

Irrigation Department, Punjab v. M/s Chahal Engineering and Construction Company Private Ltd., Chandigarh (G. R. Majithia, J.)

the judgment, it was observed as under :—

“The Government had the right to recruit from either of the two sources as stated above. It, in its wisdom, thought, to recruit only from direct sources. The right of the Government to do so cannot be challenged on this ground under Article 16 of the Constitution of India.”

(12) For the reasons recorded above, both the Writ Petitions are dismissed with costs.

R.N.R.

Before G. R. Majithia, J.

IRRIGATION DEPARTMENT, PUNJAB,—Appellant.

versus

M/S CHAHAL ENGINEERING AND CONSTRUCTION COMPANY PRIVATE LTD., CHANDIGARH,—Respondent.

First Appeal from Order No. 364 of 1988.

11th January, 1991.

Arbitration Act (X of 1940)—Arbitrator—Power to award interest—Powers of the Arbitrator—Such powers—Controlled by conditions contained in the Arbitration Act—Where Arbitrator ignoring such conditions—Award irrelevant.

Held, that the arbitrator must conform to the conditions contained in the arbitration agreement. Failure to carry out the mandate in the agreement will render the award invalid. If he ignores such limits or restrictions, the award would be liable to be set aside for misconduct. (Para 6)

Held, that the arbitrator could only award interest if the question of interest is generally or specifically referred to him or if he is required to decide the dispute expressly or by implication in accordance with law. He will have the power to award interest on the principal sum found due. The arbitrator could not award

any interest on the unascertained amount from the date of the award till the date of the payment. (Para 6)

First Appeal from the order of the Court of Shri R. N. Moudgil, PCS, Senior Sub Judge, Ropar, dated 16th November, 1987 ordering that the award is made the rule of the Court.

Claim : Petition under section 14 of the Arbitration Act.

Claim in Appeal : For setting aside the order of the Court below.

C.M. No. 6534/CII/90.

Application under section 151 CPC, praying that this Hon'ble Court may pass appropriate order in the above mentioned case in the facts and circumstances of the case in the interest of justice.

O. P. Goyal, Advocate, for the Petitioner.

R. S. Randhawa, Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The State has come up in first appeal against the order of the trial judge rejecting the objections to the award dated August 14, 1987 and making it rule of the Court.

(2) In order to resolve the dispute arising in this case, it is necessary to give backdrop of the case. The respondent (hereinafter called 'Contractor') in response to the tender notice submitted its tender which was accepted. Contract agreement dated April 19, 1984 was executed by the parties. Relevant clauses of these documents read thus:—

(A) (i) Sealed lump sum tenders based on the tenderer's own design are invited on behalf of the Governor of the State of Punjab for construction of AQUEDUCT across Sirsa Nadi Sutlej Yamuna Link Canal (Punjab).

(ii) Tenderers shall quote for the entire work.

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(iii) Memorandum:—

(a) General description	Construction of AQUEDUCT across Sirsa Nadi Sutlej Yamuna Link Canal (Punjab)
(b) Estimated cost	Rs. 5 Crores
(c) Earnest Money	Rs. 5 lakhs
(d) Security deposit	10 per cent
(e) Percentage, if any to be deducted from the bills	5 per cent
(f) Time allowed for the work from the date of the written order to commence	18 calendar months.

(Extract from Tender Notice)

- (B) (i) The lump sum tender shall be inclusive of all expenses for proper and entire completion of the work and shall amongst other things include all taxes, tolls, octroi, royalties patent rights etc.

The tenderer shall be responsible for furnishing detailed designs and working drawings. Further he shall obtain technical approval of the Chief Engineer for each of the components of the Aqueduct before carrying out the work. The set of drawings accompanying Notice Inviting Tender are only tentative, and cannot be quoted as a basis for contractor's bid or any claim for extra over his bid for the complete work.

(ii) *General Instructions* :

The tender alongwith N.I.T. and post tender correspondence upto date of acceptance together with the letter of acceptance thereof shall constitute a binding contract between

the successful tenderer and the department and shall form the foundation for the rights and the obligation of both the parties. (Extract from Information and Instructions for Tenderers).

(C) (i) *Purpose of Drawings and Specifications and Conformance thereto:*

The contract drawings read together with the contract specifications are intended to show and explain the manner of executing the work and to indicate the type and class of materials to be used.

The works shall be carried out in accordance with the directions of Executive Engineer in accordance with the drawings and specifications which form part of the contract and in accordance with such further drawings, details and instructions as may, from time to time, be given by the Executive Engineer.

It shall be the responsibility of the Contractor to promptly bring to the notice of the Executive Engineer any error or discrepancy in the contract documents and obtain his orders thereon. Only stated dimensions are to be taken and not obtained from scaling the drawing. In case of any discrepancy between the description of items in the schedule of quantities and the specifications, the latter shall prevail. In case any feature of the work is not fully described and set forth in the drawings and specifications, the Contractor shall forthwith apply to the Executive Engineer for further instructions, drawings or specifications.

(ii) *Modifications:*

The Executive Engineer may order modifications at any time before the completion of the work. No modifications shall be made unless so ordered.

For all modifications, the Executive Engineer will issue revised plans, or written instructions or both.

Any modification in original specifications, drawings, designs and instructions shall not invalidate the contract and the

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same shall be carried out by the Contractor on the same conditions in all respects on which he be agreed to do the main work and the same rates as specified in the tender for the main work.

(iii) *Settlement of Disputes:*

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any drawings, record or ruling of the Executive Engineer on any matter in connection with or arising out of the contract or the carrying out of work to be unacceptable, he shall promptly ask the Executive Engineer in writing, for written instructions or decision. Thereupon the Executive Engineer shall give his written instructions or decision within a period of thirty days of such request.

Upon receipt of the written instructions or decision the Contractor shall promptly proceed without delay to comply with such instructions or decision.

If the Executive Engineer fails to give his instructions or decision in writing within a period of thirty days after being requested, or if the Contractor is dissatisfied with the instructions or decision of the Executive Engineer, the Contractor may within thirty days after receiving the instructions or decision appeal to Superintending Engineer who shall afford an opportunity to the Contractor to be heard and to offer evidence in support of his appeal. This officer shall give a decision within a period of sixty days after the Contractor has given the said evidence in support of his appeal.

If the Contractor is dissatisfied with this decision, the Contractor within a period of thirty days from receipt of the decision shall indicate his intention to refer the dispute to arbitration, failing which, the said decision shall be final and conclusive.

(iv) *Arbitration:*

All the disputes or differences in respect of which the decision has not been final and conclusive shall be referred for arbitration to a sole arbitrator appointed as follows:

Within thirty days of receipt of notice from the Contractor of his intention to refer the dispute to arbitration the Chief

Engineer shall send to the Contractor a list of three officers of the rank of Superintending Engineer or higher, who have not been connected with the work under this contract. The Contractor shall within fifteen days of receipt of this list select and communicate to the Chief Engineer the name of one officer from the list who shall then be appointed as the sole arbitrator. If Contractor fails to communicate his selection of name, within the stipulated period, the Chief Engineer shall without delay select one officer from the list and appoint him as the sole arbitrator. If the Chief Engineer fails to send such a list within thirty days, as stipulated, the Contractor shall send a similar list to the Chief Engineer within fifteen days. The Chief Engineer shall then select one officer from the list and appoint him as the sole arbitrator within fifteen days. If the Chief Engineer fails to do so the Contractor shall communicate to the Chief Engineer the name of one officer from the list, who shall then be the sole arbitrator.

The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. The arbitrator shall determine the amount of costs of arbitration to be awarded to either parties.

Performance under the contract shall continue during the arbitration proceedings and payments due to the Contractor shall not be withheld unless they are the subject matter of the arbitration proceedings.

All award shall be in writing and in case of awards amounting to Rs. 1.00 lakh and above, such awards shall state the reasons for the amount awarded.

Neither party is entitled to bring a claim to arbitration if the arbitrator has not been appointed before the expiration of thirty days after defect liability period.

If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reasons whatsoever, another sole Arbitrator shall be appointed as aforesaid.

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The arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of first hearing.

Arbitrator may, from time to time, with the consent of the parties, enhance the time for making and publishing the award.

The arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The venue of arbitration shall be such place as may be fixed by the arbitrator in his sole discretion.

The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The costs of the reference other than arbitration fees shall be settled at the discretion of the arbitrator.

The award of the arbitrator shall be final and binding on both the parties.

This contract shall be governed by the Indian laws for the time being in force.

(Extract from General Conditions of Contract).

(3) The contract agreement was a complete code in itself. It provided for the instructions and the conditions to be followed by the parties to the agreement. The circumstances which led to the reference of the dispute between the parties have not been brought on record. It was a lump sum contract. The contractor's tender for the Sirsa Aqueduct work was accepted on revised quotation of Rs. 610 lakhs by the State.

(4) The Contractor submitted ten claims before the arbitrator but subsequently withdrew claims No. 1 and 5 to 10. Claims No. 2, 3 and 4 reads thus:—

“Claim No. 2.—Reimbursement of extra cost due to increase in quantities intermediate well foundation:— Rs. 53, 69, 712.40.

Out of nine wells only five wells have been executed by the claimant. There will thus be no propriety to award a lump sum amount incorporating all the wells. The claim also constitutes difference of cost for the work done up to 20th October, 1986 and does not exhaust even the quantities in this respect of the original contract. Since the work is continuing item rates for each item shall form the basis for future executed work justifiably. In consideration of the basis of premium at the rate of 575 per cent above as adopted by the respondent in estimation of cost of the Aqueduct on 10th March, 1983 over and above the rates provided in the Common Schedule of Rates Volume II, I determine and award the premium at the rate of 575 per cent over and above the rate mentioned against each item/category of work as under :

(a) Concrete :

1. M-100 Rs. 59.50 per Cum after premium of Rs. 401.62.
2. M-150 Rs. 73.00 per Cum after premium Rs. 492.75.
3. M-200 Rs. 83.95 per Cum after premium Rs. 566.66.
4. M-150 with Rs. 77.07 per Cum after 10 per cent extra premium Rs. 520.22 cement.

(b) Shuttering-Steel Rs. 9.65 per sq. mtr. Rs. 65.14.

(c) Steel :

1. M. S. Reinforcement less than 20 mm Rs. 930 per Metric Ton Rs. 6277.50.
2. M. S. Reinforcement more than 20 mm Rs. 871 per Metric Tone Rs. 5879.25.
3. Structural Rs. 1314 per Metric Ton Rs. 8869.50.

(d) Earth work :

1. Excavation Rs. 2.70 per Cum Rs. 18.22.
2. Sand filling Rs. 1 per Cum Rs. 6.75.

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| <p>(e) 1. Sinking as per item of CSR Vol. II
up to 18 mtrs. depth.</p> <p>2. Beyond 18 meters of 21 mtrs Rs. 7500
per 100 Cum.</p> <p>3. Beyond 21 mtrs. Rs. 10,000 per Cum.</p> | <p>} </p> <p>} </p> <p>} </p> | <p>with premium at
the rate of 575 per
cent above CSR
Vol. II.</p> |
|--|----------------------------------|--|
- (f) Other items to be determined on C.S.R. Vol. II, with premium at the rate of 575 per cent.

The above item rates are complete rates of the items executed or to be executed complete in all respects and may be construed from the very first bill as it will over ride all the percentages up to the completion of abutments, i.e., item 4 on page SC-4, set in the Schedule III of the agreement admissible for interim payments. The interim award of Rs. 55 lacs shall be adjusted on probate basis during the execution of work. Escalation of clause 44 shall be available to the claimant in addition to above rates with effect from the quarter ending March, 1983, i.e., quarter of opening of tenders.

Claim No. 3: Reimbursement of cost of providing Rocker Roller and Bearings under the superstructure and other extra works; Rs. 78, 53, 028.00.

The claim is premature as the design for superstructure has not been approved so far by competent authority and quantities thereof not stood verified. Further no corroborative evidence regarding the price of each item is on record on which value of the job can be ascertained. Hence I am handicapped to award for this item and suggest the respondent for mutual settlement through negotiations for superstructure and balance of items in order to execute a supplementary agreement therefor with the claimant.

Claim No. 4: Reimbursement of extra cost for providing well foundations under the abutments = Rs. 33,06,083.

Since all the items would be under execution and are similar to well foundations, I award on the item rates as determined in claim No. 2 above, with the same premium over and above on the rates for each item with the same proviso mentioned therein.

The arbitrator allowed these claims and awarded compensation for the actual work done at the rate provided in the Common Schedule of Rates Volume II. Over and above, these rates, he also allowed premium 575 per cent. The arbitrator did not appreciate that it was a lump sum contract. The Contractor's revised quotation of Rs. 610 lacs was accepted for the entire work. The Contractor was not entitled to be paid for the actual work done at the rates provided in the Common Schedule of Rates Volume II. The parties to the agreement set limits to actions by the arbitrator. The arbitrator has to follow the limits set for him. He is to conform to the directions contained in the arbitration agreement. The contract agreement executed by the parties specified documents which were to be read as a part and parcel of the agreement. The term contained in the document under the caption information and instructions for Tenders provided that the lump sum tender shall be inclusive of all expenses for proper and entire completion of the work and shall amongst other things include all taxes, tolls, octroi, royalties patent rights etc. The tenderer was to furnish detailed designs and working designs. Clauses 11 and 66 of the General Conditions of the Contract say that the Executive Engineer can order modifications in original specifications, drawings and designs. If the Contractor considers any work demanded of him to be outside the requirements of the contract, he shall promptly ask the Executive Engineer in writing for written instructions or decision. Thereupon the Executive Engineer will give his written instructions or decision within a period of 30 days of such request. If the Contractor is dissatisfied with the instructions or decision of the Executive Engineer, the Contractor could within 30 days after receiving the instructions or decision appeal to the Superintending Engineer who shall afford an opportunity to the Contractor and offer evidence in support of his appeal. If the Contractor is dissatisfied with the appellate decision, he was to indicate his intention to refer the dispute to arbitration within 30 days of the receipt of the decision failing which the decision was to obtain finality. The Contractor did not take any exception to the modifications suggested in the drawings and specifications by the Executive Engineer as provided for in Clauses 11 and 66 of the General Conditions of Contract. The arbitrator ignoring these conditions of the contract which were beyond his jurisdiction held thus :—

“Reading the context of the above clauses of modifications the view of the respondent does not hold good, firstly the modifications were not to the type of Aqueduct forming

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part of the agreement but to a different type which was not included in the agreement and the respondent was not competent to change the same after the execution of the contract agreement even with the consent of the claimant unless a supplementary agreement thereto was executed in writing. Secondly modifications literally mean as per the Oxford Dictionary "Make less severe or decided, tone down, make partial changes". Thus these modifications do not indicate increase but only entail small or partial changes here and there in the already approved preliminary design. The changes of the category and type of Aqueduct, total design and that too with colossal changes cannot be covered under the term modifications under any equity and justification. The increase in quantities has been verified by the respondent".

Similarly, the objections that the change in the lump sum nature of the contract cannot be made held thus :—

"The above discussion and evidence on record do not postulate that the quantities and rates provided in the original contract can be made the basis of tabulation and calculation because of lump sum nature of contract to the original type of Aqueduct for the items of work involved therein. The averments therefore fall short of the justified and accepted norms. In my opinion, the only way left with to solve this predicament out of this pertinent situation is to take the verified quantities by the respondent to be executed under the type of Aqueduct namely "Simply Supported Prestressed Structure" be taken as the over all quantities and paid to the claimant from time to time who has executed and shall execute the work on accepted norms of P.W.D. and engineering practice as item rate items considering their nomenclature and specification and bidding farewell to the word "extra" frequently and fervently used by both the parties in communications exchanged between them and also without considering the value of Rs. 610 lacs for the Hammer Head Type Structure as per the agreement."

The arbitrator has failed to take cognizance of the fact that the preliminary design submitted by the contractor was accepted by the

department conditionally and the condition was that the design submitted by the contractor was acceptable only if satisfactory sealing arrangement for water tightness is ensured with that design. In the meeting held to discuss the design of the Sirsa Aqueduct on September 6, 1984, the contractor agreed to provide alternative design because with the previous design submitted by him satisfactory sealing arrangement for water tightness as well as stability of the structure could not be ensured. The relevant portion of the minutes of the meeting reads thus:--

“MINUTES OF THE MEETING HELD TO DISCUSS THE DESIGN OF SIRSA AQUEDUCT ON 6TH SEPTEMBER, 1984, IN THE OFFICE OF THE CHIEF ENGINEER/CONST. SYL CANAL PROJECT PUNJAB CHANDIGARH.”

PRESENT:—

1. Shri N. S. Gill, Chief Engineer/Const. SYL Canal Project.
 2. Shri Prahlad Singh, Chief Engineer/Designs SYL Canal Project.
 3. Shri Jagdish Chander, Director, Hill Torrents.
 4. Shri R. N. Hoon, S.E. SYL Construction Circle No. 1.
 5. Shri M. L. Bansal, SDE, Designs.
 6. Shri S. K. Mehta, Executive Engineer, Sirsa Construction Division, Ropar.
 7. Shri H. D. Singh, Chairman.
 8. Shri Gurbax Singh.
 9. Shri W. R. Temdhurni.
 10. Shri A. S. Patkie.
 11. Shri Rajiv Ahuja.
 12. Shri S. Rangarajan.
- } M/s Chahal Engineering
and Construction Co.
- } Stup Consultants Ltd.

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The following decisions were taken :—

- (1) It was decided that with the Hammer Head Type of Structure with long cantilever on either side, satisfactory sealing arrangement for water tightness as well as stability of the structure cannot be ensured. M/s Chahal Engineering and Construction Co., therefore, agreed to provide "Simply Supported Superstructure with joints and sealing arrangement at the supports." (emphasis supplied).

While agreeing to provide alternative design, the contractor did not ask for a supplementary agreement. Therefore, the conclusion arrived at by the arbitrator that supplementary agreement was required to be executed with the modified design is his innovation obviously invoked for extraneous reasons. Moreover, the arbitrator hastened to award compensation to the contractor for the work done at the rates specified in the Common Schedule of Rates Volume II and over and above this allowed premium at 575 per cent. He ignored the limits and restrictions provided in the General Conditions of the contract. The Contractor nowhere pleaded or proved that after the Executive Engineer made alterations in the original drawings and specifications he invoked the stipulations contained in Clause 66 of the General Conditions forming part of the agreement. If he had failed to invoke the provisions in Clause 66, he could not make a grievance that the modifications which were suggested would make the original Aqueduct different than the one agreed upon in the agreement. The interpretation sought to be given to the term modification by the arbitrator was alien to the one mentioned in the agreement.

- (5) The contractor himself altered the nature of the original Aqueduct which was Hammer Head Type of Structure with long cantilever on either side with Neoprene bearing pads, since with the original preliminary designs, he could not ensure fulfilment of the condition laid down by the department while accepting that design. The arbitrator put the onus for the change in the Aqueduct on the department ignoring the fact that the previous design was only conditionally accepted by the department. After holding the department responsible for the change in the design of the Aqueduct, he came to the conclusion that the value of the original lump sum contract was fixed for Hammer Head Type of Structure with long cantilever on either side and since the Aqueduct was altered to

“Simply Supported Prestressed Structure”, the Contractor is not bound by the lump sum contract which was for Hammer Head Type of Structure with long cantilever on either side. The conclusion arrived at by the arbitrator is contrary to the admitted facts. In the meeting held on September 6, 1984, the Contractor agreed to provide “Simply Supported Structure with joints and sealing arrangement at the supports”.

(6) The arbitrator must conform to the conditions contained in the arbitration agreement. Failure to carry out the mandate in the agreement will render the award invalid. If he ignores such limits or restrictions, the award would be liable to be set aside for misconduct. Reference can be usefully made to the following observations in the *Halsbury's Laws of England* Third Edition Volume 2, page 35, Article 80 :—

“In the conduct of arbitration proceedings, it is well-settled the arbitrator or Umpire must conform to any directions which may be contained in the agreement of reference itself”.

The Apex Court in *Jivarajbhai Ujamshi Sheth and others v. Chintamanrao Balaji and others* (1), has taken a similar view and held thus :—

“Where in respect of a dispute arising out of a partnership business, the primary duty of the arbitrator under the deed of reference in which is incorporated the partnership agreement is to value the net assets of the firm and to award to the retiring partners a share therein, then in making the “valuation of the firm”, his jurisdiction is restricted to the manner provided in the partnership agreement. The Supreme Court observed that if the parties set limits to action by the arbitrator, then the arbitrator has to follow the limits set for him and the Court can find that he has exceeded his jurisdiction on proof of such action. The assumption of jurisdiction not possessed by the arbitrator renders the award to the extent to which it is beyond the arbitrator's jurisdiction, invalid”.

(1) A.I.R. 1965 S.C. 214.

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A Full Bench of the Calcutta High Court in *Ramanath Agarwalla v. Messers Goenka and Company and others* (2), held thus :—

“In our case, the Arbitrator’s jurisdiction was limited to looking into the books of account of two commercial concerns and finding out the amounts due by one party to the other. The Arbitrators have made their award without looking into any books. They have, therefore, exceeded their jurisdiction and the award is invalid”.

The arbitrator hastened to award interest on the amount to be determined by some other source in the light of the directions contained in the award and it was to carry interest at the rate of 15.5 per cent from the date of the award to the date of the payment under the decree of the competent authority whichever is earlier. The award was made on August 14, 1987. The award was not for a specified amount. The actual amount payable to the Contractor in the light of the observation of the arbitrator has to be determined. It is not provided within how much period the determination was to be made. It may take months or it may take years but the amount will carry interest from the date of the award. The arbitrator could only award interest if the question of interest is generally or specifically referred to him or if he is required to decide the dispute expressly or by implication in accordance with law. He will have the power to award interest on the principal sum found due. The arbitrator has not alluded to the instructions under which the reference was made in which the question of payment of interest on the amount found due was either expressly or impliedly referred to the arbitrator. If all disputes including question of interest are referred to the arbitrator, he has the authority to grant interest from the date of the award to the date of the decree. In *Union of India v. Bungo Steel Furniture Private Limited* (3), held thus :—

“In this Court, counsel for the appellant contended that the arbitrator had statutory power under the Interest Act of 1839 to award the interest and in any event, he had power to award the interest during the pendency of the arbitration proceedings under S. 34 of the Code of Civil Procedure, 1908. Bose, J. rejected this contention, but it should be noticed that the judgment of this Court in

(2) A.I.R. 1973 Calcutta 253.

(3) A.I.R. 1967 S.C. 1032.

Thawardas's case, 1955-2 S.C.R. 48 : (A.I.R. 1955 S.C. 468), does not deal with the question whether the arbitrator can award interest subsequent to the passing of the award if the claim regarding interest was referred to arbitration. In the present case, all the disputes in the suit, including the question of interest, were referred to the arbitrator for his decision. In our opinion, the arbitrator had jurisdiction, in the present case, to grant interest on the amount of the award from the date of the award till the date of the decree granted by Mallick, J. The reason is that it is an implied term of the reference that the arbitrator will decide the dispute according to existing law and give such relief with regard to interest as a Court could give if it decided the dispute. Though, in terms, S. 34 of the Code of Civil Procedure does not apply to arbitration proceedings, the principle of that section will be applied by the arbitrator for awarding interest in cases where a Court of law in a suit having jurisdiction of the subject-matter covered by S. 34 could grant a decree for interest".

The arbitrator could not award any interest on the unascertained amount from the date of the award till the date of the payment.

(7) The learned trial judge did not appreciate the scope and ambit of the objections raised by the State before it.

(8) Through Civil Miscellaneous No. 6534 C-II of 1990, the State wanted to point out the circumstances under which the order passed in Civil Miscellaneous No. 3629 C. II of 1990, dated June 8, 1990, could not be complied with by the parties. The order dated June 8, 1990 was passed on the request of the parties' counsel. The parties' counsel, namely, the State and the Contractor brought to my notice that the State has claims against the Contractor and *vice versa*. If those disputes are referred to the arbitrator, the disputes will be resolved and the award of the arbitrator could be taken note of while disposing of this appeal. It was at the request of the Contractor that the order dated June 8, 1989 was passed. Civil miscellaneous application is accordingly rendered infructuous. The parties can proceed according to law.

(9) *Vide* my order dated November 12, 1988, I had directed the appellant to produce the record relating to Sirsa Aqueduct. Complete record was not produced. However, a part of it was produced

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in the Court. The parties were afforded an opportunity to examine the same and address arguments on the basis of said record.

(10) Before I part with the judgment, I am constrained to observe that no assistance was rendered by the parties' counsel. The State did not produce the entire record of the case as directed by me on November 12, 1988. The conduct deserve condemnation, Civil miscellaneous No. 3629/C-II of 1990, dated May 28, 1990, was moved by the Contractor for appointing an arbitrator to decide other pending disputes between the parties. The State was asked to furnish names of three Chief Engineers working in the Irrigation Department, out of whom one could be appointed as an arbitrator. The State submitted the list and out of that Dr. M. R. Goel Chief Engineer, River Water Disputes, Irrigation Department, Punjab, was appointed as arbitrator. The Contractor did not submit before him presumably he was found inconvenient. The arbitrator in this case, who was expected to act impartially acted in a partisan manner as indicated in the earlier part of the judgment. Registrar (Judicial) is directed to send a copy of the judgment by name to the Secretary to the Governor, Punjab, who will bring these observations to the notice of the Governor for remedial action, if possible.

(11) Thus, for the reasons aforesaid, the appeal succeeds, the order dated November 16, 1987 making the award of the arbitrator dated August 14, 1987 rule of the court is set aside. Award dated August 14, 1987 is also set aside. The parties are left to bear their own costs.

S.C.K.