A M/S SUBHASH AGGRAWAL AGENCIES

v.

M/S BHILWARA SYNTHETICS LTD. AND ORS.

DECEMBER 13, 1994

B [A.M. AHMADI, CJ, S. MOHAN AND MRS. SUJATA V. MANOHAR, JJ.]

Arbitration Act, 1940: Arbitrator—Award—Duty to give reasons—Reasons given by Arbitrator—Award affirmed by Appellate Tribunal—
C *Insistence upon appellate Tribunal to furnish reasons for confirmation held not warranted.*

Delhi Hindustani Mercantile Association Rules and Regulations:—Rule 37—Regulations 7 and 10—Arbitrator—Award—Appeal against Provisions for.

D **The appellant claimed a sum of Rs. 4,51,246.50 from the first respondent. In turn the first respondent also made a counter claim against the appellant. Both being members of the Delhi Hindustani Mercantile Association, their dispute was referred to an Arbitrator under the Rules of the Association. By its order dated 20.11.1981 the**
E **High Court directed that in terms of the concession made on behalf of the Mercantile Association and the sole Arbitrator, a reasoned award shall be passed by the Arbitrator. Consequent to the said direction, the sole Arbitrator entered upon the reference and by his reasoned award dated 19.7.1983 awarded a sum of Rs. 1,97,891.81 in favour of the appellant with 18% interest till the date of payment. The first**
F **respondent preferred an appeal before the Tribunal which confirmed the Arbitrator's award without assigning any reasons. Thereafter, the appellant filed a suit for making the award a rule of the Court but a single Judge of the High Court set aside the Award on the ground that it was bereft of reasons and thus runs counter to the High Court's order dated 20.11.1981. Consequently the award was remitted to the**
G **tribunal for reconsideration and for giving reasons. The appellant preferred appeal before the High Court which was dismissed in limine.**

In appeal to this Court it was contended on behalf of the appellant that since the Arbitrator gave a reasoned award it was not necessary for the Tribunal to give reasons as it merely affirmed the Tribunal's
H **award.**

On behalf of the respondents it was contended that when the appellate Tribunal confirms or reverses the original award, its award not only completely replaces the original award but also defines the rights of the parties and therefore, such an award must contain its reasons to enable the parties to know as to why the appellate Tribunal has come to such a conclusion. A

Allowing the appeal and setting aside the impugned judgment of the High Court, this Court B

HELD: 1. The award of the sole Arbitrator contained reasons as to why it was made in favour of the appellant. Therefore, that is fully in conformity with the direction given by the High Court on 20.11.1981. [536 B] C

2. When the tribunal upheld the award of the sole Arbitrator, it stands to reason that it has come to be confirmed for the same reasons as prevailed with the sole Arbitrator. To insist upon such reasons to be repeated by the appellate authority will only be superfluous. An arbitration procedure should be quick. Such proceeding cannot be equated to Court proceedings nor do they partake of the character of trial. To insist upon the appellate Tribunal to furnish reasons for its confirmatory order is not warranted. The direction dated 20.11.1981 does not cover the appellate authority. [545 H, 546 A] D

3. The essence of arbitration is to avoid cumbersomeness of the Court procedure and to have a fair settlement. It is true that the award of the appellate Tribunal is the final award and it is that which is to be made the rule of the Court. The Court, by looking at the original award as confirmed by the order of the appellate Tribunal, can always discern the reasons which in this case are fully contained in the award dated 19.7.1983 of the Sole Arbitrator. [546 E] E F

4. Of course, if the appellate Tribunal reverses the arbitrator's award, it may be required to give reasons but that is not the position here. [546 F]

Indian Oil Corporation v. *Indian Carbons Ltd.*, [1983] 3 SCR 426; *Bermer Handelegesellschaft mbH* v. *Westzucker GmbH*, (No. 2) (1981) 2 Lloyd's rep.130; *Bungo Steel Furniture* v. *Union of India*, AIR (1967) SC 376; *Firm Madanlal Roshanlal* v. *Hukumchand Mills*, AIR (1967) SC 1030; *Raipur Development Authority* v. *M/s Chokhamal Contractors*, AIR [1990] SC 1426; *University of New South Wales* v. *Max Cooper and Sons Pvt. Ltd.*, (35) Australian Law Reports 219; *Firm Madanlal Roshanlal* G H

A *Mahajan* v. *Hukumchand Mills Ltd., Indore,* **[1976] 1 SCR 105;** *N. Chellappan* v. *Secretary, Kerala, State Electricity Board,* **AIR (1975) SC 230;** *Payyaula Vengamma* v. *Payyavula Kesanna,* **AIR (1953) SC 21;** *Harvey* v. *Shelton* **[1844] 7 Beav 455;** *Haigh* v. *Haigh,* **[1861] (31) LJ Ch 420 and** *Brownsea Haven Properties* v. *Poole Corpn.,* **(1958) Ch. 574, referred to.**

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Commercial Arbitration by Mustill and Boyd Second Edition pages 364-365; Russel on Arbitration (Twentieth Edition) page 291; Arbitration Law by Robert Merkin, 1991 Edition; N.D. Basu on Arbitration (eighth Edition) para 2228, pages 835-36; Corpus Juris Secundum, Vol. VI p. 324-325, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2340 of 1994.

From the Judgment and Order dated 17.7.90 of the Delhi High Court in F.A.O. (O) No. 113 of 1990.

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Randhir Jain for the Appellant

A.B. Rohtagi, Ms. Shireen Khajuria and Ms. Indu Malhotra for the Respondents.

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The Judgment of the Court was delivered by

MOHAN, J. The facts in brief leading to this civil appeal are as follows:

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The appellant is a member of the Delhi Hindustani Mercantile Association. By a claim petition dated 11.8.1979, the appellant had claimed a sum of Rs. 4,51,245.50 under various heads of accounts including commission from the first respondent up to the period of 30.6.1979. The claim related to transaction which took place between appellant and first respondent. In turn, the first respondent was also a member of Delhi

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Hindustani Mercantile Association. It also made a counter claim against the appellant. As per the rules of the association, the dispute was referred to an Arbitrator.

By an order dated 20.11.1981, the learned Single Judge of Delhi High Court directed in terms of the concession made on behalf of the Association

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and the Sole Arbitrator, a reasoned award shall be passed by the Arbitrator.

The Sole Arbitrator (Mohan Lal) entered upon the reference. On 19.7.1983, by a reasoned award, he awarded a sum of Rs. 1,97,891.81 in favour of the appellant against the first respondent. This amount was also to carry interest @ 18% per annum from the date of the award till the date of payment. Aggrieved by this award the first respondent preferred an appeal as per Rule 37 Regulation 7 of Delhi Hindustani Mercantile Association Rules and Regulations (hereinafter referred to as the Rules). The appeal was heard by the Tribunal. By an order dated 24.2.1984, the Tribunal confirmed the award of the Arbitrator without assigning any reasons.

Against this order, the appellant preferred suit No. 498-A/84 for making the award a rule of the Court. The first respondent filed objections against the Award. *Inter alia*, it was urged by it that the award was not a reasoned award. A learned Single Judge of the High Court of Delhi by an order dated 5.4.1990 allowed the objections and set-aside the award of the appellate Tribunal and remitted the award to Tribunal for reconsideration and for giving reasons for the Award within four months from the date of the judgment.

Assailing the correctness of this judgment, the appellant preferred Appeal FAO (OS) 113/90 before the High Court. The said appeal was dismissed *in limine* by the impugned order date 17.7.1990.

The learned counsel for the appellant would argue that in so far as the award dated 19.7.1983 is concerned it is a reasoned award. That is enough compliance with law. Generally speaking when the appellate Tribunal merely confirms that reasoned award, it is not necessary again to give reasons. Therefore, the high court erred in setting-aside the order of the appellate Tribunal on the ground that no reasons were given in that order. The principle of merger did not apply to the present proceedings where the parties had consented to a reasoned award by the Sole Arbitrator. In any event, the High Court erred in requiring reasons to be given even at the appellate stage overlooking the fact that the award dated 19.7.1983 is a reasoned award.

In opposition to this, the learned counsel for the respondent would urge that in law as laid down in *Commercial Arbitration by Mustill and Boyd, Second Edition at pages 364-65* when the appellate tribunal has made an award either confirming or reversing the original award, it is the award of the Tribunal which defines the rights of the parties.

The appellate award once made completely replaces the original award. Therefore, a party is entitled to know the reasons as to why the appellate

A authority has come to such a conclusion. Once the award of the Sole Arbitrator was subject to an appeal, the award of the appellate authority superseded the original award and it is only that award which exists in law. Such an award must contain reasons for its decision. This Court in *Indian Oil Corporation* v. *Indian Carbon Ltd.*, [1983] 3 SCR 426 has stressed the requirement of the Arbitrator to give reasons in the Award.

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The first respondent filed O.M.P. 37 No. of 1980 before the High Court of Delhi. That was a petition under Section 5 and 12 (2) of Arbitration Act. 1940. The prayer was that the authority granted in favour of Delhi Hindustani Mercantile Association and the Arbitrator (Mohan Lal) be revoked; a sole arbitrator be appointed in their places and that a direction C may be issued that the arbitrator agreement shall cease to have any effect. By order dated 20.11.1981, the said petition was dismissed with the following directions:

> "In the circumstances, I would, therefore, dismissed the petition subject, however to the direction to the arbitrator, in D terms of the concession made on behalf of the Association and the Arbitrator, *that the Arbitrator would hear the matter after giving reasonable opportunity to the petitioner of being heard, and to make a reasoned award on the conclusion of the proceedings.* The Petitioner would be at liberty to raise before the Arbitrator, as indeed in any proceedings, E subsequent to the award any questions of law or fact, irrespective of whether they have been raised and/or dealt with in the present proceedings, including the questions as to the effect of the petitioner's resignation on the arbitration agreement and arbitration proceedings."

F (emphasis supplied).

Consequent to this direction, the matter was taken up by the sole Arbitrator and by his reasoned Award dated 19.7.1983, he ultimately held has under :

> G "Thus, for the above reasons, I do hereby award a sum of Rs.1,97,891.81 (Rupees one lakh ninety seven thousand eight hundred ninety one and paise eighty one only) against respondent No. 1 (M/s Bhilwara Synthetic Limited, who are the principal respondent in this case, as agreed by themselves also) in favour of the claimant (M/s Subhash Aggarwal H Agencies). I further give my award that respondent is liable

> to pay interest at 18% P.A. or this award amount from this day to the date of making the whole payment by the respondent No. 1." A

This Award fully conforms to the order dated 20.11.1981. of the High Court made on concession between the parties. Aggrieved by the same, as per regulation 7 of the Rule 37 of the Rules, the matter was taken up in B appeal to the tribunal by the first respondent. It may be relevant at this stage to quote Regulation 7 and 10 of Rule 37 of the Rules. The said Regulations read as under :

> "7: If any of the parties is not agreed with the decision of the Arbitrator, the party may file the appeal against the decision C within 30 days from the date of decision. The cost of the appeal's documents will be Rs. 20

Note : The holiday will not be counted for the period of expiry of aforesaid time limit.

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10 : If any of the parties files the appeal against the decision of the Arbitrator, the appeal will be heard by the Tribunal consisting of three members and its decision will be final."

On 24.2.1984, the Tribunal dismissed the appeal of the respondent and confirmed the award of the Sole Arbitrator. That order reads as under : E

> "We have heard the arguments for both the parties and also taken into consideration their objections raised by them. The appeal of the appellant is dismissed and the award of the Arbitrator Shri Mohan Lal dated 19.7.1983, is hearby upheld. Parties to bear their own costs. Order be pronounced." F

This was set aside by the learned Single Judge by his order dated 5.4.1990 on the ground that as award given by the Tribunal is bereft of reasons, it cannot be made a Rule of the Court. In his opinion the award given by the Tribunal is the final award and this award is to be made a rule of the Court. No reasons had been given at all. Only the conclusion has G been stated. The award does not indicate as to how the Tribunal had arrived at the conclusion. The award of the Appellate Tribunal is directly in conflict with the direction given by this Court by order dated 20.11.1981 which specifically provided that the arbitrator should make a reasoned award. No reasons whatsoever have been assigned. This is the final award. It should have contained the reasons. Thus, it cannot be legally sustained and has to H

A be set-aside. The order of the learned Single Judge was confirmed in FAO (OS) 113/90 when the Division Bench dismissed the same laconically saying :

"Dismissed"

B On a perusal of the award dated 19.7.1983 of the Sole Arbitrator, it cannot be disputed that it contained reasons as to why an award of Rs. 1, 97, 891.81 was made in favour of the appellant. Therefore that is fully in conformity with the direction given by the Court on 20.11.1981. Now, the High Court holds that the appellate order of the Tribunal dated 19.7.1983. must also give reasons. This finding is arrived at on two grounds :

C (i) The award of the Tribunal is the final award which has to made a rule of Court ;

(ii) The failure to give reasons runs counter to the directions of the High Court dated 20.11.1981.

D We can shortly dispose of the second ground before we take up the first. The direction dated 20.11.1981 does not envelop the appellate authority. Before we proceed further, we will consider the relevant law on this aspect. The Arbitrator should give reasons, is beyond dispose.

Russell on Arbitration (Twentieth Edition) at page 291 says :

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> "In order that an appeal (if it takes place) may be effected, the Court has power to order an arbitrator or umpire to give reasons for his decision in sufficient detail to enable the Court to consider any question of law arising out of the award. Where the arbitrator or umpire gives no reason for
> F making the award, the Court must not make an order unless it is satisfied either that before the award was made, one of the parties gave notice to the arbitrator or umpire that a reasoned award would be required; or that there was some special reason why such notice was not given, or unless all the parties to the arbitration consent to the order being made.....
> G "All that is necessary under the Act of 1979 is that the arbitrator should give a "reasoned award", i.e. the Arbitrators should set out that, in their view of the evidence, did or did not happen, and should explain succinctly why in the light of what happened they had reached their decision and what that decision was. They are not expected to analyse the law and
> H the authorities."

Again at page 335 it is stated : A

> "An arbitrator does not normally have to state his reasons in his award, but, of course, may be ordered by the Court to do so, or to amplify those already given."

An illuminating passage is found in *Arbitration Law by Robert Merkin, 1991 Edn.* It is stated in the following paragraphs as under : B

> "19.17: English arbitration law does not impose any general duty upon arbitrators to give reasons for their award, although the parties are of course free to agree that the award should contain reasons. The provision of a reasoned award is nevertheless of great significance under English law as, C presented with a reasoned award, it becomes possible for the High Court to determine whether the arbitrators have made any error of law in reaching their conclusions. In order to ensure that the possibility of an appeal on point of law is not defeated by the failure of the arbitrators to provide a reasoned award, the 1979 Act provides a mechanism whereby D sufficient reasons may be obtained to facilitate judicial review: if reasons are not available, the High Court has no jurisdiction to hear any appeal based on error of law.
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> 19.23 : It would seem that where arbitrators do determine to give reasons for their award, or are ordered to do so by the E High Court or the parties themselves, no great obligation is involved: this is by way of contrast to the old special case procedure. The often repeated guidelines were laid down by Donaldson LJ in *Bermer Handelegesellschaft mbH* v. *Westzucker GmbH, (No. 2) [1981] 2 Lloyd's Rep. 130, at p. 132:* F
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> It is of the greatest importance that trade arbitrators working under the 1979 Act should realize that their whole approach should now be different. At the end of the hearing they will be in a position to give a decision and the reasons for that decision. They should do so at the earliest possible moment G ...No particular form of award is required .... All that is necessary is that the arbitrators should set out what on their view of evidence, did or did not happen, and should explain succinctly why in the light of what happened, they have reached their decision and what that decision is ...Where a 1979 Act award differs from a judgment is in the fact that the H

A arbitrators will not be expected to analyze the law and the authorities. It will be quite sufficient that they should explain how they reached their conclusion ... The point which I am seeking to make is that a reasoned award, in accordance with the 1979 Act, is wholly different from an award in the form of a special case. It is not technical, it is not difficult to draw
B and above all it is something which can and should be produced promptly and quickly at the conclusion of the hearing.

The Courts have, consistently with this passage, stressed that awards are not legal judgments and thus must not be viewed
C in a pedantic or overcritical fashion. Equally, the fact that an award is short does not mean that it is inadequately reasoned. In particular it is not necessary for arbitrators to set out lists of rival submissions or factual propositions and to choose between them. It is enough that the award demonstrates why the arbitrators have found for one party rather than the other.

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Situations in which reasons may be ordered

19.24 : The operation of S. 1(5)-(6) of the Arbitration Act 1979 is most easily explained by separate consideration of each of the situations in which it may be required. These are
E as follows:

(a) The parties have agreed that a reasoned award is required, or have otherwise asked the arbitrators for a reasoned award.

(b) The parties have agreed that no reasons are to be given, or have otherwise asked the arbitrators not to include reasons in
F their award.

(c) There is no agreement as to reasons, but neither party has asked for reasons.

(d) There is no agreement as to reasons, and one party has
G requested a reasoned award.

(e) There is no agreement as to reasons, and one party has requested an award not containing reasons,."

The Indian Law is stated by N.D. Basu on Arbitration (Eighth Edition)
H at para 2228 at pages 835-836. It reads:

"2228. Whether arbitrators should give reasons for decisions:- *An award of arbitrators is not a reasoned judicial decision and the arbitrators need not give reasons for their decisions,* and even ignore any proposition advanced by the parties. The Court in filing an award wherein the arbitrators have failed to give a decision or any matter, the subject of dispute cannot be deemed to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction vested in it by law. An arbitrator is not bound by the technical rules of procedure which the court must follow, nor need record separate findings on the various points on which the parties are at issue or write a reasoned judicial decision. All that he is required to do is to give an intelligible decision which determines the rights of the parties in relation to the subject-matter of the reference. *While it is not necessary for an arbitrator to give reasons for his own conclusions or to give separate finding on each and every issue involved in the dispute,* every party that appoints an arbitrator has right to expect an intelligible decision which determines the rights of the parties in the various important points which are at issue. *Mere omission to give reasons does not vitiate the award.* It is not open to the court to speculate where no reasons have been given by the arbitrator as to what impelled him to arrive at a conclusion and to determine whether the conclusion was right or not." (Emphasis supplied)

A few rulings of this court may now be seen. In *Bungo Steel Furniture* v. *Union of India*, AIR (1967) SC 376 at 382 (para 9), this Court observed thus:

"It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself."

(emphasis supplied)

A Again, in Firm *Madanlal Roshanlal* v. *Hukumchand Mills*, AIR (1967) SC 1030 at 1031-32, it is stated:

> "*In the present case, the arbitrator gave no reason for the award.* We do not find in the award any legal proposition which is the basis of the award, far less a legal proposition
B which is erroneous. It is not possible to say from the award that the arbitrator was under a misconception of law. The contention that there are errors of law on the face of the award is rejected." (emphasis supplied)

A reference may be made to the decision of *Indian Oil Corporation*
C (Supra), it is held as under:

> "In India, there has been a trend that reasons should be stated in the award. The reasons that are set out must be reasons which will not only be intelligible but also deal with the substantial points that have been raised. When the arbitration clause required the arbitrator to give a reasoned award, the
D sufficiency of the reasons depend upon the facts of the particular case. He is not bound to give detailed reasons.

The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is
E based upon any legal proposition which is erroneous.

> The reasons that are set out must be reasons which will not only be intelligible but also deal with the substantial points that have been raised. When the arbitration clause required the Arbitrator to give a reasoned award and the Arbitrator
F does give his reasons in the award, the sufficiency of the reasons depend upon the facts of the present case. He is not bound to give detailed reasons. The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the
G award is based upon any legal proposition which is erroneous."

(emphasis supplied)

In *Raipur Development Authority* v. *M/s. Chokhamal Contractors*, AIR
H (1990) SC 1426, a five Judge Bench of this Court discussed the entire law

on this aspect elaborately. Therefore, it is enough that we refer to this ruling. It is stated in following paragraphs as under:

> "3 : A brief history of the English Law of Arbitration is given in the learned treatise— The Law and Practice of Commercial Arbitration in England by Sir Michael, J. Mustill and Steward C. Boyd. For centuries, commercial men preferred to use arbitration rather than the Courts to resolve their business disputes on account of the inherent advantages in the settlement of disputes by arbitration. They preferred this alternative method of settlement of disputes to the ordinary method of settlement through Courts because arbitration proceedings were found to be cheap and quick. It was no doubt true that the Courts repeatedly expressed doubts as to the wisdom of this preference as reflected by the current opinion that arbitration was an ineffective procedure, not that it was undesirable in itself. The commercial community, has been, however, insisting on the right to arbitration and has always exhibited an interest in seeking that the system is made to work as well as possible. This led to repeated situatory intervention. Accordingly laws were passed from time to time to make the arbitration proceedings effective. The English Arbitration Act of 1950 and the English Arbitration Act, 1979 are the two major pieces of legislation which now control the arbitration proceedings in England. The legal requirements of an award under English Law are succinctly given in the Hand Book of Arbitration Practice by Ronald Bernstein (1987). English Law does not impose any legal award must be certain. It could be either interim or final. An award without reasons is valid. "The absence of reasons does not invalidate an award. In many arbitrations the parties want a speedy decision from a tribunal whose standing and integrity they respect, and they are content to have an answer Yes or No; or a figure of X. Such an award is wholly effective; indeed, in that it cannot be appealed as being wrong in law it may be said to be more effective than a reasoned award."
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> 4: Section 1 of the English Arbitration Act, 1979, however, provides that if it appears to the High Court that an award does not or does not sufficiently set out the reasons for the award in sufficient detail to enable the Court to consider any

question of law arising out of it, the Court has power to order the arbitrator or umpire to give reasons or further reasons.

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

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

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21 : Thus it is seen that the Law Commission did not recommend the inclusion of a provision in the Act requiring the arbitrator or umpire to give reasons for the award.

22 : *It is not disputed that in India it had been firmly established till the year 1976 that it was not obligatory on the part of the arbitrator or the umpire to give reasons in support of the award* when neither in the arbitration agreement nor in the deed of submission it was required that reasons had to be given for the award (vide Firm *Madanlal Roshanlal Mahajan* v. *Hucumchand Mills Ltd.*, Indore [1967] 1 SCR 105, *Bungo Steel Furniture Pvt. Ltd.* v. *Union of India* AIR (1967) SC 378 and *N. Chellappan* v. *Secretary Kerala State Electricity*

Board, AIR (1975) SC 230. It is, however, urged by Shri Fali S. Nariman who argued in support of the contention that in the absence of the reasons for the award, the award is either liable to be remitted or set aside, that subsequent to 1976 there has been a qualitative change in the law of arbitration and that it has now become necessary to insist upon the arbitrator or the umpire to give reasons in support of the award passed by them unless the parties to the dispute have agreed that no reasons need be given by the arbitrator or the umpire for his decision. Two main submissions are made in support of the above contention. The first submission is that an arbitrator or an umpire discharges a judicial function while functioning as an arbitrator or an umpire under the Act, and , therefore, is under an obligation to observe rules of natural justice while discharging his duties, as observed by this Court in *Payyavula "Vengamma* v. *Payyavula Kesanna*, AIR (1953) SC 21. This Court relied in that decision upon the observations made by Lord Langdale *M.R. in Harvey* v. *Shelton*, 1844 7 Beav 455 at page 462 which read thus:

"It is so ordinary a principle in the administration of justice, that no party to a cause can be allowed to use any means whatsoever to influence the mind of the judge, which means are not known to and capable of being met and resisted by the other party, that it is impossible for a moment, not to see, that this was an extremely indiscreet mode of proceedings, to say the very least of it. It is contrary to every principle to allow of such a thing, and I wholly deny the difference which is alleged to exist between mercantile arbitrations and legal arbitrations. The first principle of justice must be equally applied in every case. Except in the few cases where exceptions are unavoidable, both sides must be heard, and each in the presence of the other. In every case in which matters are litigated, you must attend to the representations made on both sides, and you must not, in the administration of justice, in whatever form, whether in the regularly constituted Courts or in arbitrations, whether before lawyers or merchants, permit one side to use means of influencing the conduct and the decisions of the Judge, which means are not known to the other side."

(emphasis supplied)

A 23 :This Court also relied on the decision in *Haigh* v. *Haigh*, [1861] 31 LJ Ch 420 which required an arbitrator to act fairly in the course of its duties. The two well recognized principles of natural Justice are (1) that a Judge or an arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased (*nemo judex in causa sua*); and (ii) that
B the parties to dispute should be given adequate notice and opportunity to be heard by the authority (*audi alteram partem*) (See Administrative Law by H.W.R. Wade, Part-V and Judicial Review of Administrative Action by S.A. de Smith,Third Edition, Chapter 4. Giving reasons in support of a decision was not considered to be a rule of natural justice
C either under the law of arbitrator or under administrative law.

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33: *The people in India as in other parts of the world such as England. U.S.A. and Australia have become accustomed to*
D *the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards for a long time.* They have attached more importance to the element of finality of the awards and those reasons disclose any error apparent on the face of the record people have not
E refrained from questioning such awards before the Courts. It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where reasons are required, it is open to the parties to the disputes to introduce a term either in the arbitration agreement or in the
F deed of submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In
G the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the Arbitrations to give reasons for their awards we feel that it may not be
H appropriate to take the view that all awards which do not

contain reasons should either be remitted or set aside. A decision on the question argued before us involves a question of legislative policy which should be left to the decision of Parliament. It is a well-known rule of construction that if a certain interpretation has been uniformly put upon the meeting of a statute and transactions such as dealings in property and making of contracts have taken place on the basis of that interpretation upon it which will materially affect those transactions. We may rear here to the decision of the Court of Appeal rendered by Lord Evershed M.R. in *Brownsea Haven Properties* v. *Poole Corpn.*, [1958] Ch 574 in which it is observed thus :

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

(emphasis supplied)

In the present case, the arbitrator was directed to give a reasoned award by an order dt. 20.11.1981 of the High Court. That he is bound to do.

But the question is, where the arbitrator had given sufficient reasons is it incumbent upon the appellate tribunal also to give reasons more so, while confirming the same ? When an award is subject to an appeal. What is the position ?

In *Commercial Arbitration by Mustill and Boyd, (2nd Edition)* it is stated at pages 364-365 as under :

"When the appeal tribunal has made an award, whether confirming, reversing or varying the decision of the original arbitrators, it is the award of the appeal tribunal which defines the rights of the parties.

The appellate award, once made, completely replaces the original award of the arbitrators."

In the case on hand, the appellate tribunal has confirmed the award in the manner set out as above. When the Tribunal upheld the award dated 19.7.1983. of the sole Arbitrator, it stands to reason that it has come to be

confirmed for the same reasons as prevailed with the sole arbitrator. To insist upon such reasons to be repeated by the appellate authority will only be superfluous. An arbitration procedure should be quick. Such proceedings cannot be equated to court proceedings nor do they partake the character of trial. To insist upon the appellate tribunal to furnish reasons for its confirmatory order is not warranted.

From the above extract it is manifest that:

1. Non-reasoned award is not violative of natural justice.

2. Equally, such an award would not put a party under a disadvantage, in that, he is unable to question the same by discerning the error apparent on the face of the record. The plea of the respondents for which reliance is placed on the above quoted passage from Mustill and Boyd (2nd Edition) is when an arbitrator's award is subject to an appeal the final award is the appellate award and the original award is replaced. Therefore, it is the appellate award that is made the rule of the Court. Hence, reasons must be given by the appellate authority. This contention cannot be accepted in view of what we have held above.

Of course, if the appellate tribunal reverses the arbitrator's award, it may be required to give reasons but that is not the position here.

The essence of arbitration is to avoid cumbersomeness of the court procedure to have a fair settlement. It is true that the award of the appellate tribunal is the final award and it is that which is to be made the rule of Court. The Court, by looking at the original award as confirmed by the order of the appellate tribunal, can always discern the reasons which in this case are fully contained in the award dated 19.7.1953 of the Sole Arbitrator.

In this view, we find great difficulty in upholding the impugned judgment. Accordingly, it is set-aside. The civil appeal stands allowed. However, there shall be no order as to costs.

T.N.A. Appeal allowed.