**ANNEXURE-19**

**GUIDELINES TO ARBITRATORS**: Guidelines to Arbitrators issued by Northern Railway:

# GUIDELINES

# FOR

# ARBITRATORS

(FOR WORKS CONTRACTS)

ENGINEERING DEPARTMENT
NORTHERN RAILWAY,
HEADQUARTERS OFFICE,
BARODA HOUSE, NEW DELHI

## GUIDELINES FOR ARBITRATORS:

STEPS FOR FINALISATION OF AN ARBITRATION CASE AFTER APPOINTMENT BY GENERAL MANAGER/ HON'BLE COURT.

**CASES GOVERNED BY INDIAN ARBITRATION ACT-1996**

(i) On receipt of appointment letter, the Sole-Arbitrator (Presiding Arbitrator in **case of more than one arbitrator) should enter into reference by addressing a letter to the Claimant (and copy to Respondent) to submit statement of facts within 15 days and thereafter respondent should submit his counter statement of facts within next 15 days.** (Annex-I). The Claimant should also be asked to send a copy of the statement of facts to each arbitrator and the respondent.

For further correspondence Presiding Arbitrator may nominate one of the Co-Arbitrators as convener to Organize & write letters on behalf of Arbitral Tribunal.

(ii) Any correspondence with one party should invariably be endorsed to the other party as well as Co-Arbitrators / Presiding Arbitrator.

(iii) On receipt of Statement of Facts/ Counter Statement of Facts from claimant as well as from respondent.

- Hearings should be fixed for giving full opportunity to both the parties to present their case. Format is enclosed as **Annexure-II**. In case of failure of either party to submit SF/CSF the case should be proceeded Ex-parte after giving due notice of Ex-parte (preferably through newspapers).
- In case one of the party, especially claimant, is not available & has left his address & registered letters are received back, the respondent & the Pr.CE/CAO Office (on behalf of the G.M.) should make all out efforts to locate the contractor. After that ex-parte decision may be taken. For this, respondent should be directed to submit counterstatement of facts & counter claims based on original claims of the claimant. Hearings may be finalized in absence of the contractor.
- The arbitrators draw their jurisdiction from the "Terms of Reference" through their appointment letter.
- The award is strictly to be in terms of contract agreement. Arbitrator cannot award any amount ruled out by term of agreement i.e. excepted matters. (List of Excepted Matters clearly showing the clauses of GCC etc. is enclosed herewith) (**Annexure-VIII**)

(iv) Act does not provide any time limit for publication of award. However, the mandate of an arbitrator shall terminate if he fails to act without undue delay. Therefore arbitrators are to act and finalise the case expeditiously. As per Railway Board's letter placed as Annexure – 3, item 5 normally an arbitration award must be given within 4 months from the date of first hearing. However, for claims exceeding Rs.15 lacs a period upto one year may be permitted.

(v) Further, all the Arbitrators are supposed to sit in the proceedings of the case.

(vi) The award is to be by the majority ruling of Arbitral Tribunal Section 29 (1) & 31 (2) of Act. This was an anomaly which has been covered by G.C.C. 1999 Clause 64.4 which states: "In the absence of such a majority, the view of Presiding Arbitrator shall prevail" .

(vii) Place of hearing if not agreed unanimously, should be fixed by Sole-Arbitrator /Presiding Arbitrator & it should either be within geographical limits of the Division/Dy.CE in case of construction or Railway HQs as per GCC correction slip no. 4.

(viii) When the case is nearing finalisation, the parties are directed to submit stamp papers for publication of the award.

- The value of which is governed by Stamp Duty Act of the concerned State. In case of Delhi State, Stamp Duty Act Section 12 deals with, the amount is Rs.1 / 1000 of the claims. Claimant and Respondent may be asked to supply stamp papers for their respective claims (subject to a minimum of Rs.25/-) for publishing the award.
- The Headquarter of the Arbitrator where award is published will govern the applicability of the Stamp Duty Act, i.e. if the Arbitrators are Headquartered at Lucknow, U.P. State Stamp Duty Act will be applicable.

(ix) On finalization, the hearings are to be concluded by obtaining the No Objection Certificates from both the parties. Format enclosed as **Annexure-IV**.

(x) Award in general may be published within one year & after conclusions of the

hearings:

- Arbitrators are required to publish the award and send notice to both the parties about publication of the award directing for payment of fee / honorarium. Notice for fee / honorarium is to be

signed only after award is signed and on the same date on which award is published and signed.

- Original copy of award on stamp paper will form a part of file of the Convener. Number of copies of award will depend upon the Constitution of Arbitration Tribunal. Format of award enclosed as **Annexure-V**.
- Award is to be signed by all the members of Arbitral Tribunal. However, any member can give note of descent, if any.

(xi) After publication of the award notice to both the parties is sent for payment of fee/ honorarium and clerkage of secretarial staff of the Arbitral Tribunal. As per extant instructions, Arbitrator is entitled for fee Rs.300/- per day (per hearing) for more than two hours duration and Rs.150/- for half day (for hearing less than two hours) duration subject to a maximum of Rs.10,000/- per case. Amount for clerkage is Rs.500/- (only one steno/clerk) per case vide Railway Board's letter No. E(G)2004.H01-1 dated 21-05-2004. No amount is prescribed for peon and is the discretion of the Arbitral Tribunal. The notice for payment of fee / honorarium must invariably give number of hearings as well as its duration. It should also contain a certificate regarding typing work being done outside normal working hours for Clerkage. Format enclosed as **Annexure-VI**. (one half of the amount of Fee/ Honorarium/ Clerkage as mentioned above should be charged from each of the parties.)

(xii) On receipt of fee / honorarium from both the parties, the award should be released (**Annexure-VII**).

**The arbitration case file after a period of 60 days after the receipt of award by both the parties may be sent to the office of the respondent for record.**

STEPS FOR FINALISATION OF AN ARBITRATION CASE AFTER APPOINTMENT BY GENERAL MANAGER/ HON'BLE COURT.

**CASES GOVERNED BY INDIAN ARBITRATION ACT-1940**

(i) On receipt of appointment letter, the Sole-Arbitrator (in case of more than one arbitrator Co-Arbitrators) should enter into reference by addressing a letter to the Claimant (and copy to Respondent) to submit statement of facts within 15 days and thereafter respondent should submit his counter statement of facts within next 15 days. (Annex-I)

It is already mentioned in the appointment letter of the Co-Arbitrators to nominate an Umpire within 30 days of their appointment.

(ii) Any correspondence with one party should invariably be endorsed to the other party as well as Co-Arbitrators and Umpire.

(iii) On receipt of Statement of Facts/ Counter Statement of Facts from claimant as well as from respondent.

- Hearings should be fixed for giving opportunity to both the parties to present their case. Format is enclosed as **Annexure-II**. In case of failure of either party to submit SF/CSF the case should be proceeded Ex-parte after giving due notice of Ex-parte.
- In case one of the party, especially claimant is not available & has left his address & Registered letters are received back, the respondent & the Pr.CE/CAO Office (on behalf of the G.M.) should make all out efforts to locate the contractor. After that ex-parte decision may be taken. For this respondent should be directed to submit counterstatement of facts & counter claims based on original claims of the claimant. Hearings may be finalized in absence of the contractor.
- The arbitrators draw their jurisdiction from the "Terms of Reference" through their appointment letter.
- The award is strictly to be in terms of contract agreement. Arbitrator cannot award any amount ruled out by term of agreement i.e. excepted matters. (List of Excepted Matters clearly showing the clauses of GCC-1999 etc. is enclosed herewith) (**Annexure-VIII**)

(iv) Arbitrators are supposed to publish the award within four months from the date of entering into reference. If it is felt that it is not possible to publish this award within four months from the date of entering into reference then either extension for publication of the award can be taken from claimant / respondent (Format enclosed as Annexure-III) or one of the parties can be requested by the Arbitrator

to approach Hon'ble Court for extension of time for publication of award under Section 28 of the Arbitration Act – 1940.

(v) Umpire is not supposed to sit in the arbitration proceedings and is required to act either in case of difference of opinions between the Co-Arbitrator or on expiry of the time limit of award as per Schedule I Rule 4 of Indian Arbitration Act – 1940.

(vi) In case of difference of opinion between the Co-Arbitrators, the decision of Umpire shall be final.

(vii) For place of hearing there is no mention in GCC-1989 (if not agreed unanimously, should be fixed by Sole-Arbitrator /Co-Arbitrator & it should either be within geographical limits of the Division/Dy.CE in case of construction or Railway HQs as per GCC-1999 correction slip no. 4.)

(viii) When the case is nearing finalisation, the parties are directed to submit stamp papers for publication of the award.

- The value of which is governed by Stamp Duty Act of the concerned State. In case of Delhi State, Stamp Duty Act Section 12 deals with, the amount is Rs.1 / 1000 of the award. For the confidentiality of award, the claimant may be asked to deposit 0.1% of the claims in cash. After the award is ready, the Arbitrator may purchase stamp paper of 0.1% of the award (subject to a minimum of Rs.25/-) for publishing the award & return the balance to the claimant after declaring the award.
- The Headquarter of the Arbitrator where award is published will govern the applicability of the Stamp Duty Act, i.e. if the Arbitrators are Headquartered at Lucknow, U.P. State Stamp Duty Act will be applicable.

(ix) On finalization, the hearings are to be concluded by obtaining the No Objection Certificates from both the parties. Format enclosed as **Annexure-IV**.

(x) After conclusions of the hearings:

- Arbitrators are required to publish the award within the extended time and send notice to both the parties about publication of the award directing for payment of fee / honorarium. Notice for fee /

honorarium is to be signed only after award is signed and on same date on which award is published and signed.

- Original copy of award on stamp paper will form a part of file of the Convener. Number of copies of award will depend upon the Constitution of Arbitration Tribunal. Format of award enclosed as **Annexure-V**.
- Award is to be signed by all the members of arbitral tribunal.

(xi) After publication of the award notice to both the parties is sent for payment of fee / honorarium and clerkage of secretarial staff of the Arbitral Tribunal. As per extant instructions Arbitrator is entitled for fee Rs.300/- per hearing for more than two hours duration and Rs.150/- for less than two hours duration subject to a maximum of Rs.10,000/- per case. Amount for clerkage is Rs.500/- (one steno/clerk only) per case vide Railway Board's letter No. E(G)2004.H01-1 dated 21-05-2004. No amount is prescribed for peon and is the discretion of the Arbitral Tribunal. The notice for payment of fee / honorarium must invariably give number of hearings as well as its duration. It should also contain a certificate regarding typing work being done outside normal working hours for Clerkage. Format enclosed as **Annexure-VI**. (half of amount of Fee/Honorarium/Clerkage as mentioned above should be charged from both the parties.)

(xii) On receipt of fee / honorarium from both the parties the award should be released (**Annexure-VII**).

**Annexure – I**

NORTHERN RAILWAY

Headquarters Office
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No. Regd. Dated :-

1) ---------- (Claimant),
**----------**
**----------**

2) ---------- (Respondent),
---------- Railway,

Sub:-

General Manager ---------- Railway, vide letter No.---------- dated ---------- has appointed the undersigned as Sole-Arbitrator/ Presiding -Arbitrator to settle the disputes arising out of the above noted contract.

The claimant is hereby directed to submit STATEMENT OF FACTS of his claims item-wise along with the supporting documents, correspondences, etc. to substantiate his claims within 15 days from the date of receipt of this letter. Simultaneously, a copy of STATEMENT OF FACTS and documents should be sent to ---------- (respondent). The respondent, thus, in turn, will submit the COUNTER STATEMENT OF FACTS supported by evidential facts, if any, to the Sole-Arbitrator/Presiding/Co-Arbitrator endorsing a copy thereof to the claimant within 15 days from the receipt of claimant's Statement of Facts.

(----------)
Sole-Arbitrator/ Presiding
Arbitrator & designation
etc.

Copy to:-

General Manager/ Engg. in ref. to his letter No.------- dated --------.

NORTHERN RAILWAY

Headquarters address
of arbitrator
----------

No. Regd. Dated :-

1) ---------- (Claimant),
**----------**
**----------**

2) ---------- (Respondent),
---

Sub:-

General Manager ---------- Railway, vide letter No. ---------- dated ---------- ---------- has appointed us the Co-Arbitrators to settle the disputes arising out of the above noted contract and we have nominated Sh. ---------- ---------- as Umpire / Presiding Arbitrator with his consent.

The claimant is hereby directed to submit STATEMENT OF FACTS of his claims item-wise along with the supporting documents, correspondences, etc. to substantiate his claims within 15 days from the date of receipt of this letter in three separate covers to Co-Arbitrators as well as to Umpire / Presiding Arbitrator. Simultaneously, a copy of STATEMENT OF FACTS and documents should be sent to ---------- (respondent). The respondent thus in turn will submit the COUNTER STATEMENT OF FACTS supported by evidential facts, if any, to Co-Arbitrators as well as to Umpire/Presiding Arbitrator endorsing a copy thereof to the claimant within 15 days from the receipt of claimant's Statement of Facts.

(Co-Arbitrator's Name) (----------)
designation etc. designation etc.

1. Copy to General Manager/Engg, --------Rly. in ref. to his letter No.------- dated --------.
2. Copy to Sh. -------- (Umpire/ Presiding Arbitrator) & --------- along with a copy of G.M., ------ Rly. letter No. ---------- dated ----------.

Annexure - II

NORTHERN RAILWAY

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No. **Regd.** Dated :-

1) ---------- (Claimant),
---
---

2) ---------- (Respondent),
---

Sub:- ----------

Ref:- Appointment letter No. ---------- dated ----------

The hearing in the above noted case has been fixed for ---------- & ---------- (month) 2006 at ---------- hrs., in my chamber/in the chamber of ----------. Both the parties are directed to attend the hearing on the date and time fixed with all documentary evidence in support of the case.

( ----------)
Sole-Arbitrator/Umpire/Co-Arbitrator/Presiding Arbitrator

1. Copy to General Manager/Engg., Northern ---------- for information please.
2. Copy to Co-Arbitrator for ----------
3. Copy to Umpire /Presiding Arbitrator ----------

**Annexure - III**

| | | |
|---|---|---|
| Shri ---------- | Shri ---------- | Shri ---------- |
| Sole Arbitrator & | Co-Arbitrator & | Presiding Arbitrator & |
| ---------- | ---------- | ---------- |

Sub: ----------

We the undersigned agree for extending the time limit for publication of award up to ---------- with regularizing the intervening period.

| | |
|---|---|
| M/s ---------- (Claimant) | ---------- (Respondent) |
| ---------- | ---------- |
| ---------- | ---------- |

**Annexure - IV**

| | | |
|---|---|---|
| Shri ----------<br>Designation &<br>Sole Arbitrator | Shri ----------<br>Designation &<br>Co-Arbitrator | Shri ----------<br>Designation &<br>Presiding Arbitrator |

Sub: ----------

We the claimant and the respondents do hereby certify that we have been given full opportunity by the Learned Sole-Arbitrators/Arbitral Tribunal to represent our case before them and produce evidence and documents that we considered necessary. We have been heard fully and have nothing more to add. We now request the Sole Arbitrator/ Arbitral Tribunal to proceed further in the matter for making and publishing the award.

M/s ---------- (Claimant) ---------- (Respondent)

**Annexure – V**

AWARD

In the matter of Arbitration

between (claimant ) ----------

---

AND

Union of India representing through (respondent) ----------,

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In connection with work for ----------

AND WHEREAS Shri ---------- and Sh. ---------- were appointed as Co-Arbitrators in the above matter by General Manager, ---------- Railway vide letter No. ------- dated ---------;

AND WHEREAS the said disputes and difference were referred to us;

AND WHEREAS after nominating Sh. ---------- as Umpire/Presiding Arbitrator, We had entered into reference on ----------.

AND WHEREAS the said disputes and differences as contained in the Statement of Facts and Counter Statements of Facts received from both the parties as well as additional papers produced and / or cited before us during the hearings.

AND WHEREAS both the parties have given their undertaking in writing that they have been given / afforded full opportunity to represent their case and have nothing more to produce / say in the matter and have further requested to make and publish the Award;

AFTER having heard and fully considered all arguments and evidence of the parties concerning the said disputes and differences and having gone through all the materials,

papers and documents, and having considered all the matter submitted to us in connection with the aforesaid disputes and differences, we do direct and award as follows:-

Details of Contractor's claims:-

| S.No. | Description of claims | Amount of claims | Amount of award | Reasons of amount awarded. |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| **TOTAL =** | | | | |

Railway's Claims:-

IN CONCLUSION U.O.I. represented through ---------- (respondent) shall pay to M/s ------- (claimant) a sum of Rs.---------- + ---------- + ---------- plus release of FDR deposited towards earnest money in full and final settlement of all claims/Counter Claims of both the parties arising out of the disputes and counter disputes as referred by the General Manager in his letter No. ------ dated ----------;

THAT this amount as mentioned above should be paid to claimant within ------- days from the date of publication of the award failing which amount of award will carry simple interest of ---------% till the date of payment;

**(In case award is in favour of U.O.I. the language will get change suitably)**

That the expenses incurred on non-judicial stamp papers shall be borne by the parties (Stamp papers already supplied on demand from Arbitral tribunal);

That any of the expenses incurred by the parties in connection with the arbitration will be borne by themselves.

This award is given and signed by us at ---------- on this ------ day of ----------

| | | |
|---|---|---|
| (----------) | (----------) | (----------) |
| Co-Arbitrator & | Co-Arbitrator & | Presiding Arbitrator & |
| ---------- | ---------- | ---------- |

**Annexure - VI**

NORTHERN RAILWAY

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No. Dated :-

1) ---------- (Claimant),
**----------**
**----------**

2) ---------- (Respondent),
Northern Railway,
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Sub:- ----------

In terms of Arbitration and Conciliation Act 1996/Arbitration Act 1940 the Arbitral Tribunal gives notice that on ---------- (month) ---------- have made the Award in the above case and signed it.

The Claimant and the Respondent are requested to pay the fee / Hon. of the Sole-Arbitrator / Umpire/Co-Arbitrators, Presiding Arbitrator as well as clerkage and peon charges as shown below against each:

| S.No. | Particular | Payable by N.Rly | Payable by Firm |
|---|---|---|---|
| 1 | Fee/Hon. of Sh. ---------- Co-Arbitrator & ---------- Rly. ---------- | Rs.-- - --/- | Rs.----- --/- |
| 2 | Fee/Hon. of Sh. ---------- Co-Arbitrator & ---------- Rly. ---------- | Rs.-- - --/- | Rs.----- --/- |
| 3 | Fee/Hon. of Sh. ---------- Presiding Arbitrator & ---------- Rly. ----------. | Rs.-- - --/- | Rs.----- --/- |
| 4 | Clerkage to be paid to CA/----------. Delhi . Typing work was done outside Office hours) | Rs.-- - --/- | Rs.----- --/- |

| | | | |
|---|---|---|---|
| 5 | Clerkage to be paid to Sh. ---------CA/----------. Rly. (work was done outside Office hours) | Rs.-- - --/- | Rs.----- --/- |
| 6 | Clerkage to be paid to CA/---------. Rly. ---------- (work was done outside Office hours) | Rs.-- - --/- | Rs.----- --/- |
| 7 | Service rendered by Shri ---------- S/o Shri -------- attached with ---------- Rly. ---------- | Rs.-- - --/- | Rs.----- --/- |

A copy of the Award will be given to the parties on payment of the aforesaid dues, either in cash or by money order only.

(----------)
Co-Arbitrator &
---

CC: for information to:-

1. General Manager/Engg. N.Rly., in ref. to his letter No. ---------- dated ----------. In all ---------- sittings were held including the sittings required for examination of file and publication of the award, -------- number of hearings are more than two hours duration and ------ hearings are of less than two hours duration.
2. C.P.O., N.Rly. ---------- for information & necessary action please.
3. Copy to Sh. ---------- & Co-Arbitrator ------- Rly., ------- for information please.
4. Copy to Sh. ---------- & Presiding Arbitrator, --------- Rly. ----- for information.

**Annexure - VII**

NORTHERN RAILWAY

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---,
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No.---------- Dated

1) ---------- (Claimant),
---
---

2) ---------- (Respondent),
Northern Railway,
---

Sub:- ----------

Enclosed please find a copy of the Award given by me in the above noted Arbitration case.

Please acknowledge the receipt.

DA/As above.

(----------)
Sole-Arbitrator &
designation etc.

Annexure - VIII

## LIST OF EXCEPTED MATTERS & OTHER CLAUSES OF G.C.C. PROHIBITING CERTAIN OTHER PAYMENTS

**Clause 8(Page20)** No claim for **material agreed to be supplied by Railway** owing to difficulty in obtaining it in market. The contractor shall have no claim.

**Clause 16 (3)** No claim of interest on EM, SD on amounts payable to the contractor.

**Clause 17 A (iii)** No claim (but may be extra of DOC) for delay by Railway.

**Clause 17 (B)** Penalty shall be imposed on contractor for delays.

**Clause 18** No claim made by contractor, for amount paid for illegal **gratification** paid to any Railway servant for execution of the contract, shall be referred for arbitration. (ii) No compensation shall be paid to contractor for any monetary transaction made with any Railway employee. No monitory dealings with staff.

**Clause 19 (1)** Location of work, ground condition, material and equipments etc. required to carrying out the work.

**Clause 22 (5)** In case of any ambiguity as to the meaning and interest of specification & drawings or as to execution of work or quality of work / material, the **decision of Engineer concerned shall be final**. Any claim thereto shall be excepted matters. To be brought into notice of engineer within 7 days.

**Clause 27 (1)** No claims for material testings.

**Clause 28** No claims for inspection facility.

**Clause 31** Water / Electricity supply.

**Clause 34** No claims for safety precautions.

**Clause 36** Suspension of work (No extra payment but may be DOC extension).

**Claim 39** Rates for extra item of work included in SOR as agreed upon by the Engineer and contractor, the contract shall be binding on the contractor. Thereafter in case of **failure on the part of contractor**

**to execute the extra work**, the contractor shall not have any claim for loss or damage. Notice to engineer of at least 7 days.

**Clause 43 (2)** The contractor shall not be entitled for any claims after he has signed the **"No Claim Certificate"** after the work has been finally measured up.

**Claim 45/A** No claim regarding the accuracy and classification of **measurements** shall be entertained once the measurement has been taken **in the presence of contractor**.

**Clause 55** No compensation for any claims for not complying with provisions of **payments of Wages Act**.

**Clause 55 (A)** No compensation for noncompliance of **Contractor Labour Act**.

**Clause 57** No compensation for noncompliance of **Workmen Compensation Act.**

**Clause 57/A** No claims for noncompliance of provisions of **Mines Act** shall be entertained.

**Clause 61 (1)** Contractor shall have no claims if the contract is determined/terminated by Railway in **view of paucity** of funds except for the value of approved materials at site and for work done to date by the contractor.

**Clause 61 (2)** No claims of contractor to be entertained for expenditure incurred by him in **expectation of completing the whole work** except those claims which are reasonable and supported by documents Railways decision in this regard shall be final.

**Clause 61 (3)** Contractor shall have no claim to any payment of compensation on account of any profit or advantage which he might have derived from **execution of work in full but** could not be derived **due to determination of contract.**

**Clause 64.6** **Arbitration** fee is to be born equally by claimant as well as by the respondent.

# SUMMARY OF COURT JUDGEMENTS RELATED WITH ARBITRATION CASES.

BY R.K.YADAV, Sr. Professor, Track/IRICEN/PUNE

CASE-1 Jurisdiction of arbitrator – Arbitrator can not award any amount ruled out by Terms of Agreement.

Judgement:- **Court – Supreme Court (B.P.Jeevan Reddy and Mrs. Sujata V.Manohar, J.J.)**
**Date of Order – 17-02-1997.**
**Case – AIR 1997 Supreme Court 980 – Civil Appeal No.808 of 1997 arising out of SLP (C) No.20853 of 1996, in case of New India Civil Engineers (P) Ltd. (Applicant) vs. Oil and Natural Gas Corporation (Respondent).**

**Important observations made by Hon'ble Judges are:-**

(A) Contractor's own letter stipulating as to exclusion of balcony area at time of measurement – Tender condition also to same effect- Amount calculated by including balcony area not justified – arbitrator cannot award any amount ruled out by terms of agreement.

The arbitrators over stepped their authority by including the area of the balconies in the measurement of the built up area. It is aesthetic that the arbitrator being a creature of the agreement must operate within the four corners of the agreement and cannot travel beyond it. More particularly, he cannot award any amount, which is ruled out or prohibited by the terms of the agreement.

(B) Express stipulation between parties as to price being firm and not subject to any escalating till completion of work-Contractor was not entitled for escalation for work completed after expiry of period of contract – Award granting such amount beyond authority of Arbitrator.

The above price is firm and is not subject to any escalation under whatsoever ground till the completion of the work.

The learned arbitrators, could not therefore have awarded any amount on the ground that the appellant must have incurred extra expense in carrying out the construction after the expiry of the original contract period. The aforesaid stipulation between the parties is binding upon them both and the Arbitrators.

This is not a case of the arbitrators constructing the agreement. It is a clear case of the arbitrators acting contrary to the specific stipulation/condition contained in the agreement between the parties. We, therefore, affirm the decision of the Division Bench on this account as well.

"……if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him and the Court can find that he exceeded his jurisdiction on proof of such excess……"

CASE-2 Excepted Matters:- As per Clause 63 of GCC excepted matters are not arbitrable. (Cases governed under 1940 Act).

Judgement:- **Court-Hon'ble Supreme Court (R.C.Lahoti, J. and Brijesh Kumar, J.)**
**Date of Order – 01-03-2002**
**Case–in SLP filed by Union of India V/s Sarvesh Chopra, Contractor**

**In the judgement, the Hon'ble Judges have deliberated upon at length the issues of excepted matters and its arbitrability. Hon'ble Court, in fact, has upheld the contention of the Railway about the excepted matters that these matters should not be allowed to be arbitrated upon. The important observations made by the learned Judges are given below:-**

**(i) To be an excepted matters, it is not necessary that a departmental or inhouse remedy for settlement of claim must be provided by the contract Merely for the absence of provision for inhouse settlement of the claim, the claim does not cease to be an excepted matter.**

**(ii) It would be an exercise in futility to refer for adjudication by the arbitrator a claim, though not arbitrable, and thereafter, set aside the award if the Arbitrator chooses to allow such claim. The High Court was, in our opinion, not right in directing the said 4 claims to be referred to arbitration.**

**(iii) We cannot subscribe to the view that interpretation of arbitration clause itself can be or should be left to be determined by arbitrator and such determination cannot be done by Court at any stage.**

CASE – 3 Payment of interest on any amount not admissible as per Clause-16 (3) of GCC.

Judgement:- **Court – Hon'ble High Court Guwahati (J.N.Sarma, C.J.)**
**Date of order – 19-06-02.**
**Case – Arbitration appeal filed by Union of India represented through N.F. Railway/Con/MLG Vs Major V.Najhawan Reta, Contractor.**

**Important observations made by Hon'ble Judges are:-**

**"Clause – 16 (3) of General Condition of Contract reads as under – No interest will be payable upon the earnest money or the security deposit of amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of the clause will be repayable with interest accrued thereto.**

**Sub Clause (3) of Clause – 16 of the General Conditions of Contract prescribes such prohibition and, therefore, the Arbitrator does not get any jurisdiction to grant interest to the contractor. When there is prohibition in the contract for grant of interest, in view of the Apex Court Judgement, the Arbitrator does not have jurisdiction to grant interest and no fruitful purpose will be served by remanding the matter to the Arbitrator on the question of interest.** The Arbitrator's jurisdiction to grant interest, in view of the terms of the contract, is not available. **That being the case, the directions issued by the court below remanding the matter for fresh adjudication on the question of interest is illegal and contrary to the provisions. Consequently, this appeal is allowed, the order dated 16-03-2001 passed in Misc (J) Case No.154/2000 arising out of T.S. (Arb) Case No.229/95 by the learned Civil Judge Senior Division No.1, Guwahati is set aside to that extent".**

CASE – 4 Appointment of Arbitrator – **Where the agreement specifically provided for appointment of two gazetted Railway Officers of equal status as arbitrators, held, High Court erred in appointing a retired Judge as the sole arbitrator – Appointment of sole arbitrator set aside- Arbitration Act, 1940.**

Judgement:- **Court- Hon'ble Supreme Court, (V.N.Khare, CJ and S.B.Sinha and S.H. Kapadia J.J.)**
**Date of Order – 05-02-2004.**
**Case – (2004) 10 Supreme Court case 504, Civil Appeal No.2053 of 1999 in case of Union of India and another Vs M.P. Gupta.**

**Important observation made by Hon'ble Judges are:-**

**"The relevant part of clause 64 runs as under:-**

**64 Demand for arbitration – (3) (a) (ii) the arbitrators who shall be gazetted railway officers of equal status to be appointed in the manner laid in clause 64 (3) (b) for all claims of Rs.5,00,000/- (Rupees Five Lakhs) and above, and for all claims irrespective of the amount or value of such claims if the issues involved are of a complicated nature. The General Manager shall be the sole judge to decide whether the issues involved are of a complicated nature or not. In the event of the two arbitrators being undecided in their opinions, the matter under dispute will be referred to an umpire to be appointed in the manner laid down in sub-clause (3) (b) for his decision.**

**(3) (a) (iii) It is a term of this contract that no person other than a gazetted railway officer appointed by the General Manager as afore-said should act as an arbitrator/umpire and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.**

In view of the express provision contained therein that two gazetted railway officers shall be appointed as arbitrators, Justice P.K.Bahri could not be appointed by the High Court as the sole arbitrator. On this short ground along, the judgement and order under challenge to the extent it appoints Justice P.K.Bahri as Sole Arbitrator is set aside.

CASE – 5 Court's Jurisdiction Under Section 34 of the Arbitration and Conciliation Act, 1996 - **If the award passed by the arbitral is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract is considered patently illegal and this could be set aside under Section 34.**

Judgement:- **Court – Supreme Court of India**
**Bench: ;M.B.Shah & Arun Kumar**
**Date of Order: 17-04-2003.**
**Case – in case of Oil & Natural Gas Corporation Ltd. (Petitioner) Vs Saw Pipes Ltd. (Respondent) case No.: Appeal (civil) 7419 2001 of 518.**

**Important observation made by Hon'ble Judges are:-**

**"The question therefore, which requires consideration is – whether the award could be set aside, if the** arbitral tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31 (3), **which affects the rights of the parties? Under sub-section (1) (a) of** Section 28 there is a mandate to the arbitral tribunal to decide the dispute in accordance with the substantive law for the time being in force of India.

Sub-section (3) arbitral tribunal is directed to decide the dispute in accordance with the terms of the contract.

If the arbitral has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.

However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest.

CASE – 6 Appointment of Arbitrator as per Section – 11(6) of Arbitration Act 1996. **As per 11(6) of Act where procedure for appointment of arbitration has been agreed upon, a party fails to act as required under that procedure and then if other party approaches Chief Justice of a High Court, Chief Justice instead of appointing independent arbitrator should take necessary measure for appointment of arbitrator as per agreement.**

Judgement:- **Court – Division Bench of Kerala High Court (K.S.Radhakrishna and M.N. Krishnan J.J.)**
**Date of Order – 20-12-2004**
**Case – In case of National Thermal Power Corporation Ltd. Vs Raghul Construction Pvt. Ltd., (WP(C)No.28254, 28256, 28257 and**

**28233 of 2004) (AIR 2004 Kerala 115) set aside order of single Judge of Kerala High Court for appointment of arbitrator.**

**Important observations made by Hon'ble Judges are:-**

The expression "necessary measures" and the expression "securing appointment" are absent in a case where there is no agreed procedure. In case where there is no agreed procedure the Chief Justice can make an appointment. In a case where there is agreed procedure the Chief Justice or the person or institution designated by him has to take necessary measures so as to secure appointment as per the agreed procedure. In our view endeavour must be to give effect to that procedure and not to annihilate it.

In our view learned single Judge should have taken necessary measures for securing appointment on the basis of the appointment procedure.

CASE – 7 The power exercised by the Chief Justice of High Court or the Chief Justice of India under Section 11 (6) of the Act is not an administrative Power. It is a judicial power.

Judgement:-**Court – Constitution Bench of Hon'ble Supreme Court (CJI RC Lahoti, B.N.Agarwal, Arun Kumar, G.P.Mathur, A.K.Mathur, P.K. Balasubramanyam)**
**Date of Order – 26-10-2005**
**Case – Case No. appeal (Civil) 4179 of 2003, M/s S.B.P. & Co., Vs M/s. Patel Engineering Ltd. & ANR.**

**Important observations made by Hon'ble Judges are:-**

**We, therefore, sum up our conclusion as follows:-**

**(i)** **The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6)** of the Act is not an administrative power. It is a judicial power.

**(ii)** **The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.**

**(iii)** **In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated judge would be that of the Chief Justice as conferred by the statute.**

**(iv)** **The Chief Justice or the designated judge will have the right to decide the** preliminary aspects **as indicated in the earlier part of this judgement. These will be,** his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the

arbitrator or arbitrators. **The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the judge designate.**

**(v) Designation of a district judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.**

**(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.**

**(vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.**

**(viii) There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.**

**(ix) In a case where an arbitral tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the arbitral tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act."**