, R.K. Mehta, Shri Narain, Sandeep

Narain, D.P. Mohanty, Ashok Kumar Panda, R.K. Patri and Jatinder Sethi for the Appellants. Soli J. Sorabjee, A.K. Sen, M.H. Baig, Raja Ram Agar- walla, P.A. Choudhary, A.K. Ganguli, M.C. Bhandare, S. Ganesh, P.S. Shroff, Randeep Singh, Shrjawala, R. Sasiprab- hu, S.S. Shroff, S.A. Shroff, Arun Madan, R.K. Sahoo, J.D.B. Raju, M.M. Kshatriya, T.V.S.N. Chari, T. Sridharan, Ms. Mridula Ray, S.K. Sahoo, N.D.B. Raju, Aruneshwar Gupta, P.P. Juneja, S.K. Bagga, P.N. Mishra, H.J. Zaveri and B.S. Chau- han for the Respondents.

Milan Banerjee, P.P. Rao, A. Mariarputham, C.M. Nayar, A.K. Chakravorty, Mrs. J. Wad. Mrs. Aruna. Mathur for the Intervener.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The common question which arises for consideration in these cases which are very neatly argued by learned counsel on both the sides is whether an award passed Under the provisions of the Arbitration Act, 1940 (hereinaf- ter referred to as 'the Act') is liable either to be remit- ted under section 16(1)(c) of the Act or liable to be set aside under section 30(c) thereof merely on the ground that no reasons have been given by the arbitrator or umpire, as the case may be, in support of the award.

Ordinarily all disputes arising under a contract have to be settled by courts established by the State. Section 28 of the Indian Contract Act, 1872 provides that every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent. Exception 1 to the said section 28, however, provides that the .said sec- tion shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect or any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

A brief history of the English Law of Arbitration, is given in the learned treatise--The Law and Practice of Commercial Arbitration in 'England by Sir Michael J. Mustill and Stew- art C. Boyd. For centuries commercial men preferred to use arbitration rather than the courts to resolve their business disputes on account of the inherent advantages in the set- tlement of disputes by arbitration. They preferred this alternative method of settlement of disputes to the ordinary method of settlement through courts because arbitration proceedings were found to be cheap and quick. It was no doubt true that the courts repeatedly expressed doubts as to the wisdom of this preference as reflected by the current opinion that arbitration was an ineffective procedure, not that it was undesirable in itself. The commercial community, has been however, insisting on the right to arbitration and has always exhibited an interest in seeing that the system is made to work as well as possible. This led to repeated statutory intervention. Accordingly laws were passed from time to time to make the arbitration proceedings effective. The English Arbitration Act of 1950 and the English Arbitra- tion Act, 1979 are the two major pieces of legislation which now control the arbitration proceedings in England. The legal requirements of an award under English Law are suc- cinctly given in 'the Hand Book of Arbitration Practice' by Ronald Bernstein (1987). English Law.. does not impose any legal requirement as to the form of valid award but if the arbitration agreement contains any requirement to the form of the award the award should meet those requirements. The

award must be certain. It could be either interim or final. An award without reasons is valid. "The absence of reasons does not invalidate an award. In many arbitrations the parties want a speedy decision from a tribunal whose stand- ing and integrity they respect, and they are content to have an answer Yes or No; or a figure of X. Such an award is wholly effective; indeed, in that it cannot be appealed as being wrong in law it may be said to be more effective than a reasoned award."

Section 1 of the English Arbitration Act, 1979, however, pro-

vides that if it appears to the High Court that an award does not or does not sufficiently set out the reasons for the award in sufficient detail to enable the court to con- sider any question of law arising out of it, the court has power to order the arbitrator or umpire to give reasons or further reasons.

In the United States of America as a general rule an arbitration award must contain the actual decision which results from an arbitrator's consideration of the matter submitted to them but the arbitrator need not write opinion with any specificity as a court of law does unless otherwise provided by a statute or by the submission itself. Arbitra- tors are not required to state in the award each matter considered or to set out the evidence or to record findings of facts or conclusions of law. They need not give reasons for their award and conclusions or the grounds which form the basis for the arbitration determination, describe the process by which they arrived at their decision or the rationale of the award. Although such matters are not re- quired, the award is not necessarily invalidated because it sets out the reasons or the specific findings, matters, or conclusions on which it is based and faulty reasoning if disclosed does not by itself vitiate the award. (See Corpus Juris Secundum, Vol. VI pp. 324-325).

In Australia too an arbitrator, unless required under section 19 of the Australian Arbitration Act, 1902 to state in a special case a question of law is under no obligation in law to give his reasons for his decision (vide University of New South Wales v. Max Cooper & Sons Pvt. Ltd., 35 Aus- tralian Law Reports p. 219).

An instructive survey of the Indian Law of Arbitration is to be found in the learned lecture delivered by Nripendra Nath Sircar in the Tagore Law Lectures series of the Calcut- ta University entitled "Law of Arbitration in British India". After referring to the provisions of the Bengal Regulation Act and the Madras Regulation Act, the learned lecturer traces the history of the Law of Arbitration in India in detail commencing with Act VIII of 1859 which codified the procedure of civil courts. Sections 3 12 to 325 of Act VIII of 1859 dealt with arbitration between parties to a suit while sections 326 and 327 dealt with arbitration without the intervention of a court. These provisions were in operation when the Indian Contract Act, 1872, which permitted settlement of disputes by arbitration under sec- tion 28 thereof as stated at the commencement of this judg- ment came into force. Act VIII of 1859 was followed by later codes relating to Civil Procedure, namely, Act X of 1877 and Act XIV of 1882 but not much change was brought about in the law relating to arbitration proceedings. It was in the year 1899 that an Indian Act entitled the Arbitration Act of 1899 came to be passed. It was based on the model of the English Act of 1889. The 1899 Act applied to cases where if the subject-matters submitted to arbitration were the subject of a suit, the suit could whether with leave or otherwise, be instituted in a Presidency town. Then came the Code of Civil Procedure of 1908.

Schedule II to the said Code contained the provisions relating to the law of arbi- tration which extended to the other parts of British India. The Civil Justice Committee in 1925 recommended several changes in the arbitration law and on the basis of the recommendations by the Civil Justice Committee, the Indian Legislature passed the Act, i.e., the Arbitration Act of 1940, which is currently in force. The salient provisions of the Act which are relevant for purposes of this case are these.

The Act as its preamble indicates is a consolidating and amending Act and is an exhaustive code in so far as the law relating to arbitration is concerned. An arbitration may be without intervention of a court or with the intervention of a court where there is no suit pending or it may be an arbitration in a suit. Unless there is an arbitration agree- ment to submit any present and future differences to arbi- tration to which a person is a party, he cannot be compelled to have a dispute in which he is concerned settled by arbi- tration. The foundation of any arbitration proceeding is therefore the existence of an arbitration agreement between the persons who are parties to the dispute. Every arbitra- tion agreement unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule to the Act in so far as they are applicable to the reference. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment. The author- ity of an appointed arbitrator or umpire cannot be revoked except with the leave of the court, unless a contrary inten- tion is expressed in the arbitration agreement. An arbitra- tion agreement does not come to an end by death of parties thereto but shall in such event be enforceable by or against the legal representative of the deceased. The authority of an arbitrator does not stand revoked by the death of any party by whom he was appointed. In any of the following cases (a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appoint- ed by consent of the parties, and all the parties do not after differences have arisen, concur in the appointment or appointments; or (b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or the arbitrators, as the case may be', do not supply the vacancy; or (c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appoint- ment or appointments or in supplying the vacancy. If the appointment is not made within fifteen clear days after the service of the said notice, the court may on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act on the reference, and to make an award as if he or they had been appointed by consent of all parties. The Court may on an application of any party to a reference remove an arbitrator or umpire who fails to use all reasona- ble dispatch in entering on and proceeding with the refer- ence and making an award. The court may remove an arbitrator or umpire who has misconducted himself or the proceedings. Where the court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the court may on the application of any party to the arbitration agreement, appoint persons to fill the vacancies. The arbitrators or umpire shall, unless a differ- ent intention is expressed in the agreement have power to administer oath to the parties and witnesses appearing; state a special case

for the opinion of the court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the court; make the award conditional or in the alternative; correct in an award any clerical mistake or error arising from any accidental slip or omission; and administer to any party to the arbitration such interrogato- ries as may, in the opinion of the arbitrators or umpire, be necessary. Section 14 of the Act provides that when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. While an award should contain the decision of the arbitra- tors or umpire of the case, as the case may be, the Act does not say in express terms that an award should contain the reasons in support of the decision. The arbitrators or umpire shall at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in court, and the court shall thereupon give notice to the parties of the filing of the award. Sections 15, 16, 17 and 30 of the Act which are relevant for purposes of this case read as follows:

> 15. Power of the Court to modify award.--The Court may by order modify or correct an award--
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> (a) where it appears that a part of the award is upon a matter not referred to arbitration and such can be separated from the other part and does not affect the decision on the matter referred, or
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> (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
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> (c) where the award contains a cleri- cal mistake or an error arising from an acci- dental slip or omission.
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> 16. Power to remit award. (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitra- tors or umpire for reconsideration upon such terms as it thinks fit--
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> (a) where the award has left undeter- mined any of the matters referred to arbitra- tion, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determina- tion of the matters; or
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> (b) where the award is so indefinite as to be incapable of execution; or
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> (c) where an objection to the legality of the award is apparent upon the face of it. (2) Where an award is remitted under sub- section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court. (3) An award remitted under sub-section (1) shall become void on the failure of the arbi- trator or

umpire to reconsider it and submit his decision within the time fixed.

17. Judgment in terms of award. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has ex- pired, or such application having been made, after refusing it, proceed to pronounce judg- ment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

30. Grounds for setting aside award.--An award shall not be set aside except on one or more of the following grounds, namely:

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceed- ings have become invalid under section 35;

(c) that an award has been improperly procured or is otherwise invalid.

Section 15 of the Act deals with the power of the Court to modify award. Section 16 of the Act deals with its power to remit an award and section 30 of the Act deals with the power of the Court to set aside an award. Section 17 of the Act provides that where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award. The period for getting an award remitted for reconsideration or for setting it aside is prescribed under Article 119 of the Limitation Act, 1963. Section 39 of the Act provides that an appeal shall lie from the following orders passed under the Act; (1) superseding an arbitration; (2) on an award stated in the form of a special case; (3) modifying or correcting an award; (4) filing or refusing to file an arbitration agree- ment; (5) staying or refusing to stay legal proceedings where there is an arbitration agreement; and (6) setting aside or refusing to set aside an award and from no others to the court authorised by law to hear appeals from original decree of the court passing the orders. Section 46 of the Act makes the Act applicable to statutory arbitrations, save in so far as is otherwise provided by any law for the time being in force, the provisions of the Act apply to all statutory arbitrations. These are broadly the provisions of the Act which govern an arbitration proceeding. In many of the cases in which awards are passed by arbitrators under auspices of institutions like Chambers of Commerce it may not be necessary for the parties to the disputes to go to the Court to get rules issued in terms of the awards since persons against whom awards are made would be willingly complying with the awards for it would be in their interest to do so in order to maintain their prestige in the business world. But in other cases where there is no guarantee of ready

compliance with the awards by those against whom they are made it becomes necessary to take appropriate steps under the Act to get the awards filed in the Court under section 14 of the Act and to seek the as- sistance of the Court in getting decrees passed in terms of the awards so that the decrees can be executed through court for the realisation of the fruits of the award. At the same time the Act provides the necessary machinery for getting the award remitted to the arbitrators or the umpire, as the case may be, for reconsideration or for getting the award set aside in cases falling under section 30 thereof. Under the Indian Arbitration Act, 1899 which applied to areas lying within the Presidency towns section 14 provided as follows:

> "14. Where an arbitrator or umpire has miscon- ducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award."
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> This section was couched in the same language in which section 11(2) of the English Arbitration Act, 1889 was couched. Para 15 of the Second Schedule to the Code of Civil Procedure, 1908 which was applicable to the rest of British India read as follows: "15 ..... But no award shall be set aside except on one of the following grounds, name- ly:
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> (a) corruption or misconduct of the arbitrator or umpire:
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> (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
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> (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid."

Then followed the Act, i.e., the Indian Arbitration Act, 1940 which extended to the whole of the British India w.e.f. July 1, 1940 superseding the Indian Arbitration Act, 1899 and the Second Schedule to the Code of Civil Procedure, 1908. Section 30 of the Act provides that an award shall not be set aside except on one or more of the following grounds, namely:

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitra- tion proceedings have become invalid under section 35;

(c) that an award has been improperly procured or is other- wise invalid.

It may be noticed that the general ground, namely, the award being 'otherwise invalid' for setting aside an award which appeared for the first time in the Second Schedule to the Civil Procedure Code, 1908 was not to be found either in the Indian Arbitration Act, 1899 or in the English Arbitration Act, 1889 which contained inter alia two grounds for setting aside an award, namely:

(i) that an arbitrator or an umpire had misconducted him- self; and

(ii) the award had been improperly procured. In connection with the English Arbitration Act, 1889 and the Indian Arbitration Act, 1899 certain principles had become well- settled although neither of these statutes made reference to illegality or error apparent on the face of the award. In one of the cases frequently referred to in later decisions, namely, Hodgkinson v. Fernie and another, [1857] 3 C.B. (N.S.) 189= 140 English Reports. p. 712 it was recognised that the principle had been firmly established that where an error of law appeared on the face of the award or upon some paper accompanying or forming part of the award that consti- tuted a ground for setting aside the award. Williams, J. who agreed with Cockburn, C.J. in the said decision observed thus:

> "I am entirely of the same opinion. The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constitut- ed the sole and final judge of all questions both of law and of fact. Many cases have fully established that position, where awards have been attempted to be set aside on the ground of the admission of an incompetent witness or the rejection of a competent one. The court has invariably met those applications by saying, 'You have constituted your own tribu- nal; you are bound by its decision.' The only exceptions to that rule, are cases where the award is the result of corruption or fraud, and one other, which, though it is to be regretted, is now, I think, firmly estab- lished, viz. where the question of law neces- sarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established." In Champsey Bhara & Company v. Jivraj Balloo Spinning and Weaving Company Ltd., A.I.R. 1923 Privy Council, 66 which was a case arising from the High Court of Bombay, the Privy Council following the decision in Hodg- kinson v. Fernie, (supra) observed thus: "Now the regret expressed by Williams, J., in Hodgkinson v. Fernie, (2) has been repeated by more than one learned Judge, and it is cer- tainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposi-
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> tion which is the basis of the award and which you can then say is erroneous."

The ground arising out of an error of law apparent on the face of the award prima facie appears to fall either under section 16(1)(c) of the Act, which empowers the Court to remit the award to the arbitrator where an objection to the legality of the award which is apparent upon the face of it is successfully taken, or under section 30(c) of the Act which empowers the Court to set aside an award if it is 'otherwise invalid'. The following two decisions relied on the said two provisions of law respectively. This Court in Seth Thawardas Pherumal v. The Union of India, [1955] 2 SCR 48 approved the view expressed in the case of Champsey Bhara & Company (supra) in the following words at pages 53-54 thus:

"In India this question is governed by section 16(1)(c) of the Arbitration Act of 1940 which empowers a Court to remit an award for recon- sideration 'where an objection to the legality of the award is apparent upon the face of it'. This covers cases in which an error of law appears on the face of the award. But in determining what such an error is, a distinc- tion must be drawn between cases in which a question of law is specifically referred and those in which a decision on a question of law is incidentally material (however necessary) in order to decide the question actually re- ferred. If a question of law is specifically referred and it is evident that the parties desire to have a decision from the arbitrator about that rather than one from the Courts, then the Courts will not interfere, though even there, there is authority for the view that the Courts will interfere if it is appar- ent that the arbitrator has acted illegally in reaching his decision, that is to say, if he has decided on inadmissible evidence or on principles of construction that the law does not countenance or something of that nature. See the speech of Viscount Cave in Kelantan Government v. Duff Development Co., [1923] A.C. 395 at page 409. But that is not a matter which arises in this case.

The law about this is, in our opin- ion, the same in England as here and the principles that govern this class of case have been reviewed at length and set out with clarity by the House of Lords in F.R. Absalom Ltd. v. Great Western (London) Garden Village Society, [1933] A.C. 592 and in Kelantan Government v. Duff Development Co., [1923] A.C. 395. In Durga Prasad v. Sewkishendas, 54 C.W.N. 74,

79) the Privy Council applied the law expound- ed in Absalom's case [1933] A.C. 592 to India: see also Champsey Bhara & Co. v. Jivraj Balloo Spinning and Weaving Co., 50 I.A. 324, 330 & 331 and Saleh Mahomed Umer Dossal v. Nathoomal Kessamal, 54 I.A. 427, 430. The wider language used by Lord Macnaghten in Ghulam Jilani v. Muhammad Hassan, 29 I.A. 51, 60 had reference to the revisional powers of the High Court under the Civil Procedure Code and must be confined to the facts of that case where the question of law involved there, namely limita- tion, was specifically referred. An arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. He is a tribunal selected by the parties to decide their dis- putes according to law and so is bound to follow and apply the law, and if he does not, he can be set right by the Courts provided his error appears on the face of the award. The single exception to this is when the parties choose specifically to refer a question of law as a separate and distinct matter."

In Jivarajbhai Ujamshi Sheth and Others v. Chintamanrao Balaji and Others, [1964] 5 SCR 480 this Court held that an award can be set aside on the ground of error of law appar- ent on the face of the record under section 30 of the Act but it qualified the above legal position by saying that the Court while dealing with the application for setting aside an award has no power to consider whether the view of the arbitrator on the evidence was justified according to this Court. The arbitrator's justification was generally consid- ered binding between the parties for it was a tribunal selected by the parties and the power of the Court to set aside the award was restricted to cases set out in section

30. The Court further observed that it was not open to it to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. The Court declined to recognise the power of the Court to attempt to probe the mental process by which the arbitrator had reached his conclusion where it was not disclosed by the terms of his award. The relevant part of the above decision reads thus:

> "An award made by an arbitrator is conclusive as a judgment between the parties and the Court is entitled to set aside an award if the arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid: s. 30 of the Arbitration Act. An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of infer- ence and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion. As observed in Champsey Bhara and Company v. Jivraj Ballo Spinning and Weaving Company Ltd., L.R. 50 I.A. 324 at p. 331:
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> 'An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actu- ally incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposi- tion which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound.' The Court in dealing with an application to set aside an award has not to consider whether the view of' the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in s.30. It is not open to the Court to specu- late, where no reasons are given by the arbi- trator, as to what impelled the arbitrator to arrive at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not dis- closed by the terms of his, award."

The same view was expressed by this Court in Bungo Steel Furniture Pvt. Ltd. v. Union of India, [1967] 1 S.C.R. 633. There have been a number of decisions of this Court on the above question and it is not necessary to refer to all of them except to refer to a recent decision in State of Rajas- than v. M/s. R.S. Sharma and Co., [1988] 4 S.C.C. 353 decid- ed by Sabyasachi Mukharji and S. Ranganathan, JJ. It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The

arbi- trator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under section 20 or section 21 or section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so. The Law Commission of India, however, had occasion to consider the question whether it should be made obligatory on the part of the arbitrator or umpire to give reasons in support of the award in the course of its Seventy-sixth Report on Arbitration Act, 1940 which was submitted in 1978. The relevant part of the report of the Law Commission on the above question reads thus:

> "4.42A. Before leaving section 14, it is necessary to deal with one suggestion that has been made to the effect that an arbitrator must be required to give reasons for the award. This suggestion was made by the Public Accounts Committee (1977-78), Sixth Lok Sabha, Ninth Report, dealing with the Forest Depart- ment, Andaman. The suggestion has been brought to our notice by the Ministry of Law. The Committee, after expressing its unhappiness over the manner in which certain arbitration cases which formed the subject-matter of the Report had been pursued, and after noting the delay that took place in the disposal of cases, made the following observations:
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> 'In this distressing story, Government has repeatedly suffered loss. In the first arbi- tration case, Government's claim for royalty on shortfall of extraction was not upheld. As the arbitrator's award gave no reasons, Gov- ernment could not even find out why their claim was rejected. It will be strange if Government really finds itself so helpless in such case. The Committee would like Government to make up its mind and amend the law in such a manner that it would be obligatory on the arbitrator to give reasons for his award. Meanwhile, it should be ascertained whether in an award which sets out no reasons the ag- grieved party would have no remedy whatever.' 4.43. We have also been informed that the Public Accounts Committee (1975-76), in its 210 Report, has observed as follows (Public Accounts Committee'19776, 210th Report, page 136, para 5.17):
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> 'Incidentally, the Committee also find that under the Arbitration Act, the Arbitrator is not bound to give any reason for the award. The result is that often it becomes difficult to challenge such non-speaking awards on any particular ground. The Committee are of the view that it should be made obligatory on arbitrators to give detailed reasons for their awards so that they may, if necessary, stand the test of objective judicial scrutiny. The Committee desire that this aspect should be examined and the necessary provision brought soon on the statute book.' 4.44. We' have given careful consideration to the suggestion that the arbitrator should be required to give reasons. And we appreciate the embarrassment that must be caused to the Government by such awards in the cases re- ferred to by the Public Accounts

Committee in its Report referred to above. We are also not unmindful of the fact that the public interest might sometimes suffer by awards which are not supported by reasons. But we regret that we are unable to persuade ourselves to accept the suggestion for amending the law. Our reasons for this conclusion will be set out presently. These reasons are, in our view, weighy enough to override other considerations.

4.45. There are, it seems to us, several consideration that are relevant in determining the question whether an arbitrator should be required by law to give reasons for the award. The scheme of the Arbitration Act is to provide a domestic forum, for speedy and substantial justice, untrammelled by legal technicalities, by getting the dispute re- solved by a person in whom the parties have- full faith and confidence. The award given by such a person under the scheme of the Act can be assailed only on very limited ground like those mentioned in section 30 of the Act. The result is that most of the awards at present are made rules of the court despite objections to their validity by the party against whom those awards operate. To have a provision making it obligatory for the arbitrator to give reasons for the award would be asking for the introduction of an infirmity in the award which in most cases is likely to prove fatal. Many honest awards would thus be set aside. Once the arbitrators are compelled to give reasons in support of the award, the inevitable effect of that would be that the validity of most of the awards would be chal- lenged on the ground that the reasons, or at least some of them, are bad and not germane to the controversy. Sometimes, if four reasons are given in support of the award and one of the reasons is shown to be not correct or not germane, the award would be challenged on the ground that it is difficult to predicate as to how far the bad reason which is not germane has influenced the decision of the arbitrator. Many awards would not survive court scrutiny in such circumstances.

4.46. It is also noteworthy that in a large number of cases the arbitrators would be laymen. Although their final award may be an honest and conscientious adjudication of the controversy and dispute, they may not be able to insert reasons in the award as may satisfy the legal requirements and the scrutiny of the court. The arbitrators having been chosen by the parties, it would, in our opinion, be not correct to put extra burden on them of also giving reasons which are strictly ration- al and germane in the eye of law in support of their award. Once the parties have voluntarily chosen the arbitrators, presumably because they have faith in their impartiality, the law should not insist upon the recording of rea- sons by them in their award.

4.47. The previous experience, in fact, points out that it is awards incorporating reasons which have generally been quashed in court.

The awards not giving reasons have survived the attack on their validity, unless the arbitrator is otherwise shown to have misconducted himself or his award suffers from some other technical defect. Once we have the compulsion for the incorporation of reasons in the award given by the

arbitrators, validity of most of the awards, in our opinion, would not be able to survive in court. As such, the object of the Arbitrations Act would be substantially defeated.

4.48. Once Parliament provides that reasons shall be given, that must clearly be read as meaning that proper, adequate, reasons must be given; the reasons that are set out, whether they are right or wrong, must be reasons which not only will be intelligible, but also can reasonably be said to deal with the substantial points that have been raised. If the award in any way fails to comply with the statutory provi- sions, then it would be a ground for saying that the award was bad on the face of it, as Parliament has required that reasons shall be incorporated (Of. Re Poyser & Mills Arbi- tration, (1964) 2 Q.B. 467; (1963) 1 All E.R. 6 12, 6 16 (Megaw J.).

It is well established that where the arbitrator gives reasons for a conclusion of law, courts can go into those reasons. (Champsey Bhara & Co. v. J.B. Spinning & Weaving Co. Ltd., A.I.R. 1923 P.C. 66; S. Dutt v. University of Delhi, A.I.R. 1958 S.C. 1050.

4.49. It is sometimes stated that since an arbitrator is bound to apply the law, there should be some means of ensur- ing that he applied the law correctly. However, it is also to be remembered that parties resort to an arbitration voluntarily and select or agree to a particular arbitrator, because, inter alia,

(i) they have faith in him, and

(ii) the proceedings will be more speedy and free from technicalities than in the courts.

The object Of achieving speed and informality is likely to be largely frustrated if a statutory provision makes it compulsory to give reasons for the award. The general rule is that the parties cannot object to the deci- sion given by their own judge, except in case of misconduct and the like. (Government of Kelantan v. Duff Development Co. Ltd., [1923] A.C. 395; Russell (1970), pages 359,360). This general principle should not be departed from unless weighty reasons exist for such departure. No doubt, it is desirable that the award should be correct in law. But the fundamental question is, how far should the finality of the award yield to the desirability of legal correctness, and what procedural requirements should be insisted upon to ensure that the award is sound in law? In this connection, reference may be made to the obser- vations of Barwick C.J. (of the High Court of Australia). Tata Products Pvt. Ltd. v. Hutcheson Bros. Pvt. Ltd., [1972] 127 C.L.R. 253, 258; (1972) Australia Law Journal Reports 119 (Australia). He observed that 'finality in arbitration in the award of the lay arbitrator is more significant than legal propriety in all his processes in reaching that award.' The importance which the law attaches to the finality of arbitration goes against the suggestion now put forth for giving reasons for an award. A requirement that the reasons for an award should be given would open too wide a door for challenging the award, even if the grounds for setting aside are, by statute, restricted in other respects. 4.50. For these reasons, we are not inclined to recommend a provision requiring the arbitrator to give reasons for the award.

Thus it is seen that the Law Commission did not recom- mend the inclusion of a provision in the Act requiting the arbitrator or umpire to give reasons for the award.

It is not disputed that in India it had been firmly established till the year 1976 that it was not obligatory on the part of the arbitrator or the umpire to give reasons in support of the award when neither in the arbitration agree- ment nor in the deed of submission it was required that reasons had to be given for the award (vide Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, [1967] 1 S.C.R. 105; Bungo Steel Furniture Pvt. Ltd. v. Union of India, (supra) and N. Chellappan v. Secretary, Kerala State Electricity Board & Another, [1975] 2 S.C.R. 811. It is, however, urged by Shri Fali S. Nariman, who argued in sup- port of the contention that in the absence of the reasons for the award, the award is either liable to be remitted or set aside, that subsequent to 1976 there has been a qualita- tive change in the law of arbitration and that it has now become necessary to insist upon the arbitrator or the umpire to give reasons in support of the award passed by them unless the parties to the dispute have agreed that no rea- sons need be given by the arbitrator or the umpire for his decision. Two main submissions are made in support of the above contention. The first submission is that an arbitrator or an umpire discharges a judicial function while function- ing as an arbitrator or an umpire under the Act, and, there- fore, is under an obligation to observe rules of natural justice while discharging his duties, as observed by this Court in Payyavula Vengamma v. Payyavula Kesanna and others, [1953] S.C.R. 119. This Court relied in that decision upon the observations made by Lord Langdale M.R. in Harvey v. Shelton, [1844] 7 Beav. 455 at p. 462 which read thus: "It is so ordinary a principle in the administra- tion of justice, that no party to a cause can be allowed to use any means whatsoever to influence the mind of the Judge, which means are not known to and capable of being met and resisted by the other party, that it is impossible, for a moment, not to see, that this was an extremely indiscreet mode of proceeding, to say the very least of it. It is contrary to every principle to allow of such a thing, and I wholly deny the difference which is alleged to exist between mercantile arbitrations and legal arbitrations. The first principle of justice must be equally applied in every case. Except in the few cases where exceptions are unavoidable, both sides must be heard, and each in the presence of the other. In every case in which matters are litigated, you must attend to the representations made on both sides, and you must not, in the administration of justice, in whatever form, whether in the regularly constituted Courts or in ar-

bitrations, whether before lawyers or merchants, permit one side to use means of influencing the conduct and the deci- sions of the Judge, which means are not known to the other side."

This Court also relied on the decision in Haigh v. Haigh, [1861] 31 L.J. Ch. 420 which required an arbitrator to act fairly in the course of its duties. The two well recognised principles of natural justice are (i) that a Judge or an arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased (nemo judex in cause sua); and (ii) that the parties to dispute should be given adequate notice and opportunity to be heard by the authority (audi alteram partem) (See Administrative Law by H.W.R. Wade, Part V and Judicial Review of Adminis- trative Action by S.A. de Smith, Third Edition, Chapter 4). Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law. In Som Datt Datta v. Union of India and Ors., [1989] 2 S.C.R. 177 a Constitution Bench of this Court held that there was no obligation on the part of an administrative or statutory tribunal to give reasons for the order passed by it. The relevant part of the said decision in which this Court considered the prevailing legal decision in England at the time reads thus:

"In the present case it is manifest that there is no express obligation imposed by s. 164 or by s. 165 of the Army Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial. Mr. Dutta has been unable to point out any other section of the Act or any of the rule made therein from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

In English law there is no general rule apart from the statutory requirement that the statutory tribunal should give reasons for its decision in every case. In Rex..v. Northumberland Compensation Appeal Tribunal, [1952] 1 K.B. 338, it was decided for the first time by the Court of Appeal that if there was a 'speaking order' a writ of certi- orari could be granted to quash the decision of an inferior court or a statutory tribunal on the ground ,of error on the face of record. In that case, Denning, L.J. pointed out that the record must at least contain the document which initi- ates the proceedings; the pleadings, if any, and the adjudi- cation, but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them in its decision. It was observed that if the tribunal did state its reasons and those reasons were wrong in law, a writ of certiorari might be granted by the High Court for quashing the decision. In that case the statutory tribunal under the National Health Service Act, 1946 had fortunately given a reasoned decision; in other words, made a 'speaking order' and the High Court could hold that there was an error of law on the face of the record and a writ of certiorari may be granted for quashing it. But the decision in this case led to an anomalous re- sult, for it meant that the opportunity for certiorari depended on whether or not the statutory tribunal chose to give reasons for its decision, in other words, to make a 'speaking order'. Not all tribunals, by any means, were prepared to do so and a superior court had no power to compel them to give reasons except when the statute required it. This incongruity was remedied by the Tribunals and Inquiries Act, 1958 (s. 12), (6 & 7 Elizabeth 2 c. 66), which provides that on request a subordinate authority must supply to a party genuinely interested the reasons for its decision. Section 12 of the Act states that when a tribunal mentioned in the First Schedule of the Act gives a decision it must give a written or oral statement of the reasons for the decision, if requested to do so on or before the giving or notification of the decision. The statement may be re- fused or the specification of reasons restricted on grounds of national security, and the tribunal may refuse to give the statement to a person not principally concerned with the decision if it thinks that to give it would be against the interest of any person primarily concerned. Tribunals may also be exempted by the Lord Chancellor from the duty to give reasons but the Council on Tribunals must be consulted on any proposal to do so. As already stated, there is no express obligation imposed in the present case either by s. 164 or by s. 165 of the Indian Army Act on the confirming authority or on the Central Government to give reasons for its decision. We have also not been shown any other section of the Army Act or any other statutory rule from which the necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. We, therefore, reject the argument of the petitioner that the order of the Chief of the Army Staff, dated May 26, 1967 confirming the finding of the Court Martial under s. 164 of the Army Act or the order of the Central Government dismissing the appeal under s. 165 of the Army Act are in any way defective in

law."

It is, however, urged that this Court omitted to notice an earlier decision of a Constitution Bench of this Court in Bhagat Raja v. The Union of India & Ors., [1967] 3 S.C.R. 302 and therefore, the decision in Som Datt Datta, (supra) should be considered as a decision per in curjam. The point involved in Bhagat Raja' case (supra) was whether in dis- missing a revision petition filed under the Mines & Minerals (Regulation and Development) Act, 1957 and the rules made thereunder, the Union of India was bound to make a speaking order. This Court held that under the Mines & Minerals (Regulation and Development) Act, 1957 the Central Govern- ment while deciding a revision petition was required to act judicially as a tribunal and an appeal could be filed against the said decision before this Court under Article 136 of the Constitution of India. In order to make the right of appeal effective it was necessary that the Central Gov- ernment should pass a reasoned order so that this Court might decide whether the case had been properly decided by the Central Government or not and in the absence of the reasons the order of the Central Government was liable to be reversed. The relevant part of the judgment of this Court in Bhagat Raja's, case (supra) reads thus:

"Let us now examine the question as to whether it was incum- bent on the Central Government to give any reasons for its decision in review. It was argued that the very exercise of judicial or quasi judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Art. 227 of the Constitution and of appellate powers of this Court under Art. 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word 'rejected', or, 'dismissed'. In such case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatis- factory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Gov- ernment are scrappy or nebulous and the- Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specify- ing those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in uphold- ing the order of the State Government. In such circum- stances, what is known as a 'speaking order' is called for."

A careful reading of this decision shows that it is not based on the ground that the order of the Central Government was not in conformity with the principles of natural justice but on the ground that the order of the Central Government was subject to the supervisory powers of the High Courts

under Article 227 of the Constitution of India and the appellate powers of this Court under Article 136 of the Constitution of India. It is no doubt true that in Siemens Engineering & Manufacturing Co. of India Limited v. Union of India & Anr., [1976] Supp. SCR 489 a Bench of three Judges of this Court held that every quasi judicial order of a tribunal must be supported by reasons and the rule requiring the reasons to be given in support of the order was like the principles of audi alteram partem, a basic principle of natural justice which must involve every quasi judicial process and that the said rule should be observed in this proper spirit. In that case again the order whose validity had been questioned in this Court in an appeal filed under Article 136 of the Constitution of India was an order passed by the Central Government under the Customs Act. A reading of the decision in this case shows that this Court felt that the rule requiring reasons in support of an order was a rule not covered by the principle audi alteram partem but an independent principle of natural justice. We have already observed that the two recognised principles of natural justice were (i) that a Judge or an umpire who is entrusted with the duty to decide a dispute should be disin- terested and unbiased (nemo judex in causa sua); and (ii) that the parties to dispute should be given adequate notice and opportunity by the authority (audi alteram partem). For the first time this Court laid down that the rule requiring reasons in support of an order is a third principle of natural justice. It may be as observed in Bhagat Raja's case (supra) that the Court may require a tribunal to give rea- sons in support of its order in 'order to make the exercise of power of the High Courts under Articles 226 and 227 of the Constitution of India and the powers of this Court under Article 136 of the Constitution of India effective. It is further urged relying upon the decisions of this Court in Associated Cement Companies Ltd. v. P.N. Sharma and Another, [1965] 2 S.C.R. 366 and A.K. Kraipak & Ors. etc. v. Union of India & Ors., [1970] 1 S.C.R. 457 that the concept of natu- ral justice had undergone a great deal of Change in recent years. It is argued that while originally there were two rules of natural justice in course of time many more subsid- iary rules had come to be added to the rules or natural justice and, therefore, in the same way the requirement of giving reasons for a decision should be treated as a new rule of natural justice.

The second main submission made in support of the neces- sity of giving reasons for the award is that since the arbitrator or umpire is required to make an award in accord- ance with law as held by this Court in Seth Thawardas Pheru- mal's case (supra) and several other cases decided by this Court and since under section 16(1)(c) of the Act the legal- ity of an award can be questioned in Court on the basis of an error apparent on the face of an award the only way of ensuring that an award is in accordance with law is by insisting upon the arbitrator or umpire to give reasons for the award. It is urged that if no reasons are disclosed it would not be possible for the Court to find out whether an award has been passed in accordance with law or not.

Our attention is drawn to the existence of the safeguard in the English Law of Arbitration (before the English Arbi- tration Act, 1979) for ensuring that an arbitrator deciding a dispute judicially and in accordance with the requirement of the parties to the agreement that the dispute be decided according to law in the form of the power of the Court to compel the arbitrator to state his award in the form of a special case under section 21 of the Arbitration Act, 1950. It is submitted that the provision with regard to the state- ment of the case by an arbitrator to the Court contained in clause (b) of section 13 of the Act, i.e., the Indian Arbi- tration Act, 1950, being one which could be exercised at the option of the arbitrator and there being no power for the Court to compel the

arbitrator to state a case for its decision, the only way of ensuring that the arbitrator kept within the bounds of law is to compel him to give reasons for his award. Our attention is also drawn to the Report on Arbitration made by the Commercial Court Committee presided over by Justice Donaldson (now Master of Rolls) in which certain recommendations were made in order to improve the procedure which was prevailing in England with regard to the power of judicial review of the decisions of the arbitra- tors. In the course of the said report, the Commercial Court Committee has observed thus:

"Supervisory powers

3. All systems of law provide for some degree of judicial supervision of arbitral proceedings and awards. These powers enable the Courts to intervene in cases of fraud or bias by the arbitrators, contravention of the rules of natural justice or action in excess of jurisdiction. In the case of the English Courts these powers are conferred by sections 22, 23 and 24 of the Arbitration Act, 1950. Powers of review

4. Most systems of law adopt the philosophy that the parties, having chosen their own tribunal, must accept its decisions "with all faults". Accordingly, they make no, or very little, provision for a review by the Courts of arbitral decisions which may be based upon erroneous conclu- sions of fact or law. Until recently the law of Scotland was based upon this philosophy. However, this has never been the approach of the law of England or of some systems derived from the law. English law provides for two different forms of review, namely by motion to set aside the award for error on its face and by a reference to the High Court of an award in the form of a special case.

(a) Setting aside an award for error on its face

5. Under English law the Courts have jurisdiction to set aside any arbitral award if it appears from the award itself or from documents incorporated in the award that the arbitrator has reached some erroneous conclusion of fact or law. The Court cannot correct the error. It can only quash the award leaving the parties free to begin the arbitration again.

6. As a result of the existence of this power, English arbitrators customarily avoid giving any reasons for their awards, confining themselves that A should pay B a specified sum. Where the parties wish to know the reasons for the award or the arbitrator wishes to give them, this is achieved by giving the reasons in a separate document which expressly states that it is not part of the award and by obtaining an undertaking from the parties that they will not seek to refer to or use the reasons for the purposes of any legal proceedings. The general pattern is, however, that English awards are given without reasons.

7. In this important respect English arbitral awards differ from those of most other countries. In the case of arbitrations held under the laws of Belgium, the Federal Republic of Germany, France, Italy and the Nether- lands, the giving of reasons is normally obligatory. When it comes to enforcing an English arbitral award in a foreign country, there is always some doubt whether objection may not be taken to it on the ground that it is "unmotivated", to use the continental term, although the

Committee knows of no case in which this objection has yet been upheld..... ..... The alternative of judicial review based on reasoned awards

25. The existing obstacle to a judicial review based upon reasoned awards is the power and the duty of the Court to set aside awards for error on their face. This obstacle could easily be removed and this system would then have considerable attractions.

26. In every case an arbitrator would be free to give reasons for his award. This would in itself be an improvement, if arbitrators took advantage of the facility. The making of an award is, or should be, a rational process.. Formulating and recording the reasons tends to accentuate its rationality. Furthermore, unsuccessful par- ties will often, and not unreasonably, wish to know why they have been unsuccessful. This change in the law would make this possible.

27. Given a reasoned award, an unsuccessful party could know whether he had a just cause for complaint. Where no reasons were given initially and he thought that an error had been made, he could ask for reasons to be supplied. If the arbitrator refused to supply them, the Court could, in appropriate cases, order him to do so. This would be no great burden on the arbitrator provided that the application was made promptly. He would have had some reasons for making the award and all that he would need to do would be to summarize them in ordinary language. Nothing formal would be required.

28. Armed with the reasons for an award, the unsuccessful party could apply to the Court for leave to appeal. The right of appeal could be restricted to questions of law arising out of the decision, leaving all questions of fact to be decided finally by the arbitrator. Furthermore, unlike the position when the Court is being asked to order an arbitrator to state an award in the form of a special case, the Court would know whether any particular question of law really arose for. decision since both it and the parties would have access to the facts as found by the arbitrator. Additional restrictions could be imposed on the circumstances in which leave to appeal would be given and in which a further appeal to the Court of Appeal would be permitted.

29. An additional advantage of a change to rea- soned awards lies in the fact that this would tend to assim- ilate English awards to those made in other countries, thus mak-

ing English awards more acceptable and readily enforceable abroad.

30. Finally, there would be the great advantage that every award would be a final award and immediately enforceable as such, subject only to the right of the Court in appropriate cases to impose a stay of execution pending an appeal. Such a stay could, of course, be granted subject to conditions, such as that the amount awarded be brought into Court.

31. In a word, a system of judicial review based upon reasoned awards would place very grave obstacles in the way of those seeking unmeritoriously to avoid meeting their just obligations, would improve the standard of awards and would render them more easily and speedily enforceable. The same system is used for the review of decisions of the industrial tribunals and of the restrictive

Practices Court and has worked well.

Recommendations on judicial review

32. In the light of these considerations the Committee makes the recommendations set out below.

33. The system of judicial review based upon the special case procedure should be replaced by one based upon reasoned awards. This would involve comparatively minor amendments to the 1950 Act. Section 21 would be repealed and the Court would be deprived of the power and duty to set an award aside because of errors of fact or law on the face of the award. Arbitrators would be encouraged to give reasons for their awards, but would only be obliged to do so if it was necessary for the purposes of the new review procedure. A new section 21 would define the right of appeal to the High Court.

34. The new fight of appeal would be confined to questions of law, all decisions on questions of fact being for the arbitrator alone."

After the submission of the report the British Parlia- ment enacted the Arbitration Act, 1979. Sub-sections (1), (2), (5) and (6) of section 1 of the English Arbitration Act, 1979 which are material in this case read thus:

"1. Judicial review of arbitration awards--(1) In the arbi- tration Act 1950 (in this Act referred to as 'the principal Act') section 21 (statement of case for a decision of the High Court) shall cease to have effect and, without preju- dice to the right of appeal conferred by sub-section (2) below, the High Court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award. (2) Subject to sub-section (3) below, an appeal shall lie to the High Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the High Court may by order--

(a) confirm, vary or set aside the award; or

(b) remit the award to the reconsideration of the arbitrator or umpire together with the court's opinion on the question of law which was the subject of the appeal; and where the award is remitted under paragraph (b) above the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

..... (5) Subject to sub-section (6) below, if an award is made and, on an application made by any of the parties to the reference--

(a) with the consent of all the other parties to the reference, or

(b) subject to section 3 below, with the leave of the court, it appears to the High Court that the award does not or does not sufficiently set out the reasons for the award, the court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient details to enable the court, should an appeal be brought under this section, to consider any question of law arising out of the

award. (6) In any case where an award is made without any reason being given, the High Court shall not make an order under sub-section (5) above unless it is satisfied--

(a) that before the award was made one of the par- ties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required; or

(b) that there is some special reason why such a notice was not given."

Section 2 of the said Act of 1979 empowered the High Court to determine any preliminary point of law arising in the course of an arbitration reference under certain circum- stances. It is urged that in view of the fact that similar safeguards which are available in the English Law do not exist in the Indian Law, it is necessary that this Court should hold that there is an implied obligation on the part of the arbitrator or umpire to give reasons for the award unless the parties to the dispute agree that no such reasons need be given.

A reference was made in the course of the arguments to the decision of this Court in Rohtas Industries Ltd. & Anr. v. Rohtas Industries Staff Union and Ors., [1976] 3 S.C.R. 12 in which an award passed by the arbitrators under section 10-A of the Industrial Disputes Act, 1947 had been struck down by the High Court in part and appeals filed against the decision of the High Court were under consideration by this Court. In that case the appellants contended that an award under section 10-A of the Industrial Disputes Act, 1947 was equivalent to an award made in a private arbitration and was not amenable to correction under Article 226 of the Consti- tution of India. But this Court rejected this said conten- tion by observing at page 26 thus:

" .... Suffice it to say that a reference to arbitration under s. 10A is restricted to existing or apprehended indus- trial disputes. Be it noted that we are not concerned with a private arbitration, but a statutory one governed by the Industrial Disputes Act, deriving its validity, enforceabil- ity and protective mantle during the pendency of the proceed- ings, from s. 10A.

A distinction was thus made between statutory arbitra- tions under section 10-A of the Industrial Disputes Act and private arbitrations. It is not necessary to refer to the other cases cited before us which have a bearing on section 10-A of the Industrial disputes Act, 1947. The question which arises for consideration in these cases is whether it is appropriate for this Court to take the view that any award passed under the Act, that is, the Indian Arbitration Act, 1940 is liable to be remitted or set aside solely on the ground that the arbitrator has not given reasons thus virtually introducing by a judicial verdict an amendment to the Act when it has not been the law for nearly 7/8 decades. The people in India as in other parts of the world such as England, U.S.A. and Australia have become accustomed to the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards for a long time. They have attached more importance to the element of finality of the awards than their legality. Of course when reasons are given in support of the awards and those reasons disclose any error apparent on the face of the record people have not refrained from questioning such awards before the courts. It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbi- trator to give reasons for the award. In cases where

reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Com- mission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside. A decision on the question argued before us involves a question of legislative policy which should be left to the decision of Parliament. It is a well-known rule of construction that if a certain interpretation has been uniformly put upon the meaning of a statute and transactions such as dealings in property and making of contracts have taken place on the basis of that interpretation, the Court will not put a different interpre- tation upon it which will materially affect those transactions. We may refer here to the decision of the Court of Appeal rendered by Lord Evershed M.R. in Brownsea Havel Properties v. Poole Corpn., [1958] Ch. 574 (C.A.) in which it is observed thus:

"There is well-established authority for the view that a decision of long standing, on the basis of which many per- sons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision."

Courts should be slow in taking decision which will have the effect of shaking rights and titles which have been rounded through a long time upon the conviction that a particular interpretation of law is the legal and proper one and is one which will not be departed from.

It is no doubt true that in the decisions pertaining to Administrative Law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule. It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law. We do appreciate the contention, urged on behalf of' the parties who contend that it should be made obligatory on the part of the arbitrator to give reasons for the award, that there is no justification to leave the small area covered by the law of arbitration out of the general rule that the decision of every judicial and quasi-judicial body should be supported by reasons. But at the same time it has to be borne in mind that what applies generally to settle- ment of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes. As stated elsewhere in the course of this judgment if the parties to the dispute feel that reasons should be given by the arbi- trators for the awards it is within their power to insist upon such reasons being given at the time when they enter into arbitration agreement or sign the deed of submission. It is significant that although nearly a decade ago the Indian Law Commission submitted its report on the law of arbitration specifically mentioning therein that there was no necessity to amend the law of arbitration requiring the arbitrators to give reasons, Parliament has not chosen to take any step in the direction of the amendment of the law of arbitration. Even after the passing of the English Arbitration Act, 1979 unless a court requires the arbitra- tors to give reasons for the award (vide sub-sections (5) and (6) of section 1 of the English

Arbitration Act, 1979, an award is not liable to be set aside merely on the ground that no reasons have been given in support of it. It is true that in two cases one decided by the High Court of Delhi and another decided by the High Court of Orissa there are some observations to the effect that it would be in the interests of justice if the arbitrators are required to give reasons for their awards because in recent years the moral standards of arbitrators are going down. But generally this Court and all the High Courts have taken the view that merely because the reasons are not given an award is not liable to be remitted or set aside except where the arbitration agreement or the deed of submission, or an order made by the court such as the one under section 20 or sec- tion 21 or section 34 of the Act or the statute governing the arbitration requires that the arbitrator or umpire should give reasons for the award. The arbitrators or umpire have passed the awards which are involved in the cases before us relying on the law declared by this Court that the awards could not be questioned merely on the ground that they have not given reasons. At the same time it cannot also be said that all the awards are contrary to law and justice. In this situation it would be wholly unjust to pass an order either remitting or setting aside the awards, merely on the ground that no reasons are given in them, except where the arbitration agreement or the deed of submission or an order made by the court such as the one under section 20 or sec- tion 21 or section 34 of the Act or the statute governing the arbitration required that the arbitrator or the umpire should give reasons for the award.

There is, however, one aspect of non-speaking awards in nonstatutory arbitrations to which Government and Governmen- tal authorities are parties that compel attention. The trappings of a body which discharges judicial functions and required to act in accordance with law with their concomi- tant obligations for reasoned decisions, are not attracted to a private adjudication of the nature of arbitration as the latter, as we have noticed earlier, is not supposed to exert the State's sovereign judicial power. But arbitral awards in disputes to which the State and its instrumentali- ties are parties affect public interest and the matter of the manner in which Government and its instrumentalities allow their interest to be affected by such arbitral adjudi- cations involve larger questions of policy and public inter- est. Government and its instrumentalities cannot simply allow large financial interests of the State to be prejudicially affected by non-reviewable--except in the limited way allowed by the Statute--non-speaking arbitral awards. Indeed, this branch of the system of dis- pute-resolution has, of late, acquired a certain degree of notoriety by the manner in which in many cases the financial interests of Government have come to suffer by awards which have raised eye-brows by doubts as to their rectitude and propriety. It will not be justifiable for Governments or their instrumentalities to enter into Arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. Governments and their instrumentalities should, as a matter of policy and public interest--if not as a compulsion of law--ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitrations, the requirement of speaking awards is express- ly stipulated and ensured. It is for Governments and their instrumentalities to ensure in future this requirement as a matter of policy in the larger public interest. Any lapse in that behalf might lend itself to and perhaps justify, the legitimate criticism that Government failed to provide against possible prejudice to public-interest. Having given our careful and anxious consideration to the contentions urged by the parties we feel that law should be allowed to remain as it is until the competent legisla- ture amends the law. In the result we hold that an award passed under the Arbitration Act is not liable to be remit- ted or set aside merely on the

ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the Court such as the one under section 20 or section 21 or section 34 of the Act or the statute governing the arbitra- tion requires that the arbitration or the umpire should give reasons for the award. These cases will now go back to the Division Bench for disposal in accordance with law and the view expressed by us in this decision.

R.S.S.