

SOHAN LAL GUPTA (DEAD) THR. LRS. AND ORS.

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v.

SMT ASHA DEVI GUPTA AND ORS.

SEPTEMBER 1, 2003

[V.N. KHARÉ, C.J. AND S.B. SINHA, J.]

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Arbitration Act, 1940

Arbitration proceedings—Reasonable opportunity—Held, every party entitled to reasonable opportunity—However, party does not have unfettered right—Arbitrator has a right of managing the hearing and giving directions in pursuance thereof—Direction to remain present on particular date, time and place would be sufficient compliance of the requirement of law—Party has no absolute right to insist on being consulted—Matter within the discretion of arbitrator and court will intervene only in the event of positive abuse—Party alleging violation of principles of natural justice claiming that no proper notice received—Held, party not only required to show that proper notice was not given but also to show that serious prejudice was caused thereby—In the facts and circumstances, held, reasonable opportunity of participation in arbitration proceedings was granted—Principles of natural justice—Administrative Law.

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Two groups of persons—Group G and Group S held several properties in which both groups had 50% shares each. Disputes and differences having arisen between the two groups as also between family members of the same group, an agreement was entered into for referring some of the disputes to a Sole Arbitrator. The Arbitrator gave two awards, one for division of 50% cumulatively and another for division among family members of G group. Seven members of G group including S filed objections to the said awards. Single Judge set aside the award, *inter alia*, on the ground that no reasonable notice was given to S which amounted to violation of principles of natural justice and that conduct of the Arbitrator in seeking a letter from the parties in anticipation that they would accept his award makes the award vulnerable. Appeal filed by appellants was dismissed by the Division Bench. Hence, these appeals.

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- A** Appellant contended that notice was issued to all the parties and a reasonable notice to S in the facts and circumstances of the case should be inferred; that S had appeared before the Arbitrator earlier on various dates; that interest of all objectors had sufficiently been represented before the arbitrator since other objectors participated in the arbitration proceedings; and that the letter of the Arbitrator to the parties seeking a letter that they would not challenge the award did not vitiate the arbitration proceedings.

Allowing the appeals, the Court

- C** HELD : 1. There cannot be any dispute with regard to the proposition of law that the parties would be entitled to a reasonable opportunity of putting their case. For constituting a reasonable opportunity, the following conditions are required to be observed : (i) Each party must have notice that the hearing is to take place; (ii) Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses; (iii) Each party must have the opportunity to be present throughout the hearing; (iv) Each party must have a reasonable opportunity to present evidence and argument in support of his own case; (v) Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument; (vi) The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.
- E** [263-F, 265-B-F]

- F** *Montrose Cannel foods Ltd. v. Eric Wells (Merchants) Ltd., (1965) 1 Lloyd's, Report 597; Henry Southern Ltd. v. Norwich Union Life Insurance Society, (1992) 31 E.G. 701* referred to.

Russel on Arbitration 22nd Edition, Paragraph 5-053 referred to.

- G** 2. A party does not have an unfettered right. The arbitrator can not only ask a party to comply with procedural orders and directions including those imposing limits as to time and content of submissions and evidence but also the arbitrator has a right of managing the hearing. If the arbitrator is to manage the arbitration proceedings, he would be entitled to give direction to the parties to be present on the
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particular date, particular time and particular place which would be sufficient compliance of the requirement of law. A party has no absolute right to insist on his convenience being consulted in every respect. The matter is within the discretion of the arbitrator and the Court will intervene only in the event of positive abuse. If a party, after being given proper notice, chooses not to appear, then the proceedings may properly continue in his absence. [264-F, 266-B, C, 266-E, F]

Montrose Cannel Foods Ltd. v. Eric Wells (Marchants) Ltd., (1965) 1 Lloyd's Report 597 and *British Oil and Cake Mills Ltd. v. Horrace Battin & Co. Ltd.*, (1922) 13 Ll L Rep. 443, referred to.

Russel on Arbitration 22nd Edition, paragraphs 5-054 and 5-057, referred to.

3.1. The principles of natural justice, it is trite, must not be stretched too far and cannot be put in a straight jacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby. [267-C, D]

Managing Director, ECIL v. B. Karunakar, [1993] 4 SCC 727 and *U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead) by L.Rs. and Ors.*, [1995] 2 SCC 326, followed.

The Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee, [1997] 2 SCC 256; *R.S. Dass Etc. v. Union of India and Ors.*, [1986] Supp. SCC 617; *State Bank of Patiala v. S.K. Sharma*, [1996] 3 SCC 356; *Union of India and Ors. v. Anand Kumar Pandey and Ors.*, [1994] 5 SCC 663; *M.C. Mehta v. Union of India and Ors.* [1999] 6 SCC 237; *Graphite India Ltd. and Anr., v. Durgapur Project Ltd. and Others*, [1999] 7 SCC 645; *Aligarh Muslim University and Others v. Mansoor Ali Khan*, [2000] 7 SCC 529; and *State of U.P. v. Harendra Arora and Anr.*, [2001] 6 SCC 392, relied on.

D.L. Miller and Co. Ltd. v. Daluram Goganmull, AIR (1956) Calcutta 361; *Khaitan (India) Ltd. & Ors. v. Union of India & Ors.*, Cal LT (1999) 2 HC 478 referred to.

A *Administrative Law* 8th Edn. by William Wade and Christopher Forsyth at P. 491 referred to.

B 3.2. Each party complaining violation of natural justice will have to prove the misconduct of the arbitral tribunal in denial of natural justice to them. He must show that he was otherwise unable to present his case which would show that the matters were outside his control and not because of his own failure to take advantage of an opportunity duly accorded to him. [271-G-H]

C *Remusagar Power Co. Ltd. v. General Electric Co.*, AIR (1994) SC 860 relied on.

Minmetals Germany GmbH Ferco Steel Ltd., (1999) 1 All ER (Comm) 315 referred to.

D 4. The minutes of the arbitration proceedings clearly show that not only S had notice of arbitration proceedings but also took active part therein days after days. The circular letter dated 12.5.1976 was issued by the arbitrator so as to give a notice of caution that the arbitration proceedings shall be held and continued at Kolkata. S does not say that he did not receive the circular letter dated 12.5.1976. He did not make out a case that the said dates did not suit him. S does not say that he had difficulty in appearing on 15.6.1976 or any subsequent date and he had asked for adjournment. As despite receiving the said circular letter from the arbitrator, he did not choose to make himself available on 8.6.1976 at his own, the arbitrator sent him a telegram dated 12.6.1976. The said telegram was sent *ex abundanti cautela*.
F [265-G-H, 266-C, D]

G 5. The ground that the arbitrator had asked the parties to issue a letter to him that his award shall not be questioned would not render the award a nullity inasmuch the same was not acted upon and in fact no letter was issued. The arbitrator must have done so keeping in view the particular nature of the disputes and to see that all the disputes come to an end. [272-C]

H 6. Keeping in view the facts and circumstances of the case, S cannot be said to have been refused a fair opportunity of participation

in the arbitration proceedings. Award given by the arbitrator is made rule of the court. Any transaction in regard to property covered by the award shall be subject to the present decision. [272-B, 274-B] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2809 of 1979.

From the Judgment and Order dated 1.8.79 of the Calcutta High Court in A. No. 241 of 1978. B

WITH

C.A. No. 2810/79 C.P. (C) No. 484 of 1998 in C.A. No. 2809/79. C

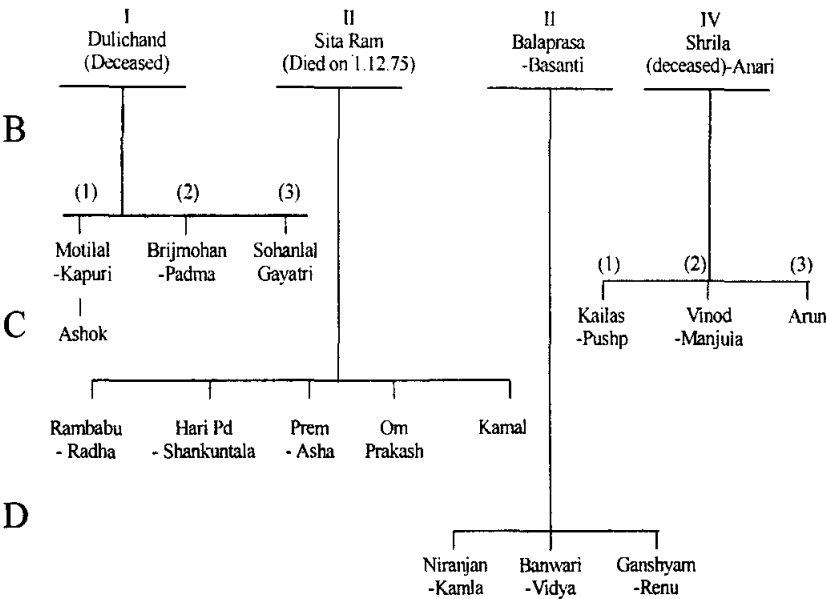
Bhaskar P. Gupta, J.P. Goyal, R.K. Maheshwari, Rishi Maheshwari, Ms. Shaily Bhasin Maheshwari, Raj Kumar Kaushik, M/s. J.B.D. & Co., (NP), Parijat Sinha, Rameshwar Prasad Goyal K.K. Gupta, Varinder Kumar Sharma, Bijan Kumar Ghosh, B.P. Subha, B.P. Nirbhay, Shrish Kumar Misra (NP), Gourab K. Banerji, Kaushik Mandal, Ms. Sangeeta Mandal, Kapil Chaudhary, Ms. Jayasree Singh, Ms. Swati Sinha, Ms. Sandhya Goswami (NP), Tarun Johri, Arvind Kumar, Ms. Jaya, C.S. Ashri, P.D. Sharma, Vijay Kumar Sharma in-peron for Respondent No. 11, Senthil Jagadeesan, V. Ramasubramanian, J.P. Pandey, D.N. Mishra, Uma Datta (NP), Chinnasamy (NP), Arun Aggarwal, Pallav Saxena and Rao Ranjit (NP) the the appearing parties. D E

The Judgment of the Court was delivered by

S.B. SINHA, J. : What constitutes a reasonable notice by an arbitrator is the question involved in these appeals which arise out of a judgment and decree dated 1.3.1979 passed by a Division Bench of the Calcutta High Court affirming an order passed by a learned Single Judge setting aside an arbitration award. F

The basic fact of the matter is not in dispute. Two groups of persons – one Guptas and another Sharmas – held several properties including three firms, six limited companies, one trust and other movable and immovable assets. Both the groups had 50% shares each. The family members of the Guptas and Sharmas Groups were interested in many or in some of the businesses and the firms. The family tree of the Gupta Group is as under : G H

A GENELOGICAL TABLE OF GUPTA GROUP



E Disputes and differences having arisen between the two groups as also between the family members of the same group, an agreement was entered into on or about 10.4.1975 for referring some of the disputes to the arbitration of one Mr. B.J. Bhide. The material parts of said agreement are as under :

- F “1. The parties hereto hereby agree that all disputes differences
- G between the parties or their representatives concerning or relating to or touching the said several firms, companies, assets moveable or immoveable or any act done by the parties or in regard to their respective rights, duties and obligations of the parties hereto or their enforcement which exist between the parties and also of other disputes and differences that may hereafter arise between the parties and be laid by the parties or either of them before he shall make his award are hereby referred to the Award and final
- H determination of Shri P.J. Bhide alias Purshottam Jagannath

Bide, son of Shri J.V. Bhide, residing at No.P-390 Keytolla Lane, Calcutta-29. A

2. That the said Arbitrator shall have powers to have the accounts of the said firms and/or companies and/or assets checked, inspected and/or audited by the Chartered accountant or by any other person or persons. B
3. That the said Arbitrator shall have powers to formulate and lay down his own procedure for the conduct of arbitration proceedings according to law.
4. That the said Arbitrator shall have power to proceed *ex parte* in case the other party fails after reasonable notice to attend before him. C
5. That the said Arbitrator shall have powers to ask for any paper, documents and/or information from any of the parties hereto and to draw adverse inference for non-production thereof. D
6. That the said Arbitrator shall be free to make use of information, documents, papers received from any source whatsoever if he considers them relevant to the matter and to this regard his decision will be final. E
7. That the Arbitrator shall have powers to apply and employ his personal knowledge in the matter under reference while giving his award. F
8. That the Arbitrator shall have power to award cost and to ask for periodical deposits towards his own fees and charges, audit charges and/or other charges from the parties hereto in the manner he may think fit and proper.
9. That the said Arbitrator shall not be required to give any reasoning for his determination and award. G
10. That the said Arbitrator shall have powers to give directions for the running of the business of the said firm and/or companies including the direction for operation of Banking H

- A Account during the pendency of arbitration proceedings.
11. That the said Arbitrator shall have full power and control over all the assets, properties, moveable or immovable of the said firms and/or companies and shall also have the powers to dispose of any of them at his discretion, for the good and benefit of the said firm.
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12. *** **
13. That the arbitrator shall have in his absolute discretion power to award the dissolution of the various partnership firms and to name the date from which such dissolution shall take effect. He may also provide for the mode of realisation of the partnership assets and discharging the liabilities and discharging either by award that the said be done by one of the partners or by the Receiver to be named by the Arbitrator. He may also award which of either of the groups shall be entitled to continue, carrying on business and upon what terms as to the price, mode, payment, indemnity and otherwise. AND he may direct the execution of the each of the parties hereto of all notices, deeds and documents whatsoever necessary for giving full effect to his Award.
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14. Each of the groups within fifteen days of this agreement shall deliver to either of them and to the said Arbitrator a full and particular statement of claim in writing of all his claims and all of the items thereof giving credits for all payments, counter claims and deductions and leaving a margin of at least 2 and ½ inches of each page and shall at the same time deliver all contracts, documents and papers thereof that may be necessary to explain the said Account
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16. The same course shall be adopted and concerning in the set off or the counter claim adduced by either of the parties against the demands of either of them.
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17. The Arbitrator shall be at liberty to employ an Accountant to whose examination he may submit such account connected with the matters hereby referred as she shall think fit. AND

the said Arbitrator may act upon any statement of accounts given by such accountant without being obliged to verify the same. A

18. The Arbitrator may have a legal assessor to sit with him and may act under the advice of such assessor. B

19. The Arbitrator shall be at liberty at any stage of the proceedings to state a case for the opinion of counsel or Court upon any question arising in the course of the reference and may act upon the opinion so taken. C

20. The Arbitrator shall have power to cause such maps plans and measurements valuations to be made and taken as he shall deem necessary or expedient and the costs and expenses thereof shall be in the discretion of the arbitrator and he may accept such valuation as correct and act in terms thereof. D

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38. Ten days' time shall be considered as reasonable time for the purpose of doing or complying with any direction of the Arbitrator." E

The jurisdiction of the Arbitrator was, thus, of wide import.

It is not in dispute that said Shri B.J. Bhide was a Chartered Accountant and a Tax Consultant. He had been dealing with accounts and other matters for and on behalf of the firms and the companies belonging to the parties. The parties indisputably had great faith and confidence in him. F

During the pendency of the arbitration proceedings, certain disputes arose as regards management, wherefor also intervention of the arbitrator was sought for. Several correspondences passed between the arbitrator and the parties with which we are not concerned at this juncture. G

The arbitrator gave two awards, which were as regards (1) division of 50% cumulatively and (2) the said division among the family members of the Guptas. H

A Seven members of the Guptas Groups filed objections to the said awards including one Ghanshyamdas Gupta. The said Ghanshyamdas Gupta at the relevant point of time was a resident of Madras. The primary objections raised by the objectors *i.e.* as regard validity of the awards purported to be (1) violative of Section 108 of the Companies Act, (2) awards made in favour of different persons including friends, relations and other individuals who were not the parties to the agreement; and (3) that the arbitrator erred in treating all the disputes in a composite award, were rejected.

C The learned Single Judge although did not set aside the said award on the ground of misconduct on the part of the arbitrator but set aside the said award, *inter alia*, on the ground of procedural irregularity holding that no reasonable notice was given to the said Ghanshyamdas Gupta. Before the learned Single Judge, a further contention was raised that the arbitrator committed illegality insofar as he sought for a letter from the parties in anticipation that they would accept his award. The learned Single Judge in this behalf was of the opinion :

“...In the background of this case, this conduct of the arbitrator, seeking for such a letter from the parties, in my opinion, makes the award vulnerable.”

E The appellants herein carried the matter in appeal before a Division Bench against the said judgment. The Division Bench of the High Court upheld the findings of the learned Single Judge that Ghanshyamdas Gupta had not been given a reasonable notice amounting to violation of principles of natural justice. The Division Bench also upheld the second finding of the learned Single Judge holding that the comments of the learned Single Judge were clearly justified.

G On the said findings the appeal was dismissed. Cross objections filed by the respondent were also dismissed. Aggrieved thereby and dissatisfied therewith, the appellants are before us.

H Before proceeding to consider the rival contentions of counsel for the parties, we may notice that Ghanshyamdas Gupta filed an Interlocutory Application in the year 1998 withdrawing his objections. However, he engaged another counsel without obtaining a certificate of no objection

from his Advocate on Record for withdrawing the same. We may further place on record that keeping in view the fact that the parties are relations and have a large number of properties, this Court at one stage opined that the disputes and differences amongst the parties should be amicably settled and for the said purpose the matter was referred to Hon'ble Mr. Justice M.K. Mukherjee, a retired Judge of this Court for conciliation. The learned Judge, however, failed in his efforts in this behalf and submitted a report to that effect before this Court in 2001.

Mr. Bhasker P. Gupta, learned senior counsel appearing on behalf of the appellants, has raised a short question in support of these appeals. The learned counsel would submit that the findings of the learned Single Judge as also the Division Bench of the High Court that no reasonable notice was given to Ghanshyamdas Gupta by the arbitrator in terms of the arbitration agreement suffers from manifest error insofar as the entire fact situation obtaining in this case had not been taken into consideration. The learned counsel would submit that the arbitrator was required to submit his award by 30.6.1976. He had been holding arbitration proceedings wherein Ghanshyamdas Gupta had participated from time to time and all the parties having regard to the enormity of the disputes were directed to remain present at Kolkata on 8.6.1976 so that they may be heard and award may be made on or before 30.6.1976, wherefor a notice was issued on 24.5.1976 to all the parties which is in the following terms :

"P.J. Bhide & Co.
Chartered Accountants

7, Waterloo Street,
Calcutta-700 069

24.5.76

Shri Omprakash Gupta,
Calcutta.

Dear Sir,

Re: *Finalization of Arbitration Proceedings.*

It has been desired by all that the arbitration proceedings should be completed at the earliest, so that the necessary Award can be given by the middle of next month.

A In this connection, you are directed to furnish to me the following, at the earliest :-

B 1. Please submit to me a list of furniture, fixtures, fittings and other household appliances in possession of yourself and/or other persons whom you represent belonging to the firm and/or Limited Companies in which you are or the others are partner and/or director. Also state the year in which the same were purchased and the present market value thereof. Similar details may please be furnished in respect of car scooter or cycle, the year of purchase, the make, the present condition thereof and the present market value thereof.

C 2. Kindly furnish to me full description of the buildings and land under the occupation of a partner and/or his relatives in your Group and owned by the Firm and/or company as mentioned in the Arbitration Agreement dated 28th June, 1975. Kindly also state what in your opinion is the market value thereof with supporting evidence, if any. Also state what is the Municipal rateable value of the said buildings and land.

D 3. As regards plants, factories and branches owned by the said firms and limited companies, kindly state what in your opinion is the net worth of each plant factory and branch, i.e. value of all the assets at the factories which may arise in future in respect of past dealings.

E 4. Regarding drawings made by the partners or their relatives, of your Group from partnership firms and/or Limited Companies, as mentioned in the Arbitration Agreement referred to above, kindly furnish details of datewise of the drawings made after 1st January 1976 to-date, indicating the nature and purpose of such withdrawal. Similar details may kindly be furnished in respect of credits therein.

F 5. Drafts of resignation letters from the Directorship of Ltd. Companies and/or partnership firms and/or from the office of Trusteeship are enclosed herewith. Kindly complete

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therein the name and address of the Company and/or the name and address of the partnership firm in which you or otherwise whom you represent are Director and/or Partner and/or a Trustee and return to me the said resignation letters duly signed by you and/or the others as the case may be, leaving the date blank. If required, you can have copies made of these resignation letters to cover all the persons represented by you in your Group. Please ensure that these resignation letters reach me by 5th June, 1976. Arising out of this, I am arranging to send to you in a day or two Transfer Deeds which should be signed by you or the other persons whom you represent, at the place marked with an "X" in pencil and witnessed by a known person and returned to me with the relevant shares scrip of the concerned Limited Company.

The next meeting in connection with the finalisation of the arbitration proceedings will be held in Calcutta on 8th June, 1976. I have a mind to have continuous sittings upto 12th June, 1975 and declare the Award immediately thereafter.

You are therefore requested to make yourself available to Calcutta at the proposed meetings on and from the 8th June 1976 without fail. Kindly bring with you all the books of accounts upto-date part pertaining to the branches and/or companies under your control.

I trust the above programme will suit you and you will extend your whole-hearted co-operation to expedite finalisation of the arbitration proceedings.

Thanking you,

Yours faithfully,
Sd/- P.J. Bhide & Co.,
Arbitrator.

Encl: Draft of resignation
Letters for completion and signatures
and return by 5.6.1976."

A When Shri Ghanshyamdas Gupta did not reach Kolkata pursuant to the said circular letter, a telegram was sent to him on 12.6.1976 asking him to attend the meeting on 15.6.1976. The said telegram reads thus :

"C.No.88

INDIAN POSTS AND
TELEGRAPHS DEPARTMENT.

B

TELEGRAM

88/13

GHANSHYAMDAS HARANATHRAIKA CARE
SANSARMAYA MADRAS

C

X 1905 547 CALCUTTA 12 45

D

REMYLET 24TH MAY STOP YOU HAVE NEITHER
REACHED HERE NOR REPLIED MY LETTER STOP
RETURN IMMEDIATELY ENCLOSURE TO MY LETTER DULY
SIGNED STOP MEETING FIXED 15TH AFTERNOON 7
WATERLOO ST. PROCEEDING CONTINUE EX PARTE IF
YOU DON'T A. DON'T ATTEND.

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ARBITRATOR BHIDE

131 547 SANSARMAYA 24 157"

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The learned counsel drew our attention to the minutes of the meetings maintained in the arbitration proceedings and submitted that even if the minutes produced before the High Court by the respondents are taken to be correct; from a perusal thereof it would appear that Ghanshyamdas Gupta appeared before the arbitrator on 27.11.1975 at 11 a.m., 27.1.1976 and 28.1.1976 both in the first session as also in the second session and on 29.1.1976 at 1.30 p.m. and 4 p.m. It was pointed out that apart from

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Ghanshyamdas Gupta, objections were filed by Asha Devi w/o Prem Kumar Gupta, Om Prakash Gupta, Kamal Kumar Gupta, Prem Kumar Gupta, Ram Babu Gupta and Smt. Radha Rani. Our attention has been drawn to the fact that as Om Prakash Gupta, Ram Babu Gupta and Kamal Kumar Gupta were present in the meeting dating 15.6.1976 on various dates in the arbitration proceedings and, thus, the interest of all the

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objectors had sufficiently been represented before the arbitrator.

The learned counsel would contend that even if the decision of the Calcutta High Court in [*D.L. Miller and Co., Ltd. v. Daluram Goganmull*, AIR (1956) Calcutta 361] is taken to its logical conclusion, a reasonable notice in the facts and circumstances of this case should be inferred. It was further submitted that Rambabu Gupta, Kamal Kumar Gupta and Brij Mohan Gupta attended the meeting also on 19.6.1976.

Mr. Gupta would urge that the purported letter of the Arbitrator to the parties asking them to send a letter to him stating that they would not challenge the award would not vitiate the arbitration proceedings.

Mr. Parijat Sinha, learned counsel appearing on behalf of Respondent Nos. 22 to 32, Mr. Vijay Kumar Sharma, appearing in person and Mr. Gourab Banerji, appearing on behalf of some members of the Sharma Group, supported the contentions of Mr. Bhasker Gupta.

Mr. Bijan Kumar Ghosh, learned counsel appearing on behalf of the respondents, however, drew our attention to the objections raised before the learned Single Judge of the Calcutta High Court and submitted that in the peculiar facts and circumstances of this case, the Court should not only consider the same *de novo* but also must take into consideration the subsequent events. According to the learned counsel, as the cross-objections filed by the objector-respondents were dismissed by the Division Bench without assigning any reason therefor, this Court in the interest of justice should consider the same on its own merits, although no appeal thereagainst or any cross-objection has been filed by the respondents.

There cannot be any dispute with regard to the proposition of law that the parties would be entitled to a reasonable opportunity of putting their case. [See *Montrose Cannel Foods Ltd. v. Eric Wells (Merchants) Ltd.*, [1965] 1 Lloyd's Report 597]. A reasonable opportunity would mean that a party must be given an opportunity to explain his arguments before the Tribunal and to adduce evidence in support of his case. However, under the old Act, an oral hearing would only be permitted if a party requested one, unless there was some agreement to the contrary [See *Henry Southeran Ltd. v. Norwich Union Life Insurance Society*, (1992) 31 E.G. 70].

What would constitute a reasonable opportunity of putting case as

A also qualification of the right has been stated in 'Russell on Arbitration', 22nd Edition, paragraphs 5-053 and 5-054 which are in the following terms :

B "5-053 A reasonable opportunity of putting case. Each party must be given a reasonable opportunity to present his own case. This means he must be given an opportunity to explain his arguments to the tribunal and to adduce evidence in support of his case. Failure to comply with this requirement may render the award subject to challenge under section 68 of the Arbitration Act 1996. It is also a ground for refusing enforcement of the resulting award under the New York Convention.

C 5-054 Qualification of the right. The need to allow a party a reasonable opportunity to present his case can give rise to difficulties. To what extent can the tribunal intervene where, for example, a party's submissions or evidence is needlessly long, repetitive, focuses on irrelevant issues or is sought to be made over an extended period of time? What if a party ignores procedural deadlines imposed by the tribunal but maintains he still has points to put before it in support of his case? Inevitably each situation has to be dealt with in its own context but the following general considerations should be taken into account."

E There cannot, therefore, be any doubt that a party does not have an unfettered right. The arbitrator can not only ask a party to comply with procedural orders and directions including those imposing limits as to time and content of submissions and evidence but also the arbitrator has a right of managing the hearing. In 'Russell on Arbitration', 22nd Edition the law is stated thus :

G "5-057 Managing the hearing. Similarly, a tribunal cannot be expected to sit through extended oral hearings listening to long-winded submissions on irrelevant matters. The tribunal is entitled, and under section 33 is obliged and encouraged, to avoid the unnecessary delay and expense that would be caused by such an approach. The tribunal should take a grip on the proceedings and indicate to the parties those areas on which it particularly wishes

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to be addressed and those which it does not consider relevant to the real issues in dispute. If a party fails to heed such guidance, the tribunal might seek to focus the proceedings by allocating the remaining hearing time between the parties. This the tribunal is entitled to do, provided it will allow a reasonable time for both parties to put forward their argument and evidence.”

For constituting a reasonable opportunity, the following conditions are required to be observed :

1. Each party must have notice that the hearing is to take place.
2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.
3. Each party must have the opportunity to be present throughout the hearing
4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.
5. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.
6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.

The objectors do not say that Ghanshyamdas Gupta has an interest adverse to or independent of them. Ghanshyamdas Gupta himself has not stated as to whether his interests were not safeguarded by other co-sharers who were present in the meeting.

The minutes of the meeting referred to hereinbefore clearly show that not only he had notice of arbitration proceedings but also took active part therein days after days. The circular letter dated 12.5.1976 was issued by the arbitrator so as to give a notice of caution that the arbitration

A proceedings shall be held and continued at Kolkata.

B Can it be said having regard to the magnitude of the problem and the number of parties involved, the extent of the properties in dispute and the disputes not only between the two groups but also some members of the same group that the arbitrator was not entitled to take recourse thereto ?
 If the arbitrator is to manage the arbitration proceedings, in our opinion, he would be entitled to give direction to the parties to be present on the particular date, particular time and particular place which would be sufficient compliance of the requirements of law. Ghanshyamdas Gupta does not say that he did not receive the circular letter dated 12.5.1976. He
 C did not make out a case that the said dates did not suit him. As despite receiving the said circular letter from the arbitrator, he did not choose to make himself available on 8.6.1976 at his own, the arbitrator sent him a telegram dated 12.7.1976. The said telegram was sent *ex abundanti cautela*.

D The arbitrator, as appears from the minutes of the meeting, proceeded only on the documentary evidences. No party appears to have presented oral evidence. Thus, the question of cross-examination the witnesses appearing on behalf of the other parties did not arise. Submissions must have been made by the parties themselves. Ghanshyamdas Gupta does not
 E say that he had difficulty in appearing on 15.6.1976 or any subsequent date and he had asked for adjournment. Even otherwise, a party has no absolute right to insist on his convenience being consulted in every respect. The matter is within the discretion of the arbitrator and the Court will intervene only in the event of positive abuse. [See *Montrose Cannel Foods Ltd.*
 F (supra)]. If a party, after being given proper notice, chooses not to appear, then the proceedings may properly continue in his absence. [See *British Oil and Cake Mills Ltd. v. Horace Battin & Co. Ltd.*, (1922) 13 LI L Rep. 443].

G In *D.L. Miller* (supra) the law is stated in the following terms :

H “The doctrine of Arbitrators’ legal misconduct has been so over-worked in recent years that across the whole branch of case law on this point one finds the blazing trial of principles of natural justice. They are discussed and agitated in an atmosphere of complete unreality and divorced from the facts of each case.

Somehow the obvious point is missed in most of such cases that when the parties agree to go to arbitration they stipulate not so much for vague principles of natural justice as for concrete principles of contractual justice according to the contracts of the parties and their specific stipulations. Where the contract of arbitration itself prescribes a private procedure of its own, then so long as such agreed private procedure is not against the laws and the statutes of the land, then such agreed procedure must prevail over the notions and principles of natural justice.”

The principles of natural justice, it is trite, cannot be put in a straight jacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby. In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another v. Ramjee*, [1977] 2 SCC 256, this Court held :

“...Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.”

(See also *Union of India and Ors. v. Anand Kumar Pandey and Ors.*, [1994] 5 SCC 663, and *R.S. Dass Etc. v. Union of India and Ors.*, [1986] Supp. SCC 617).

In *Anand Kumar Pandey's* case (supra), this Court again reiterated that the rules of natural justice cannot be put in a straight jacket and applicability thereof would depend upon the facts and circumstances relating to each particular given situation.

A In *M.C. Mehta v. Union of India and Ors.* [1999] 6 SCC 237, this Court held that in a case of natural justice upon admitted or indisputable factual position, only one conclusion is possible, a writ of *certiorari* may be issued.

B In *State of U.P. v. Harendra Arora and Anr.*, [2001] 6 SCC 392, this Court followed, *inter alia*, *Managing Director, ECIL v. B. Karunakar*, [1993] 4 SCC 727 and *State Bank of Patiala v. S.K. Sharma*, [1996] 3 SCC 364 and held that an order passed in a disciplinary proceeding cannot *ipso facto* be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing a copy of enquiry report under the statutory rules.

C In *Aligarh Muslim University and Ors. v. Mansoor Ali Khan*, [2000] D 7 SCC 529, it was held :

E “The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi v. State Bank of India*, Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade’s *Administrative Law* (5th Edn., pp. 472–75), as follows :

F “It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.”

G Since then, this Court has consistently applied the principle of H prejudice in several cases. The above ruling and various other

rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K. Sharma*. In that case, the principle of “prejudice” has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P.*”

In *U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead) by LRs. and Ors.*, [1995] 2 SCC 326, the Constitution Bench observed :

“...In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court *and has not suffered any prejudice on account of failure to give such notice.*”

In *Graphite India Ltd. and Anr. v. Durgapur Project Ltd. and Ors.* [1999] 7 SCC 645, it has been held that the principles of natural justice can be waived.

In ‘Administrative Law’, 8th Edn., by William Wade and Christopher Forsyth at page 491, it has been stated :

“...At the other end of the spectrum of power, public authorities themselves are now given the benefit of natural justice, as illustrated at the end of this section. Basically the principle is confined by no frontiers.

On the other hand it must be a flexible principle. The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that ‘it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope

A and extent. Everything depends on the subject-matter'. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility'. There must also have been

B some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice."

In *Khaitan (India) Ltd. & Ors. v. Union of India & Ors.*, Cal LT (1999) 2 HC 478, one of us said :

C "The concept of principles of natural justice has undergone a radical change. It is not in every case, that the High Courts would entertain a writ application only on the ground that violation of principles of natural justice has been alleged. The apex court, in *State Bank of Patiala & Ors. v. S. K. Sharma* reported in [1996]

D 3 SCC 364 has clearly held that a person complaining about the violation of the principles of natural justice must show causation of a prejudice against him by reason of such violation. The apex court has held that the principles of natural justice, may be said to have been violated which require an intervention when no hearing, no opportunity or no notice has been given. Reference

E in this connection may also be made to *Managing Director, E.C.I.L. v. B. Karmarkar*, reported in AIR (1994) SC 1076. The question as to the effect of non-grant of enough opportunity to the learned counsel for the appellant by the Commission to meet the allegations made in the supplementary affidavit requires

F investigation. As to what extent the appellant has suffered would be a question which would fall for a decision of a High Court. Where such a disputed question arises, in the considered opinion of this Court, a writ application will not be entertained only because violation of natural justice has been alleged and more

G so, in a case of this nature where such a contention can also be raised before the Highest Court of India. A distinction has to be borne in mind between a forum of appeal which is presided by an Administrative Body and the apex court as an appellate court."

H far. The principles of natural justice, it is trite, must not be stretched too

I.A. Nos. 1 and 19 in C.A. Nos. 2809-10 of 1979

Ghanshyamdas Gupta on or about 30.8.1998 filed an application withdrawing his objections for setting aside the award; having regard to the various developments which took place since the passing of the award. The prayer made in the said application reads as under :

“That the objections raised on behalf of Shri Ghanshyam Das Gupta, the respondent No.7 herein may be allowed to be withdrawn in respect of Awards dated 29th June, 1976 and 30th June, 1976 passed by Sole Arbitrator Shri P.J. Bhide and the said Awards be made the rule of the Court,”

Thus, the fact remains that unequivocally Ghanshyamdas Gupta had withdrawn his objections. He now seeks to resile therefrom by filing an application *i.e.* I.A. No.19 of 2003 wherein he has prayed for discharge of his advocate.

Keeping in view the statements made by Ghanshyamdas Gupta in the said interim application, we are of the opinion that at this stage, he cannot be permitted to change his advocate, particularly in view of the fact that he stuck to his earlier stand for several years.

In view of the aforementioned, no orders are passed on I.A. Nos. 1 and 19.

Furthermore, in this case Ghanshyamdas Gupta expressly relinquished his right by filing an application stating that he would withdraw his objection. Such relinquishment in a given case can also be inferred from the conduct of the party. The defence which was otherwise available to Ghanshyamdas Gupta would not be available to others who took part in the proceedings. They cannot take benefit of the plea taken by Ghanshyamdas Gupta. Each party complaining violation of natural justice will have to prove the misconduct of the arbitrator tribunal in denial of justice to them. The appellant must show that he was otherwise unable to present his case which would mean that the matters were outside his control and not because of his own failure to take advantage of an opportunity duly accorded to him. [See *Minmetals Germany GmbH v. Ferco Steel Ltd.*,

A (1999) 1 All ER (Comm) 315. This Court's decision in *Renusagar Power Co. Ltd. v. General Electric Co.*, AIR (1994) SC 860 is also a pointer to the said proposition of law.

B Keeping in view the facts and circumstances of this case, we are of the opinion that Ghanshyamdas Gupta cannot be said to have been refused a fair opportunity of participation in the arbitration proceedings.

C So far as the other ground is concerned, which found favour of the High Court, namely, that the arbitrator had asked the parties to issue a letter to him that his award shall not be questioned would render the award a nullity inasmuch the same was not acted upon and in fact no letter was issued. The arbitrator must have done so keeping in view the peculiar nature of the disputes and to see that all the disputes come to an end.

OTHER INTERLOCUTORY APPLICATIONS :

D Several interlocutory applications have been filed, some of which are required to be dealt with.

I.A. No.15 in C.A. No.2809 of 1979 :

E I.A. No. 15 has been filed at the instance of one of the parties herein for staying the auction of the properties belonging to M/s Omrao Industrial Corporation Private Limited, Kanpur and Oil Corporation of India Private Limited, Kanpur. The auction of the properties was stayed by this Court by an order dated 20.1.2003.

F The said auction was being held at the instance of Bank of Baroda in terms of a recovery certificate issued by the Debt Recovery Tribunal. The said proceeding was initiated by the Bank for enforcement of an equitable mortgage as also of guarantee. The dispute by and between a third party and a company has nothing to do with the question as to whether an award made by the arbitrator should be set aside or not. Whatever be the little connection, the same cannot be permitted to be agitated in this appeal. The parties must take recourse to such remedies which are available to them in law. The interim order dated 20.01.2003 is vacated.

H

I.A. No.17 in C.A. No.2809 of 1979 :

A

An application has also been filed for appointment of a receiver by the legal heirs of Respondent Nos.12 to 15. Having regard to the fact that as a limited question arises for our consideration in these appeals, it may not be proper for us to pass any order on the said application. If any necessity arises, parties can file appropriate application for initiating appropriate proceedings before the appropriate forum.

B

I.A. No.3 in C.A. No.2809 of 1979

Contempt Petition No. 484 of 1998 :

C

Applications have been filed for initiating proceedings for contempt of this Court for alleged violation of this Court's orders dated 21.9.1979, 16.8.1982 and 20.10.1982. According to the applicant, Appellant nos. 2 and 9 and Respondent Nos. 1 to 4, 7, 19, 22 and 28 have violated the said orders by surrendering the tenancy rights purported to be in violation of order dated 16.8.1982. It is further alleged that several other appellants and respondents have similarly violated the interim orders passed by this Court. No order appears to have been passed on the contempt petition. A direction was merely issued that this matter may be considered at the time of final hearing.

D

E

Keeping in view the fact that the appeal remained pending for a long time, it is not advisable that this Court now adjudicate upon the factual disputes. We, thus, do not intend to pass any order on the said applications.

F

We may, however, observe that an appropriate proceeding may be initiated by the parties concerned before the executing court, if any occasion arises therefor.

I.A. No..... in C.A. No.2809 of 1979 for substitution of L.Rs. of Deceased Respondent No.5 :

G

The I.A. is allowed.

I.A. No. No....in C.A. Nos. 2809-10 of 1979 for withdrawal of V/A on behalf

H

A of Appellant Nos. 9 and 10 :

No orders are necessary to be passed.

B For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. These appeals are allowed. Award given by the arbitrator is made rule of the court. Any transaction in regard to property covered by the award shall be subject to this decision. The Executing Court would look into these matters. However, in the facts and circumstances of the case, there shall be no order as to costs.

A.K.T.

Appeals allowed.