Supreme Court of India
U.P. Hotels Etc vs U.P. State Electricity Board on 28 October, 1988
Equivalent citations: 1989 AIR 268, 1988 SCR Supl. (3) 670
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
U.P. HOTELS ETC.

Vs.

RESPONDENT:
U.P. STATE ELECTRICITY BOARD

DATE OF JUDGMENT28/10/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1989 AIR 268 1988 SCR Supl. (3) 670
1989 SCC (1) 359 JT 1988 (4) 478
1988 SCALE (2)1235

ACT:
Arbitration Act , 1940: Sections 14, 17, 30 and 33- Award- Setting aside of- Wrong proposition of law laid down in award as basis of award.

HEADNOTE:
On taking over the Agra Electric Supply Co. in December 1973, the respondent- U.P. State Electricity Board- intimated to the appellant- U.P. Hotels- that the Bulk Supply Agreement between the appellant and the Agra Electric Supply Co. would continue to be in force until such time the agreement was determined in accordance with its relevant provisions. The agreement contained terms of rates, discounts, minimum sum payable and increase in the rates and sums payable once a year on account of increase in cost of production and distribution of electrical energy (clause 9) and also contained an arbitration clause (clause 18).

In November 1976, the appellant received a communication from the respondent informing that the uniform tariff rates issued under section 49 of the Electricity Supply Act, 1949 would be applicable to them. The Board also withdrew the contractual discount and rebates. While sub-sections (1) and (2) of section 49, stipulate a uniform tariff for electric

supply, sub-section (3) authorises the Board to fix different tariffs for the supply of electricity.

The appellant protested against this unilateral increases and withdrawal, but without success. The appellant then informed the respondent that it was referring the disputes for decision by the arbitrator and appointed a retired High Court Judge as its arbitrator. The respondent in turn appointed another retired High Court Judge as a joint arbitrator. The joint arbitrators appointed Justice V. Bhargava, a retired Judge of the Supreme Court, as the Umpire. The arbitrators having failed, the proceedings started before the Umpire.

The Umpire gave his award in June 1983 and held that the Board having accepted the agreement, it became binding on the Board and once the agreement was binding, its terms under sub-section (3) of section 49 could not be varied by

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fixation of uniform tariff under sub-sections (1) and (2). The Umpire further held that the present case was fully covered by the decision of the Supreme Court in Indian Aluminium Co. wherein it was held that where a stipulation in a contract was entered into by a public authority in exercise of a statutory power then, even though such stipulation fettered subsequent exercise of the same statutory power, it would be valid and the exercise of such statutory power would pro tanto stand restricted. In that view of the matter the Umpire held that in terms of clause 9 the increase in unit rate was permissible and the fuel cost variation charges which were variable every month was contrary to clause 9 as increase was permitted only once in a year of accounts, and further that the appellant was entitled to discount of 50% of the charges for electricity and also to discount for prompt payment of bills.

Objections were filed by the respondent before the IInd Additional District Judge during the proceedings initiated for making the award the Rule of the Court. The IInd Additional Distt. Judge set aside the award on the ground that the reference made to arbitration was unilateral. In appeal, the High Court, while holding against the above finding of the IInd Addl. Judge, set aside the award on the ground that the Indian Aluminium Co. case was inapplicable to the present case, and the mistake committed by the Umpire in this regard was error of law apparent on the face of the award. The High Court held that even if the stipulation as to the tariff structure in the agreement be taken to have been Continued in existence in view of sub-section (3) of section 49 of the Act, the same was not unrestricted, and that the stipulation was expressly made subject to certain reservations as would be clear from the opening sentence of clause 9 of the agreement the main clause was "subject to the provisions hereinafter contained". It was further held that in drawing distinction between `rates' and `discount'

and upholding the right of the Board to tamper with the former and negating similar right in respect of the latter, the Umpire had committed an error.

Before this Court it was contended on behalf of the appellant that a specific question of law being a question of construction had been referred to the Umpire and hence, his decision, right or wrong, had to be accepted.

On behalf of the respondent it was contended that there was no specific question of law referred to the Umpire but it was a general reference in which a question of law arose, and that it was a question in the proceedings and the question of law, as such, did not arise.

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Allowing the appeal, it was,

HELD: (1) Even assuming that there was an error of construction of the agreement or even that there was an error of a law in arriving at a conclusion, such an error was not an error which was amenable to correction even in a reasoned award under the law. [683B]

(2) Where the question referred for arbitration is a question of construction, which is, generally speaking a question of law, the arbitrator's decision can not be set aside only because the court would itself have come to a different conclusion, but if it appears on the face of the award that the arbitrator has proceeded illegally, as, for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error in law which may be ground for setting aside the award. [683G-H; 684A]

(3) In order to set aside an award, there must be a wrong proposition of law laid down in the award as the basis of the award. [684D]

(4) In the instant case, a question of law arose certainly during the course of the proceedings. Such a question has been decided by the Umpire on a view which is a possible one to take. Even if there was no specific reference of a question referred to the Umpire, there was a question of law involved. Even on the assumption that such a view is not right, the award is not amenable to interference or correction by the Courts of law as there was no proposition of law which could be said to be the basis of the award of the Umpire, and which was erroneous. [689B-Cl

(5) The Umpire in his award stated that the decision of this Court covered and supported the claim of the claimant. In the present case the only difference was that there was only an agreement which was held by the Umpire to have become operative. Once that agreement was binding on the Board, its terms could not be vaired from the uniform rate under sub-sections (1) and (2) of section 49. The Umpire was right. The Umpire committed no error in arriving at such conclusion. Further-more, such a conclusion was certainly a possible view of the interpretation of the decision of this Court in Indian Aluminium Co.'s case, if not the only view.

[688G-H; 689A]
Indian Aluminium Co. Ltd. v. Kerala Electricity Board, [1976] 1 SCR 70; Coimbatore Distt. P.T. Sangam v. Bala
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Subramania Foundry, AIR (1987) SC 2045; Delhi Municipal corpn. v. M/s Jagan Nath Ashok Kumar, AIR (1987) SC 2316; M/s. Hindustan Tea Co. v. M/s. K. Sashikant & Co., AIR 1987 SC 81; Kanpur Nagar Mahapalika v. M/s. Narain Das Haribansh, [1970] 2 SCR 28; Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd., [1923] AC 480; Dr. S.B. Dutt v. University of Delhi, [1959] SCR 1236; M/s. Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. v. Union of lndia, [1973] 1 SCC 708; Tarapore & Co. v. Cochin Shipyard Ltd. Cochin, [1984] 3 SCR 118; Hitchins & Anr. v. British Coal Refining, [1936] 2 A.E.R. Reprint 191; Pioneer Shipping Ltd. & Ors. v. ETP Tioxide Ltd., [1981] 2 AER 1030, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 756 of 1988.

From the Judgment and Order dated 21.7.1987 of the High Court of Allahabad in F.A.F.O. No. 106 of 1984. F.S. Nariman, M.L. Verma, Jeet Mahajan and Ranjit Kumar for the Appellats.

B. Sen, Gopal Subramanium and Mrs. Shobha Dikshit for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This appeal by special leave is from the judgment and order of he High Court of Allahabad, dated 21st July, 1987. The High Court has set aside the award of the Umpire. To appreciate the decision and the contentions urged, a few facts are necessary. On or about 20th October, 1962 there was a Bulk Supply Agreement entered into between Agra Electric Supply Co. Ltd. and the appellant herein, for supply of electrical energy to the latter's hotel, inter alia, containing terms of rates, discounts, minimum sum payable and increase in the rates and sums payable once a year on account of increase in cost of production and distribution of electrical energy. Clause 9 of the said agreement contained terms of the rate of supply and the contingencies in which such rates could be increased. The said Clause provided as follows:

"The consumer shall, subject to the provisions hereinafter contained, pay to the Company for all electrical energy supplied and registered or estimated as herein provided at the rate of Rs.0.20 (Rupees zero decimal two zero) per unit per month for all energy so supplied and registered and/or estimated in the case of a defective meter installation in accordance with the proviso to clause 6 thereof. The charge for all energy shall be subject to the scale of special discounts in accordance with the schedule annexed thereto.

Provided that, (without regard to the quantity of units supplied) if the payment made or to be made for any one English Calendar year ending 31st March in respect of the electricity consumed shall fall short of a minimum sum of Rs. 38640 (Rs. Thirty eight thousand six hundred and forty) the

consumer shall nevertheless pay to the Company such amount in addition to the payments already made in respect of the electricity consumed for such Calendar year as will, being the total payment made in this respect to the said minimum of Rs.38640 (Rs. Thirty eight thousand six hundred and forty).

Provided Further that, in the event of the first and last years of this Agreement not being complete calendar year as aforesaid the Company shall make a proportionate reduction on the aforesaid annual Maximum Demand and Minimum charges in respect of the period for which the said first and last year as the case may be shall be less than a complete calendar year.

Provided also that. if and whenever during the subsistence of this Agreement the Company is satisfied that there has been an increase in the cost of production and distribution of electrical energy it shall be at liberty (but not more than once in any year of accounts) to increase the rates and sums payable by the Consumer under the foregoing provision of this present clause 9 by such amount as it shall in its sole and absolute discretion decide."

There was a clause providing for arbitration i.e. clause 18 which read as follows:

"If any question or difference whatsoever shall arise between the parties to these presents as to the PG NO 675 interpretation or effect of any provision or clause herein contained or the construction thereof or as to any other matter in anyway connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party in connection therewith, when unless the means for deciding any such question or difference is provided for by the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 as the case may be, or by the rules made respectively under the said Acts or by a specific provision of this Agreement, in every such case the matter in difference shall be referred to the Arbitration of two Arbitrators, one to be appointed by each party hereto, and an Umpire to be appointed by the Arbitrators before entering upon the reference and the decision or award of the said Arbitrators or Umpire shall be final and binding on the parties hereto and any reference made under this clause shall be deemed to be a submission to arbitration under the Indian Arbitration Act, 1940 (Act X of 1940) or any statutory modification or re-enactment thereof for the time being in force.

The Arbitrators or the Umpire giving their or his decisions shall also decide by which party the cost of the Arbitration and award shall be paid and if by both parties in what proportion."

On or from 26th September, 1973 the Agra Electric Supply Co. Ltd. increased per unit rate of electricity from 0.20 P to 21.5 P in terms of clause 9 of the said agreement. Thereafter, the bills were sent @ 21.5 P per unit, after giving discounts and rebates as per the agreement. On or about 17/18th December, 1973, the respondent herein took over the undertaking of the Agra Electric Supply Co. Ltd. On or about 16th January, 1974, the respondent informed the appellant by a written communication that consequent upon the expiry of licence granted to Agra Electric Supply Co. Ltd. to generate and supply electricity the respondent had taken it over and would supply electric energy to the hotel and that the Bulk Supply Agreement with Agra Electric Supply Co. Ltd. will continue to be in force with the respondent until such time the agreement is determined in accordance with its

relevant provisions. All bills received subsequent to the take over were billed at the agreed rate allowing discounts and rebates.

On or about 23rd November, 1974, the appellant received a communication from the respondent informing that uniform PG NO 676 tariff rates issued under section 49 of the Electricity Supply Act, 1949 will be applicable to the electrical energy supplied to the hotel w.e.f. 12.10.1974. Section 49 of the Electricity (Supply) Act, 1948 (hereinafter called `the Act'), is to the following effect:

"49. Provision for the sale of electricity by the Board to persons other than licensees. -(1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariff.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:

(a) the nature of supply and the purposes for which it is required:

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee:

(c) the simplification and standardisation of methods and rates of charge for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas. (3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position or any area, the nature of the supply, and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person."

After the said date the bills were sent at the enhanced rate of 0.30 P per unit, adding fuel cost variation charges and without allowing any discount or rebate. On or about 28th November, 1974, the appellant, however, protested against the unilateral withdrawal of contractual discount and rebates and enhancement in the rates and drew the attention of the respondent to the existing and subsisting bulk supply agreement, but the respondent took no action. On or about 31st August, 1976, a Circular was issued by the Chief Engineer of the respondent advising all Engineers-in- charge of the undertakings to bill the consumers having special agreements with the ex-licensees as per those agreements and steps be taken to terminate the old agreements with new agreements providing for application of tariff.

On 7th October, 1977, vide written communication the appellant informed the respondent that upon latter's failure to resolve the disputes and differences arising between them consequent to the illegal increase in the rates and discontinuation of discounts and rebates w.e.f. 12.10.1974, the appellant was referring the disputes for decision by the arbitrator and appointed Justice Manchanda, a retired Judge of the Allahabad High Court, as the arbitrator and the respondent appointed Justice Nigam, another retired Judge of the same High Court, as its arbitrator. On or about 8th April, 1977, the joint arbitrators appointed Justice V. Bhargava, a retired Judge of this Court, as an Umpire. Between 3rd November, 1979 and 4th March, 1980, several sittings were held before the arbitrators but the parties were unable to agree and upon their disagreement the disputes were referred to the learned Umpire for decision. From 4th March, 1980 onwards, proceedings started before the Umpire and there was a plea for de novo hearing of the proceedings before the Umpire, by the respondent. The learned Umpire started de novo proceedings taking evidence of the parties. On 21st March, 1980, the respondent filed an application, being Case No. 59 of 1980 under section 33 of the Arbitration Act, 1940 before the District Judge, Lucknow, denying the existence of the agreement dated 20th October, 1962. The respondent also denied the acceptance and adoption of the agreement consequent upon the take over and sought a declaration from the Court that the arbitration agreement did not exist. The Vth Addl. District Judge by his order dated 27.5.1983 held that the agreement was duly executed, accepted and adopted by the respondent and was binding on it and that the arbitration proceedings were pursuant to the arbitration clause and, as such, the application under section 33 of the Arbitration Act, was rejected.

On 1st June, 1983, the award was made by the learned Umpire holding that in terms of clause 9 the increase in the unit rate was permissible and the fuel cost variation charges which were variable every month was contrary to clause 9 as increase was permitted only once in a year of accounts, and further held that the appellant was entitled to discount of 50% on the charges for electricity; and was also entitled to 0.03 paise per rupee for prompt payment of bills. The learned Umpire in his award set out the facts and therein recited these as follows:

"The main terms of the agreement were that in respect of the bulk electric supply to the petitioner the Hotel was to be charged at the rate of twenty paise per unit per month. There was also a clause for granting a special discount to the petitioner to the extent of 50% and in addition a cash discount of three paise per whole rupee was to be allowed to the petitioner in case the petitioner paid the bills of the Company within the stipulated period. The bills for the electric energy supplied by the Supply Company continued on these contractual rates till October 1974, even after the Supply Company was acquired by the opposite party in December 1973, and the bills were accordingly paid. However, in October 1974, the opposite party under s. 49 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act) unilaterally and according to the petitioner illegally and arbitrarily purported to replace the original terms in the agreement and revised the charges with effect from 12th October, 1974. The Board, under this notification, increased the rate of electricity supplied to 30 paise per unit and further refused to grant the discount to which the petitioner was entitled under the agreement as well as the cash discount of three paise per rupee. The opposite party further levied a fuel cost adjustment charges and subsequently the rate was raised to 31 paise per unit with effect from June 1976."

Thereafter, the learned Umpire set out the history of the negotiations between the parties resulting in the agreement dated 20.10.1962. After referring to the bulk supply agreement the learned arbitrator set out the terms upon which supply was made to the appellant. The appellant was to make an initial payment of Rs.35,326 towards service connection for the purpose of supply, though irrespective of PG NO 679 the payment the service connection was to continue to be the property of the Supply Company. The Supply Company was to make provision in the appellant's monthly bill granting a rebate of Rs. 147.20 for each month that the agreement remained inforce upto a maximum of 20 years. Under para 9 of the agreement the appellant was to pay the Company for all electric energy supplied, registered, and estimated at the rate of 20 paise p.m. The charges for energy consumed were subject to special discount according to the scale in the schedule which permitted a maximum discount of 50% in case a minimum of 41,000 units were consumed in each month. The consumption as shown by the record was never less than 41,000 units p.m. In addition, there was a provision under clause (ii) of the agreement for cash discount of 3 paise per whole rupee in case payment was made within the stipulated period. Under the first proviso to para 9, the appellant had to pay a minimum sum of Rs.38,640 for electricity consumed in any English calendar year. The provision made was that in addition to the amount paid in accordance with the bills, the appellant was to make payment in such cases so as to make up the said minimum of Rs.38,640. The second proviso laid down that if and whenever during the subsistence of the agreement the Supply Company was satisfied that there was an increase in the cost of production and distribution of electric energy it shall be at liberty (but not more than once a year) to increase the rates and sums payable by the consumer under the provisions of clause 9 by such amount as the Company shall, in its sole and absolute discretion, decide. Hence, it was held by the Umpire on the oral and documentary evidence that the payment was made at the enhanced rate under protest. Challenging the Award, several contentions were raised, namely, (i) that there was no agreement in existence and that neither the Umpire nor the arbitrator had any jurisdiction to make the award. This contention was rejected and no argument was advanced before us challenging this finding of the Umpire, (ii) that the appellant should prove the terms and conditions upon which the Supply Company was supplying the electricity to the appellant. This the Umpire held, had been duty proved and there was no challenge to either of the findings of the Umpire. (iii) it was thirdly contended that the agreement even if in existence, was not binding upon the respondent. and that while admitting that the respondent under section 49 of the Act, issued Notification under which the tariff was revised w.e.f. 12.10.1974, it was claimed that the opposite party had not, in any way, failed to fulfil its obligations on the alleged agreement and that the opposite party was fully competent under law to fix a uniform tariff and also to levy fuel PG NO 680 adjustment charges. This is the main and substantial question involved in this matter.

It was then contended that the respondent was entitled even under the agreement and under its second proviso to clause 9 to revise the tariff and the appellant was not entitled to any relief. It was further urged that the payments were made after coming into operation of the Electricity (Supply) Act, under protest. In respect of these contentions the learned Umpire held that the plea was that even if the agreement was in existence, it was not binding on the opposite party and that the opposite party was competent under section 49 of the Electricity Supply Act, to fix revised charges w.e.f. 12.10.1974 and had not violated any terms of the agreement. The appellant had also relied on the alternative provisions of section 49(3) of the Act, set out hereinbefore. The said sub-section (3)

provides that nothing contained in sub-sections (1) & (2) of section 49 shall derogate from the power of the Board, if it happens to enter into an agreement at different rates of tariff with any person other than a licensee. It appears that when the Supply Company was taken over on l7/18.12.1973, the resident Engineer wrote a letter on 16.1.1974 in which he informed the appellant that the licence of M/s. Agra Electric Supply Co. Ltd. having expired and the U.P. State Electricity Board having taken over the supply, it was to supply energy to the appellant at the aforesaid date. Their further contention was that the bulk supply agreement which the appellant had with M/s. Agra Electric Supply Co. Ltd., would continue to be in force with the State Electricity Board until such time as the agreement was determined in accordance with the relevant provisions thereof. The learned Umpire held that the letter clearly laid down that the U.P. Electricity Board had accepted the agreement which was in existence between the Supply Company and the appellant, and the Umpire proceeded on that basis. The learned Umpire further stated as follows:

"The Board thus having accepted the agreement with the claimant, it became binding on the Board and under sub- section (3) of s. 49 of the Electric Supply Act nothing contained in sub-sections (1) & (2) of s. 49 of the Act could have any bearing on the terms of the agreement. The result was that the uniform tariff fixed by the Board with effect from 12th October, 1974 did not apply to the claimant and the claimant had to be granted the various rebates laid down in the agreement. The decision of the Supreme Court in Indian Aluminium Co. Ltd. v. Kerala Electricity Board, PG NO 681 [1976] 1 SCR pa. 70 fully covers the case and supports the claim of the claimant. In the case before the Supreme Court an agreement had been entered into by the State Government and it was held that under s. 60 of the Electricity Supply Act, 1940 it became binding on the Kerala State Electricity Board and further that that agreement was enforceable under sub-section (3) of s 49 irrespective of the fixation of uniform tariff under sub-sections (I) and (2) of s. 49. In the present case the only difference is that instead of the agreement being first binding between the consumer and the State Government, the agreement became binding on the Electricity Board, because it accepted the agreement and became a party to it by letter dated 16th January 1974 (Ex. R)."

The aforesaid basis of the decision, it was contended, was the error of law which vitiated the award. This question will require further consideration later. It was held that the decision in Indian Aluminium Co., (supra) fully covered the dispute on this aspect in the instant case. The learned Umpire further held as follows:

"Once the agreement was binding on the Board its terms under sub-section (3) of s. 49 could not be varied by fixation of uniform tariff under sub-sections (1) and (2) of S. 49. The opposite party in these circumstances must be held to have failed to fulfil its obligations under the agreement".

On 1st July, 1983. an application was made under section 12 [2] of the Arbitration Act before the learned District Judge, Lucknow, for filing of the award and making the same Rule of the Court. Objections were filed by the respondent against the said award. The learned kind Addl. Distt. Judge, Lucknow, held that the award was legal, valid and binding on the parties and the alleged grounds of misconduct were not maintainable. The award was. however, set aside on the ground that the reference made to arbitration was unilateral. The appellant filed an appeal. The Lucknow Bench of the Allahahad High Court held against the finding of the Ilnd Additional Distt. Judge Lucknow that

the reference was unilateral. but set-aside the award on the ground that there was an error of law apparent on the face of it in view of the agreement dated 20.10. 1962 and the ratio of the decision of this Court in Indian Aluminium Co., (supra). The revision filed by the respondent against the judgment of the Vth Addl. Distt Judge, Lucknow was also rejected. This appeal is from the aforesaid decision of the High Court by special leave.

PG NO 682 The two learned Judges of the High Court gave separate judgments. The High Court was of the view that the instant case was distinct from the facts in the case of Indian Aluminium Co., (supra). There it was held that where a stipulation in a contract is entered into by a public authority in exercise of a statutory power then, even though such stipulation fetters subsequent exercise of the same statutory power, it would be valid and the exercise of such statutory power would pro tanto stand restricted. Mr Justice Loomba was of the view that in the instant case even if the stipulation as to the tariff structure in the agreement by taken to have been continued to be in existence in view of sub-section (3) of section 49 of the Act, the same was not unrestricted. The stipulation was expressly made subject to certain reservations as would be clear from the opening sentence of clause 9 of the agreement, the main clause was "subject to the provisions hereinafter contained". Mr Justice Loomba was of the view that the decision of the Indian Aluminium Co., (supra) case was inapplicable to the present case. According to the learned Judge, the mistake committed by the Umpire was a manifest error. It was further stated that it is well-settled proposition of law that if the reasons are stated on the basis of which the award was made and such reasons are found to be erroneous, the errors become apparent on the face of the award and constitute legal misconduct on the part of the Umpire vitiating the award. The other learned Judge Mr Justice Mathur also held that there was error of law apparent on the face of the award of the Umpire. He was of the opinion that the expression "sum payable by the consumer under the foregoing provision of this present clause 9" was subject to the discounts mentioned in the subsequent clauses of the agreement. In view of the discounts, the sum payable under clause 9 was altered and the altered amount becomes the sum payable under clause 9. According to the learned Judge, since the amount determined after allowing discounts is also sum payable under clause 9, it followed that in exercise of the power conferred under the third proviso, the discount could only be tampered with in the same way the unit charge could be tampered with. Beyond this it was not permissible. In permitting this the Umpire committed an error in drawing distinction between 'rates' and 'discount' and upholding the right of the Board to tamper with the former and negating similar right in respect of the latter. According to the learned Judge, this was a wrong understanding of the decision of the Indian Aluminium's case (supra). In the aforesaid view of the matter, the learned Judge agreed with the other learned Judge and held that the award was vitiated.

PG NO 683 It appears that the main question that arises is: whether the decision of this Court in Indian Aluminium's case (supra) was properly understood and appreciated by the learned Umpire and whether he properly applied the agreement between the parties in the light of the aforesaid decision. It was contended that the question was whether the sums payable under clause 9 included discounts. On the aforesaid basis it was contended that there was an error of law and such error was manifest on the face of the award. Even assuming, however, that there was an error of construction of the agreement or even that there was an error of law in arriving at a conclusion, such an error is not an error which is amenable to correction even in a reasoned award under the law. Reference

may be made to the observations of this Court in Coimbatore Distt. P.T. Sangam v. Bala Subramania Foundry, AlR 1987 SC 2045, where it was reiterated that an award can only be set aside if there is an error on its face. Further, it is an error of law and not mistake of fact committed by the arbitrator which is justiciable in the application before the Court. Where the alleged mistakes or errors, if any, of which grievances were made were mistakes of facts if at all, and did not amount to error of law apparent on the face of the record, the objections were not sustainable and the award could not be set aside. See also the observations of this Court in Delhi Municipal Corpn. v. M/S. Jagan Nath Ashok Kumar, AIR 1987 SC 2316, where this Court reiterated that reasonableness of the reasons given by an arbitrator in making his award cannot be challenged. In that case before this Court, there was no evidence of violation of any principle of natural justice, and in this case also there is no violation of the principles of natural justice. It may be possible that on the same evidence some court might have arrived at some different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award of an arbitrator. Also see the observations of Halsbury's Laws of England, 4th Edn., Vol. 2, at pages 334 & 335, para 624, where it was reiterated that an arbitrator's award may be set aside for error of law appearing on the face of it, though that jurisdiction is not lightly to be exercised. If a specific question of law is submitted to the arbitrator for his decision and he decides it, the fact that the decision is erroneous does not make the award bad on its face so as to permit it being set aside; and where the question referred for arbitration is a question of construction, which is, generally speaking, a question of law, the arbitrator's decision cannot be set aside only because the court would itself have come to a different conclusion; but if it appears on the face of the award that the arbitrator has proceeded illegally, as, for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not PG NO 684 countenance, there is error in law which may be ground for setting aside the award.

It was contended by Mr F.S. Nariman, counsel for the appellant, that a specific question of law being a question of construction had been referred to the Umpire and, hence, his decision, right or wrong, had to be accepted. In view of clause 18, it was submitted that in this case a specific reference had been made in the interpretation of the agreement between the parties, hence, the parties were bound by the decision of the Umpire. Our attention was drawn to the observations of this Court in M/s. Hindustan Tea Co. v. M/s. K. Sashikant & Co., AIR 1987 SC 81, where this Court held that under the law, the arbitrator is made the final arbiter of the dispute between the parties, referred to him. The award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate facts. Where the award which was a reasoned one was challenged on the ground that the arbitrator had acted contrary to the provisions of s. 70 of the Contract Act, it was held that the same could not be set aside. In order to set aside an award, there must be a wrong proposition of law laid down in the award as the basis of the award. For this see the observations of this Court in Kanpur Nagar Mahapalika v. M/s. Narain Das Haribansh, [1970] 2 SCR 28. In that case the appellant had entered into a contract with the respondent for certain construction work. The contract contained an arbitration agreement between the parties. The respondent filed a suit in 1946 claiming certain moneys due against its final bills but, at the instance of the appellant, the suit was stayed and the matter referred to arbitration. The arbitrator made an award in March 1960 in favour of the plaintiffs determining the amount payable by the appellant. Thereafter the appellant made an application for setting aside the award on the ground that the arbitrator had misconducted himself in not properly considering that the claim of the respondent

was barred by limitation under section 326 of the U.P. Act 2 of 1916. Although the trial court set aside the award, the High Court, in appeal, reversed this decision. In appeal to this Court it was contended for the appellant that the award was bad by reason of an error apparent on its face. Dismissing the appeal, it was held that there could not be predicated of the award that there was any proposition of law forming the basis of the award, and, therefore, it could not be said that there was any error apparent on the face of the award.

PG NO 685 The Judicial Committee in the famous decision of Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. Ltd., [1923] AC 480 held that the error of law on the face of the award means that one can find in the award or in document incorporated thereto as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which is erroneous. The same view was reiterated by this Court in Dr. S.B. Dutt v. University of Delhi, [1959] SCR 1236.

In this case. Mr. Nariman appearing for the appellant contended that there was no proposition of law as such stated by the Umpire which could be said to be the basis of his decision. Hence, the award was not amenable to corrections on the ground that there was an error of law apparent on its face. Mr. Nariman further submitted that the Umpire had decided the specific question of law and such a decision, right or wrong, is binding on the parties. In aid of his submission Mr. Nariman referred to the decision of this Court in M/s. Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. v. Union of India & Ors., [1973] 1 SCC 708, where it was held that in a case of arbitration where the appellants had sepcifically stated that their claims were based on the agreement and on nothing else and all that the arbitrator had to decide was as to the effect of an agreement between the appellant and the respondent, the arbitrator had really to decide a question of law i.e. of interpreting the document, the agreement. Such a decision his, is not open to challenge.

Our attention was drawn to the observations of this Court in Tarapore & Co. v. Cochin Shipyard Lld. Cochin & Anr., [l984] 3 SCR 118, where Desai J., spoke for the Court and Justice Chinnappa Reddy agreed with him. It was stated that a question of law might figure before an arbitrator in two ways. It may arise as an incidental point while deciding the main dispute referred to the arbitrator or in a given case parties may refer a specific question of law to the arbitrator for his decision. This Court reiterated that the arbitration has been considered a civilised way of resolving disputes avoiding court proceedings. There was no reason why the parties should be precluded from referring a specific question of law to an arbitrator for his decision and agree to be bound by the same. This approach manifests faith of parties in the capacity of the tribunal of their choice to decide even a pure question of law. If they do so, with eyes wide open, there is nothing to preclude the parties from doing so. If a question of law is specifically referred and it becomes evident that the parties desired to have a decision on the specific question from the arbitrator rather than one from the Court, then the court will not interfere PG NO 686 with the award of the arbitrator on the ground that there was an error or law apparent on the face of the award even if the view of law taken by the arbitrator did not accord with the view of the court. A long line of decisions was relied upon by this Court for that proposition. Mr. B. Sen, learned counsel for the respondent, however, contended that in the present case, there was no specific question of law referred to the Umpire. He submitted that it was a general reference in which a question of law arose. It was any question in the proceedings and the

question of law, as such, did not arise. According to Mr. Sen, the mistake that the Umpire, has committed is clear from his following statement:

"The Board thus having accepted the agreement with the claimant, it became binding on the Board and under sub- section [3] of s. 49 of the Electricity Supply Act nothing contained in sub-section (1) & (2) of s. 49 of the Act could have any bearing on the terms of the agreement. The result was that the uniform tariff fixed by the Board with effect from 12th October, 1974 did not apply". It was stated that no specific question having been referred to, this mistake was fatal.

We are unable to accept this submission. Our attention was drawn by Mr. Nariman to the observations of Justice Macnaghten in Hitchins & Anr. v. British Coal Refining Processes Ltd., [1936] 2 A.E.R. Reprint 191. Ihere, by an agreement the applicants were to act as consulting Engineers in connection with a certain coal refining process owned by the respondents. While the plant for the working of the process was being erected, a dispute arose. the respondents wanting the applicants to attend every day at the site of the plant and the applicants considering this to be no part of their duty. The respondents thereupon terminated the agreement and the matter was referred to arbitration. The applicants pleaded that the termination of the agreement was unjustified; the respondents pleaded that the applicants should have attended every day and that they had been quilty of negligence in respect of certain matters set out in the counterclaim. The arbitrator found the termination of the agreement to be unjustified and also negligence on the part of the appellants in respect of the matters set out in the counterclaim, and he awarded the appellants damages after setting off an unspecified amount for damages for negligence. The respondents moved to set aside the award on PG NO 687 the ground of error of law apparent on the face of it. At the hearing the respondents contended that the whole of the pleadings in the arbitration were admissible. The respondents contended that for the purpose of deciding whether there was an error of law apparent on the face of the award, the court could not look at any document except the award itself. The respondents further contended that the arbitrator had committed an error of law in deciding that the negligence found did not afford sufficient ground for the termination of the agreement, and further that on the true consideration of the agreement, the refusal to attend daily was as a matter of law a sufficient ground for the termination of the agreement. It was held that inasmuch as the arbitrator in his award referred to certain paragraphs in the counterclaim, such paras ought, in considering whether there was an error on the face of the award, to be regarded as forming part of the award. Whether misconduct justifies dismissal is a question of fact, and the arbitrator's decision was final. It was further held that the light to terminate the agreement because the applicants refused to attend daily was a question specifically submitted to the arbitrator and the court could not interfere with his decision, even if the question was a question of law. Mr. Justice Macnaghten at page 195 of the report observed that it was permissible to look at the whole of the pleadings delivered in the arbitration, and it appears therein that the respondents affirmed and the applicants denied that the respondents were entitled to terminate the agreement as the applicants refused to attend daily at the site, and that this was a specific question submitted to the decision of the arbitrator. Our attention was also drawn to the observations of House of Lords in Pioneer Shipping Ltd. and Ors. v. ETP Tioxide Ltd., [1981] 2 AER 1030. In that case by a charterparty dated 2nd November, 197 the owners of a vessel chartered her to the charterers. It was held by the House of Lords that having regard to the purpose the Arbitration Act,

1970 of England which was to promote greater finality in arbitration awards then had been the case under the special case procedure judicial interference with the arbitrator's award was only justified if it was shown that the arbitrator had misdirected himself in law or had reached a decision which no reasonable arbitrator could have.

In the instant case, the view taken by the Umpire on the interpretation of the agreement between the parties in the light of the observations of this Court in Indian Aluminium Co.'s case (supra) was at best a possible view to take, if not the correct view. If that was the position then such a view, even if wrong, cannot be corrected by this Court on the basis6is of long line of decisions of this Court. In the PG NO 688 aforesaid view of the matter it is necessary to examine the aforesaid decision in the Indian Aluminium Co's case (supra). There under section 49(1) & (2) of the Electricity Supply Act, 1948, the Legislature had empowered the State Electricity Board to frame uniform tariffs and had also indicated the factors to be taken into account in fixing uniform tariffs. Under sub-section (3), the Board was empowered, in the special circumstances mentioned therein, to fix different tariffs for the supply of electricity, but in doing so, sub-section (4) directed that the Board was not to show undue preference to any person. Under s. 59 it was stipulated that the Board shall not, as far as practicable, carry on its operations at a loss and shall adjust its charges accordingly from time to time. Certain consumers of electricity had entered into agreements for the supply of electricity for their manufacturing purposes at specified rates for specified period. Some of the agreements were entered into with the State Governments and the others with the State Electricity Boards. In one of the agreements there was an arbitration clause. On account of the increase in the operation and maintenance cost, due to various causes which caused loss to the State Electricity Boards, the Boards wanted to increase the charges in all the cases. The consumers challenged the competency of the Boards to do so by petitions in the respective High Courts. The High Court sustained the Board's claim, in some cases, under sections 49 & 59, and in others, held that the Board was incompetent to do so. In the case of the consumer where there was the arbitration clause. the High Court refused to entertain the petition on account of the clause. This Court held that fixation of special tariffs under s. 49 (3) can be a unilateral Act on the part of the Board but more often it is the result of negotiations between the Board and the consumer and hence a matter of agreement between them. Therefore, the Board can, in exercise of the power conferred under the sub-section, enter into an agreement with a consumer stipulating for special tariff for supply of electricity for a specific period of time. The agreements for supply of electricity to the consumers must therefore he regarded as having been entered into by the Boards in exercise of the statutory power conferred under section 49(3). The Umpire in his award stated that the decision of this Court covered and supported the claim of the claimant. In the present case the only difference is that there was only an agreement by which the Electricity Board accepted the agreement which was held by the Umpire to have become operative. Once that agreement was binding on the Board, its terms could not be varied from the uniform rate under sub- sections (1) and (2) of s. 49. The Umpire was right. In our opinion, the Umpire committed no error in arriving at such conclusion. Furthermore, such a conclusion is certainly a possible view of the interpretation of the decision of this PG NO 689 Court in Indian Aluminium Co's case, if not the only view. We need go no further than that.

We, are, therefore, of the opinion that the view taken by the Umpire on section 49 was a possible view in the light of the decision of this Court in Indian Aluminium's case. In the premises, a question

of law arose certainly during the course of the proceedings. Such a question has been decided by the Umpire on a view which is a possible one to take. Even if there was no specific reference of a question of law referred to the Umpire, there was a question of law involved. Even on the assumption that such a view is not right, the award is not amenable to interference or correction by the courts of law as there is no proposition of law which could be said to be the basis of the award of the Umpire, and which is erroneous.

In the premises, we are of the opinion that the High Court and the learned IInd Additional District Judge were in error in the view they took of the award of the Umpire. The appeal must, therefore, be allowed and the decision of the High Court, dated 21st July, 1987 as well as the order of the IInd Additional Judge, Lucknow, dated 30th May, 1984 are set aside. No other point was urged challenging the award of the Umpire. The award of the Umpire is confirmed and let the award be made Rule of the Court under section 14(2) of the Act. The appeal is allowed with costs.

R.S.S. Appeal allowed.