ALLEN BERRY & CO. (P) LTD.

v.

UNION OF INDIA, NEW DELHI.

January 5, 1971

[J. M. SHELAT, C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

Arbitration Act (10 *of* 1940), *s.* 30—*Setting aside award—Error apparent on the face of award—What is.*

The Director General of Disposals, through correspondence and sale-notes, sold to the appellant-company, United States surplus was materials consisting of vehicles and other stores. Disputes having arisen between the parties, both as regards the contents of and the quantity of the vehicles deliverable under the contracts, they were referred to arbitration as per cl. 13 of the general conditions of the contract between the parties. The disputes consisted of claims and counter claims and the umpire after deducting the amount of one claim allowed to the appellant, held that the appellant was liable to pay to the respondent Rs. 34,70,226.50 and costs amounting to Rs. 5,40,544,00.

The award was filed in the District Judge's Court and the appellant applied for having it set aside on various grounds. The Court held that with respect to certain matters claimed by the respondent the umpire had no jurisdiction and remeitted the award for reconsideration of those items and also for readjustment of the amount of costs. The High Court confirmed the judgment of the District Judge.

In appeal to this Court, it was contended that the award was liable to be set aside, because : (1) the contracts of sale were misconstrued and the error appeared on the face of the award; (2) several documents bearing on the scope of the sales were not considered; (3) the umpire went beyond his jurisdiction when he awarded compensation to the respondent because the appellant removed certain vehicles; (4) that the umpire acted as a conciliator deciding matters on conjecture; (5) that the umpire fixed ground rent payable by the appellants without any evidence; and (6) that the costs awarded were totally disproportionate.

HELD : (1) When parties choose their own arbitrator to be the judge in the dispute between them, they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. Therefore, even when an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside. Whether the contract or a clause of it is incorporated in award is a question of construction of the award. The test is, did the arbitrator come to a finding on the wording of the contract. If he did, he can be said to have impliedly incorporated the contract or the relevant clause, but a mere general reference to the contract in the award is not to be held as incorporating it. [288 F-H; 289 A]

Union of India v. *Bungo Steel Furniture Pvt. Ltd.* [1967] 1 S.C.R. 324, followed.

A *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning & Weaving Co. Ltd.* [1923] A.C. 480, applied.

Kelanton v. *Duff Development Co.* [1923] A.C. 395 and *Giacomo Costa Fu Andrea* v. *British Italian Trading Co. Ltd.* [1962] 2 All E.R. 53, 62, referred to.

B 2(a) The dispute in the present case being as to what was sold and as to whether besides the sale-notes, the subsequent clarifications or explanations given by various officers of the respondent formed part of the contract and were binding on the respondent, and both the questions having been referred to arbitration, the umpire's findings on them would bind the parties unless he laid down any legal proposition such as a construction which is made the basis of the award and is on the face of the award erroneous. The award showed that the umpire had considered C besides the sale-notes the oral and documentary evidence led by the parties as also the contentions urged by counsel. It could not, therefore, be contended that the several documents were not taken into consideration by the umpire. [291 E-F; 292 E-H]

(b) The umpire laid down the legal proposition that the clarifications or assurances given subsequent to the dates of the sale-notes were not binding on the respondent and could not affect the scope of the sales; D but the fact that he answered a legal point, which he had to decide while deciding the questions referred to him, did not mean that he incorporated into the award or made part of it a document or documents, the construction of which was the basis of the award. If there was an error in such a case it could not be said to an error appearent on the face of the award entitling the court to consider the various documents placed before the umpire but not incorporated in the award so as to form part of it, and then to make a search if they had been misconstrued by him. E [293 B-E]

(3) Once it was found that it was competent for the umpire to decide that the appellant company was not entitled to keep certain vehicles which it had removed, he must, to do justice between the parties, order the appellant either to return them or to pay compensation for them. Since the first course was not possible because of lapse of time the second was the only obvious course. Clause 13 of the general conditions pro- F vides for reference to arbitration of all questions or disputes arising under these conditions or in connection with this contract, and these words are wide and comprehensive. Therefore, the umpire did not go beyond his jurisdiction in accepting the respondent's counter claim for compensation. [295 D-E]

(4) Merely because the umpire held that even though the appellant was not entitled to some vehicles claimed by it, yet the authorities had G delivered a substantial number of them, without going into details, it could not be said that he had acted without evidence or that he behaved in the matter as a conciliator, or gave findings on conjuncture and surmises, especially when the appellant withheld relevant evidence which was in its possession. [296 E-F]

(5) Under the contracts of the sale, the appellant was bound to pay to the respondent ground rent and other charges which the respondent H in its turn was liable to pay the owners; and since it was not the appellant's case that the respondent had claimed a higher amount there was no substance in the contention that the arbitrator fixed the ground rent wihtout any evidence. [297 A-C]

(6) Considering the huge amounts claimed by the parties, the volume of evidence, adduced and the number of days occupied in recording that evidence and in arguing the case, it could not be said that the discretion of the umpire exercised in the matter of costs was exercised in breach of any legal provision or unreasonably. [297 C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2418 of 1966.

Appeal by special leave from the judgment and order dated February 19, 1963 of the Punjab High Court, Circuit Bench, at Delhi in F.A.O. Appeal No. 123-D of 1961.

R. L. Agarwal, K. L. Mehta, S. K. Mehta, P. N. Chadda, M. G. Gupta and *K. R. Nagaraja*, for the appellant.

L. M. Singhvi, Badri Dass Sharma and *S. P. Nayar*, for the respondent.

The Judgment of the Court has delivered by

Shelat, J. By this appeal, under special leave, the appellant-company challenges the correctness of the judgment of the High Court of Punjab, dated February 19, 1963 refusing to set aside an umpire's award, dated March 22, 1958. The award was in respect of certain disputes between the company and the Union of India in the matter of disposals of the United States surplus war materials left by the Government of the U.S.A. at the end of the last World War. These surplus materials, called the U.S. Surplus Stores, consisted of vehicles and other stores. It was said that these were sold to the company by the Director-General, Disposals through correspondence and sale-notes. These contracts of sale were subject to the General Conditions of Contract (Form Con. 117). Cl. 13 of these General Conditions provided that :

> "In the event of any question or dispute arising under these conditions or any special conditions of contract or in connection with this contract—the same shall be referred to the award of an arbitrator to be nominated by the Director General and an arbitrator to be nominated by the contractor, or in the case of the said arbitrators not agreeing, then, to the award of an Umpire to be appointed by the arbitrators in writing before proceeding on the reference—.
>
> Upon every and any such reference, the assessment of the costs incidental to the reference and award respectively shall be in the discretion of the arbitrators, or in the event of their not agreeing, of the Umpire appointed by them."

A Disputes having arisen between the parties both as regards the contents and the quantity of the vehicles delivered under the contracts, they were referred, in the first instance, to two arbitrators nominated by the parties, and ultimately to an umpire. The disputes were crystallized into nine claims by the appellant-company totaling Rs. 6,73,34,500/-, and several counter-
B claims by the Government of India. At the end of the arbitration, the umpire, by his said award, disallowed all the claims made by the company, except one for which he awarded Rs. 6,94,000/- and held, in respect of the counter-claims filed by the Government of India, that the appellant-company was liable to pay to the Government in all Rs. 36,23,682.50 P. and costs
C amounting to Rs. 5,40,544/-. In the result, after deducting the claim allowed to the appellant-company, the company was held liable to pay to the Government Rs. 34,70,226.50 P.

The award having been filed by the umpire in the Court of the District Judge, Delhi and the Government of India having
D thereupon applied for a decree in term of the award, the company applied to the Court for setting aside the award urging several grounds for so doing. The District Judge by an elaborate judgment declined to set aside the award. He, however, held that the award suffered from an error apparent on the face of the award in respect of the appellant's claim No. III(a), and further held that the counter-claims II, IV, V and VI made by the Govern-
E ment were not covered by the reference, and consequently, the umpire had no jurisdiction to go into them. Declining, however, to set aside the award, he remitted it for reconsideration of the aforesaid items and also for readjustment of the amount of costs in the event of enhanced compensation being awarded to the company in respect of its claim No. III(a). Dissatisfied with the
F judgment of the court the company filed an appeal before the High Court. The Union of India also filed certain cross-objections. The High Court heard the appeal and the cross-objections together and by its aforesaid judgment dismissed both the appeal and the cross-objections and upheld the judgment of the District Judge.

G In support of the claim that the award was liable to be set aside, counsel for the company submitted the following six propositions for our acceptance :

1. that the contracts of sale entered into by the company were misconstrued by the umpire and such misconstruction appears on the face of the award:

H 2. that the umpire, as also the High Court, failed to take into consideration several documents while deciding the scope of the sales;

3. that in respect of claim No. VI and counter-claim No. VI of the Government, the umpire acted beyond his jurisdiction as those questions did not fall within the scope of the reference;
4. that the umpire did not act according to law but acted as a conciliator and based his award on mere conjectures and surmises;
5. that his conclusion on ground rent awarded to the Government was based on no evidence; and
6. that the costs awarded to the Government were altogether disproportionate.

Before we proceed to consider these propositions, it is necessary to ascertain the scope of s. 30 of the Arbitration Act 1940 and the principles underlying that section. The general rule in matters of arbitration awards is that where parties have agreed upon an arbitrator, thereby displacing a court of law for a domestic forum, they must accept the award as final for good or ill. In such cases the discretion of the court either for remission or for setting aside the award will not be readily exercised and will be strictly confined to the specific grounds set out in ss. 16 and 30 of the Act. In *Hodgkinson* vs. *Fernie,*(1) Williams, J. stated the principle as follows :—

> "where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and fact.... The only exceptions to that rule are, cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think, firmly established, *viz.*, where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award."

This observation was recently cited with approval in *Union of India* v. *Bungo Steel Furniture Pvt. Ltd.*(2)

The principle is that the Court, while examining an award, will look at documents accompanying and forming part of the award. Thus, if an arbitrator were to refer to the pleadings of the parties so as to incorporate them into the award, the Court can look at them. In some cases, however, courts extended the principle and set aside the award on a finding that the contract, though only referred to but not incorporated into the award as part of it, had been misconstrued and such misconstruction had

(1) (1857) (3) C.B.(N.S.) 189, 202. (2) [1967] 1 S.C.R.324.

A been the basis of the award. Thus, in *Landauer* v. *Asser*(1) the dispute between buyers and sellers of goods was as to who was entitled to certain sums paid upon a policy of insurance upon the goods. This was referred to arbitration and the umpire made his award basing it on the construction he placed on the contract, namely, that as the parties to the contract were "by the B terms thereof" principals, their interest and liability in insurance was defined to be the value of the invoice plus 5 per cent. On an application to set aside the award, the Court of Appeal held that inasmuch as the umpire had referred to the contract and the terms thereof, it was justified in looking at the contract, and having done so, found that he had based his decision entirely C upon the terms of the contract. It also found that since the contract, if properly construed, did not justify the decision, the award was bad on the face of it and was liable to be set aside. A similar view appears also to have been taken in *F.R. Absalom Ltd.* v. *Great Western (London) Garden Village Society Ltd.*(2) D where the award set out the relevant words and cl. 30 of the contract and also the conclusion of law on the meaning of those words. Lord Russel said that since the award recited the contract and referred in terms to the provisions of cl. 30, thereby incorporating it into the award, and then stated the construction E which the arbitrator placed upon that clause, the Court was entitled to look at that clause to ascertain if the construction placed by the arbitrator was erroneous.

The correctness of the decision in *Landauer* v. *Asser*(1) was challenged before the Privy Council in *Chempsey Bhara & Co.* F v. *Jivraj Balloo Spinning and Weaving Co. Ltd.*(3) Lord Dunedin,, however, did not expressly overrule it but rested content by observing that that decision was not binding on the Board. But he formulated the principle thus :

> "An error in law on the face of the award means, —that you can find in the award or a document actual- G ly incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to see- H ing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound."

(1) [1905] (2) K.B. 184. (2) 1933 A.C. 592.
(3) [1923] A.C. 480.

The Privy Council upheld the award stating that it was impossible to say what was the mistake on the face of the award which the arbitrators had made as they had not tied themselves down to any legal principle which was unsound. The mere fact that the court would have construed a document differently than the arbitrator would not induce the court to interfere unless the construction given by the arbitrator is such that it is against the well-established principles of construction. [see *Kelanton* v. *Duff Development Co.*(1)]

In an illuminating analysis of a large number of earlier decisions, including *Landauer*(2) and *F. R. Absalom Ltd.*(3) Diplock, L.J., in *Giacomo Costa Fu Andrea* v. *British Italian Trading Co. Ltd.*(4) recorded his conclusion thus :

> "It seems to me, therefore, that, on the cases, there is none which compels us to hold that a mere reference to the contract in the award entitles us to look at the contract. It may be that in particular cases a specific reference to a particular clause of a contract may incorporate the contract, or that clause of it, in the award. I think that we are driven back to first principles in this matter, namely, that an award can only be set aside for error which is on its face. It is true that an award can incorporate another document so as to entitle one to read that document as part of the award and, by reading them together, find an error on the face of the award."

The question whether a contract or a clause of it is incorporated in the award is a question of construction of the award. The test is, does the arbitrator come to a finding on the wording of the contract. If he does, he can be said to have impliedly incorporated the contract or a clause in it whichever be the case. But a mere general reference to the contract in the award is not to be held as incorporating it. The principle of reading contracts or other documents into the award is not to be encouraged or extended. (see *Babu Ram* v. *Nanhemal & Ors.*(5) The rule thus is that as the parties choose their own arbitrator to be the judge in the dispute between them, they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. Therefore, even when an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the

(1) [1923] A.C. 395 (2) [1905] 2 K.B. 184.
(3) [1933] A.C. 592. (4) [1962]2 All E.R. 53, 62
(5) C.A. NO.107 of 1966, Decided on 5-12-1968.

award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake.

In the light of the principle above stated, the first question calling for determination is, is there an error apparent on the award, in the sense that the umpire misconstrued the contracts of sale inasmuch as though those contracts were contained in sale-notes as well as in several letters, he considered the sale-notes only as containing the contracts of sale disregarding the correspondence which had taken place between the company and the Director-General, Disposals and his officers? Such a question would undoubtedly be one of law. But the disputes referred to the umpire contained disputes both of fact and law. Ordinarily the decision of the umpire, even though it be on a question of law, would be binding on the parties. The court would only interfere if the case falls within the exceptions mentioned by Williams, J. in *Hodgkinson* v. *Fernie*(1) and reaffirmed by Diplock L. J., in *Giacomo Costa Fu Andrea* v. *British Italian Trading Co. Ltd.*(2).

There were in all three separate sales to the appellant-company, which according to the respondents were incorporated in sale-notes Nos. 160, 161 and 197. Before the sale-note 160 was issued on July 11, 1946, it is a fact that the company had written a letter dated July 10, 1946 which was also endorsed by two officers of the Director-General, Disposals. The letter contained three clauses, the first of which stated that "M/s. Allen Berry will buy the Moran Vehicles Depot 'as is where is' for Rs. 1,80,00,000/". The two other clauses provided the manner and time of payment of the sale price. But the letter commenced with the following words:

> "Pending detailed record of terms tomorrow the following are the broad heads of agreement, which will form the basis of sale of surplus vehicles :".

The next day, *i.e.*, July 11, 1946, the Department issued sale-note 160, which in clear terms stated that what was purchased were "all vehicles and trailers lying in Moran Depot", which meant that the vehicles sold were only those that were actually lying in that depot on July 11, 1946, and not those outside it or those borne on the records of that depot, as contended by the company. It, however, appears from the judgment of the Trial Court (para 206) that on receipt of sale-note 160, the company wrote a letter on July 11, 1946 in which it contended that "We have purchased the entire vehicle depot of Moran"

(1) [1857] 3 C.B. (N.S. 189,202. 57)
(2) [1962] 2 All ER.53, 68.

It appears that in view of this difference of opinion, a meeting of representatives of the parties was held on July 23, 1946, the minutes of which, as recorded by the Assam Controller, U.S.A.S.S., read as follows :

"(2)(a) The vehicles and trailers sold to Messrs. Allen Berry and Co. Ltd., are deemed to include all vehicles which were or should have been held in Moran Depot on the 10th July, also those which have been issued on a Memorandum Receipt as follows :—

(i) To the Americans, left behind by them in various camps and depots and not yet turned in by us.

(ii) Vehicles issued on Memorandum Receipt to military units assisting the U.S.A.S.S. Organisation.

(iii) Any surplus vehicles originally allotted to U.S.A.S.S. Units—for operational purposes and now no longer required by them."

On September 17, 1946, a secraphone message was sent from New Delhi to Calcutta which stated "We have sold U.S. Army surplus vehicles presumed to be borne on Moran list, that is those actually in Moran Vehicle Depot or those that were intended to be moved to that depot, which was meant to be parking depot for surplus U.S. vehicles in Assam area." On September 26, 1946, the Director-General, Disposals, wrote to the company that "The vehicles sold to you in Assam are those U.S. Army surplus vehicles actually in Moran Vehicle Depot or those that were intended to be moved to Moran Vehicle Depot. Any mobile engineering equipment, such as mobile cranes, tracked tractors are excluded from the sale to you." On December 10, 1946, the Controller issued a release order in respect of :

1. All vehicles and trailers lying in Moran Depot on 10th July 1946 including all United States Army Surplus Stores, excluding land and buildings lying within Moran Depot and transferred to the Government of India from the Government of the United States.

2. Vehicles in operational use in Calcutta and Assam as and when no longer required by the U.S.A.S.S. Organisation."

A The question raised by counsel is that the umpire failed to consider all these documents while considering the scope and content of the contract of sale and relied on only sale-note No. 160, dated July 11, 1946, that the contract was not contained in the said note 160 alone, and that therefore, he misconstrued the contract, and that that misconstruction, which is a point of B law, is apparent on the face of the award, as it was made the very basis of the award.

The first three issues raised by the umpire were :

(1) whether the appellant was entitled to prove that any vehicles, stores etc. other than those men- C tioned in the sale-notes were sold to it;

(2) whether the Government was bound by the clarifications, representation, explanations or assurances made or given by any officer or officers of the Department regarding the subject-matter of the contracts of sale except those D necessarily implicit in the sale-notes; and

(3) whether the Government sold any vehicles except those lying in Moran Depot on July 11, 1946, or those intended to be moved thereto.

The dispute between the parties, thus, clearly was that whereas E the company claimed that the sale was of all vehicles borne on the records of Moran Depot, irrespective of whether they were actually lying there on July 11, 1946 or not, the Government claimed that the company was entitled to those actually lying in the Depot. According to the respondents, the contract of sale was to be found in the sale-note, and therefore, any subsequent F explanations or assurances given by any officer or officers of the Department could not vary or alter the terms of the contract. These expanations and assurances were given only to remove the misunderstanding of the company over the question of the scope and extent of the sale made to it.

The umpire set out part of the sale-notes 160 and 197 in the G award and then observed :

> "the language used in these sale letters is to my mind perfectly clear, explicit and unambiguous and excludes the possibility of any vehicles, trailers or stores lying on the dates in question outside the locations specified in the sale letters having been included in the two sales. H The contention that they in fact include all vehicular stores in Assam in one case and in Bengal area in the other has been made in all seriousness and a good deal

of evidence both oral and documentary has been produced in support of or against such contention. The point has also been argued at great length by learned counsel for the parties. I have given the whole matter my most serious and earnest consideration and my view is that apart from the language of the two sale-deeds being against such a contention, the evidence too considered as a whole does not support it. Accordingly, I hold that the stores sold to the claimants in the case of Assam were those actually located in Moran Depot on July 10, 1946 and in the case of Bengal those actually located in Jodhpur and other depots specified in the sale letter on July 31, 1946."

He next held :

"The alleged clarifications or representations made or explantions or assurances given by any officer or officers of the Disposals Department either verbally or in writing have been very carefully examined by me and I am of opinion that neither are they, considered as whole, capable of the interpretation sought to be put upon them by the claimants nor are the respondents bound by them. They are not in accordance with law and do not amount to legal contracts binding the respondents."

These passages clearly show that the umpire had considered, besides the sale-notes, the oral and documentary evidence led by the parties as also the contentions urged on and as regards them by counsel for the company. It is impossible, therefore, to uphold the contention that the various documents, *i.e.*, the letter of the company dated July 10, 1946, the subsequent correspondence, minutes of the meetings which too place after the sale-note 160 was issued etc. were not taken into consideration by the umpire while coming to his conclusion as to what actually was sold to the company.

The dispute, amongst other disputes, referred to the umpire and crystallized by him in the form of issues on the pleadings of the parties involved, as already stated, the question first as to what was sold, and secondly, arising out of that, the question whether besides the said sale-notes 160 and 197, the subsequent clarifications or explanations were binding on the Government. These were, no doubt, questions partly of fact and partly of law. But questions both of fact and law were referred to the umpire and *prima facie* his findings on them would bind the parties unless, as explained earlier, the umpire has laid down any legal proposition, such as a construction which is made the basis of the award and is on the face of the award an error.

A The point is, is this such a case? True it is that this is not a case where a question of law is specifically referred to. It is clearly a case falling in the category of cases, like *Kalanton* v. *Duff Development Co. Ltd.*(1) wherein deciding the questions referred to him the umpire has to decide a point of law. In doing so, the umpire, no doubt, laid down the legal propsition that the B clarifications or assurances given subsequent to the dates of the said sale-notes by an officer or officers of the department were not binding on the respondents nor could they affect the scope of the sales. That answer the umpire was entitled to give. But the fact that he answered a legal point does not mean that he has incorporated into the award or made part of the award a docu- C ment or documents, the construction of which, right or wrong, is the basis of the award. The error, if any, in such a case cannot be said to be an error apparent on the face of the award entitling the court to consider the various documents placed in evidence before the umpire but not incorporated in the award so as to form part of it and then to make a search if they have been miscon- D strued by him. This, in our understanding, is the correct principle emerging from the decisions which counsel placed before us. In any event, this is not a case where the umpire, in the words of Lord Dunedin, "tied himself down to a legal proposition" which on the face of the award was unsound. The award makes it clear in so many words that he took into account the entire evidence, including the documents relied on by counsel E and then only came to the conclusion that it did not assist the company in its contention as to the scope of the sales. Contentions 1 and 2 raised by Mr. Agarwal, therefore, cannot be upheld.

Contention No. 3 relates to 547 vehicles said to have been sold to the company under sale-note 197, dated August 2/6, F 1946. There is no dispute that out of these vehicles the company removed 291 vehicles alleging that the delivery of the balance of 256 vehicles was withheld. The company made a claim being claim No. VI for the price of these 256 undelivered vehicles. The respondents' contention was that the sale to the company was confined only to the U.S.A. Surplus Stores, that these G vehicles did not fall within that category, but were Reverse Land Lease vehicles belonging to the Government of India under an agreement between the U.S.A. and India. On these allegations the respondents laid counter-claim No. VI claiming the price of the 291 vehicles admittedly removed by the company when they were lying in Jodhpur Depot, Calcutta.

H The umpire found that the expression "Reverse Land Lease" related to the reciprocal aid articles referred to in the said agreement. A reciprocal aid article, according to that agreement,

(1) [1923] A.C. 395.

meant an article transferred by the India Government to the U.S. Government under reciprocal aid under para 4-C of that agreement. The U.S.A. Government was deemed to have acquired as on September 2, 1945 full title over such articles except that such reciprocal aid articles incorporated into installations in India were deemed to have been rreturned to India Government from the date when the U.S.A. forces relinquished possession of such installations. From the inventories produced before him, the umpire held that these 547 vehicles were incorporated into installations in India, and therefore, ownership in them vested in India Government on and after the U.S.A. forces relinquished possession of those installations. They could not, therefore, be regarded as U.S. Surplus Stores which alone were and could be the subject-matter of sale-note 197. Consequently, the company was not entitled to remove the said 291 vehicles which it did, much less could the company claim compensation for 256 vehicles which it alleged were not delivered to it. In the result, the umpire allowed the Government's counter-claim No. VI, which was for the price of 291 vehicles unauthorisedly removed by the company from Jodhpur Depot.

The argument in connection with this part of the award was, firstly, that the findings of the umpire were vitiated as there was total lack of evidence on which they could be based, and secondly that in any event, the umpire had no jurisdiction to award compensation to the Government in respect of counter-claim No. VI. The first part of the argument need not detain us as the finding that these vehicles formed part of reciprocal aid articles, the ownership in which vested in the Government of India and were therefore not U.S.A.S.S. was based on the agreement between the two Governments and the inventories produced before the umpire from which he could hold that they belonged to the Government of India from the date when the installations in which they were incorporated were relinquished by the U.S. forces, and that therefore, they could not form the subject-matter of sale-note 197 which related only to the U.S. Surplus Stores.

The second part of the argument, however, requires consideration. The question is whether the arbitration clause included a dispute relating to compensation in respect of the said 291 vehicles unauthorisedly removed by the company. Cl. 13 of the General Conditions of Contract, quoted earlier, provides for reference to arbitration of all questions or disputes "arising under these conditions" or "in connection with this contract".

Dr. Singhvi referred us to cl. 10 of these Conditions also but it is clear that it can in no sense apply to the dispute relating to compensation. But the words "arising under these conditions"

A and "in connection with this contract" are undoubtedly wide and comprehensive. It is, nonetheless, a question whether the dispute as to compensation on the ground of unauthorised appropriation of these vehicles by the company falls within cl. 13. In *Vidya Sagar Joshi* v. *Surinder Nath Gautam*(1) the words "expenditure in connection with election" used in s. 77 of the Representation B of the People Act, 1951 were construed to mean "having to do with". An arbitration clause wherein the words "in relation to or in connection with the contract" were construed not to contemplate a dispute raised by a contractor that he could avoid the contract on the ground that it was obtained by a fradulent misrepresentation. (see *Monro* v. *Bognor Urban District Coun-*C *cil*(2). But a claim for damages on the ground of negligence on the part of the defendant in removing the plaintiff's furniture against a clause for due diligence in removing it was held to fall within the arbitration clause. [*Woolf* v. *Collis Removal Service*(3)].

D Counsel conceded that a dispute as to the interpretation of sale-note 197 would fall under the arbitration clause.. If that is so, it must follow that the umpire was competent to decide whether the said 547 vehicles fell within the purview of the sale-note or not. If in determiniing that question he came to the conclusion that they did not, the obvious conclusion would be that the company was not entitled to take away 291 vehicles E admittedly removed by it from the Depot. If the company did that, would the question as to the return or of compensation in lieu of such vehicles, to which it was not entitled under the sale, be a question which arises out of or in connection with the contract ? Counsel went as far as to say that the umpire in deciding the company's claim No. VI and the Government's F counter-claim No. VI could decide that the company was not entitled to those vehicles, but could not take the next step either to direct the return of them or payment of compensation in lieu of those vehicles. In our view, such an argument cannot be accepted. The reason is that once it is found that he was competent to decide the dispute as to whether the said 547 vehicles G were not the subject-matter of the sale and 291 of them were removed unauthorisedly, he must, to do justice between the parties in respect of disputes referred to him, order the company either to return them or to pay compensation for them. Since the first course was not possible after all these years, the second was the only and the obvious course. The dispute raised by the respondents that 291 vehicles were not included in the sale was H co-extensive with and connected with the dispute that the com-

(1) A.I.R. 1969 S.C. 288.
(2) [1915] (3) K.B. 167.
(3) [1947] 2 All E.R. 260.

pany was bound to return them if it was found that they were not covered by the sale. On this reasoning it is not possible to say that the umpire went beyond his jurisdiction either in rejecting the company's claim No. VI or in accepting the corresponding counter-claim No. VI of the respondents.

Contention 4 relates to 600 vehicles which had been taken out of Moran Depot for operational purposes, but which the company claimed were part of the sale under sale-note 160. The umpire held (1) that those vehicles having been taken out of the Depot for operational purposes did not fall within the sale, and (2) in the alternative, that the evidence disclosed that a substantial number of vehicles in operational use were delivered to the company even though strictly speaking it was not entitled to them as they were not lying in the Depot on July 10, 1946. The umpire further held that if some of them per chance were not handed over, the respondents had sufficiently compensated the company by handing over several non-operational vehicles from outside the depot to which the company was not entitled. Counsel argued that this part of the award was vague and without any evidence to support it, and therefore, the umpire behaved in this respect more like a concilliator than as an arbitrator.

Having held that sale-note 160 covered only those vehicles which were actually lying in Moran Depot on July 10, 1946, it was not incumbent on the umpire to decide the number of operational vehicles outside the depot. Consequently, if he was satisfied that even though the company was not entitled to the said 600 vehicles claimed by it, yet the authorities had delivered a substantial number of them, and for any deficiency, had also delivered non-operational vehicles, there would be no purpose in going into the details of vehicles delivered to the company. Even though, as the judgment of the Trial Court discloses (para 223), there was evidence, both oral and documentary, that the company had collected a number of vehicles lying at places outside the Depot, and the vehicles so collected were recorded by the company, yet the company had withheld the production of those records. In view of these facts it is impossible to say that the umpire had acted without evidence, or that he behaved in the manner of a conciliator, or gave findings on conjectures and surmises.

Our interference was invited next on the question of ground rent on the ground that the amount of such rent was fixed by the umpire without any evidence. There is hardly any substance in this contention. The sites, on which the various depots were situated, were requisitioned by the Government under the

A Defence of India Rules. The Government had a statutory obligation, therefore, to pay to the owners of those sites compensation as provided by those Rules. Under the contracts of sale the company was bound to pay to the Government ground rent and other charges which the Government in its turn was liable to
B pay. It is, therefore, not correct to say that the umpire could award only that amount which the Government had actually paid and that the umpire should, therefore, have taken an account from the Government. It was never the case of the company that the Government had claimed ground rent higher than the compensation it was liable to pay.

C The last objection was that the amount of costs awarded by the umpire to the respondents was disproportionate. It appears from the award that the umpire fixed the amount of costs after considering the statements of expenses incurred by the parties for the hearing before him tendered by the respective counsel for the parties. Considering the huge amounts claimed by the
D parties, the volume of evidence, both oral and documentary, adduced by them, the number of days occupied in recording that evidence and in arguing the case, we are not prepared to say that the discretion which the umpire exercised in the matter of costs was exercised in breach of any legal provision or unreasonably which can justify the Court's intervention.

E In our view, none of the six contentions urged by counsel can be upheld. The result is that the appeal fails and is dismissed with costs.

V.P.S. *Appeal dismissed.*