A INTERNATIONAL AIRPORT AUTHORITY OF INDIA

v.

K.D. BALI & ANOTHER

MARCH 29, 1988

B [SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Arbitration Act, 1940—Whether a party to arbitration proceedings can seek revocation of authority of the arbitrator appointed under sections 5 and 11—Of-on apprehension in the mind of such a party about bias of the arbitrator—Determination of the question.

C **This petition for special leave was against the judgment and order of the High Court of Bombay, rejecting the application for revocation of the authority of the respondent No. 1, the sole arbitrator under sections 5 and 11 of the Arbitration Act, 1940 ('The Act').**

D **The petitioner invited tenders for the construction of the terminal building of a new international passenger complex (Phase II) at the Bombay Airport. The respondent No. 2, a partnership firm, submitted a tender which was accepted and a formal agreement followed, with a provision in the agreement for settlement of disputes through a sole arbitrator appointed under clause 25 of the conditions of contract by** E **the competent authority.**

Certain disputes arose in which the petitioner sought claims amounting to Rs.85 lakhs. The respondent No. 2—the contractor—approached the petitioner to refer the disputes to arbitration. The Chief Engineer of the petitioner appointed respondent No. 1 as the arbitrator F **and made a reference with regard to the claim of Rs.85 lakhs. The respondent No. 2 asked the Chief Engineer to refer further disputes to the arbitrator and, accordingly, on 16th May, 1986, a second reference was made with regard to 11 further points of dispute with claims amounting to Rs.1.17 crores. On 23rd December, 1986, the Chief Engineer made reference No. 3 to the Arbitrator with regard to claim** G **amounting to Rs.5.81 crore. Thereafter, by applications of 8th and 9th June, 1987, the petitioner expressed objections to the references Nos. 2 and 3 made by the Chief Engineer contending that the references were null and void, being irregularly made, and took preliminary objections before the arbitrator to the arbitration proceedings, being lack of jurisdiction of the arbitrator on the ground that he was not validly** H **appointed so far as references Nos. 2 and 3 were concerned. On 7th**

August, 1987, the petitioner made an application before the arbitrator under section 13(b) of the Act with the request to state the matter before him for the opinion of the Court as special case. A

The arbitrator by his order dt. 3rd October, 1987, rejected the said application and the preliminary objections of the petitioner. Thereafter, the petitioner alleging that the arbitrator had formed his own opinion regarding the matters in issue, filed an appliction before the High Court for the revocation of the authority of the arbitrator on the ground of apprehension in the petitioner's mind about bias of the arbitrator. The High Court by its judgment and order dt. 2nd February, 1988, rejected the application of the petitioner. The petitioner then moved this Court for relief by special leave. B C

Dismissing the petition for special leave, the Court,

HELD: It was necessary to reiterate first what are the parameters by which an appointed arbitrator can be removed on the appliction of a party. It is well-settled that there must be purity in the administration of justice as well as quasi-justice involved in the adjudicatory process before the arbitrator. Once the arbitrator enters on an arbitration, he must not be guilty of any act which can possibly be construed as indicative of partiality or unfairness. It is not a question of the effect which a misconduct on his part had in fact upon the result of the proceeding, but of what effect it might possibly have produced. It is not enough to show that even if there was misconduct on his part, the award was unaffected by it and was in reality just; the arbitrator must not do anything which is not in itself fair and impartial. In the words of Lord O'Brien, L.C. J, there must be a real likelihood of bias and not a mere suspicion of bias before proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party, but it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased, as held by the High Court. The apprehension must be judged from a healthy, reasonable and average point of view and not on a mere apprehension of any whimsical person. It cannot be and should never be in a judicial or quasi-judicial proceeding that a party who is a party to the appointment could seek the removal of an appointed authority or an arbitrator on the ground that the appointee being his nominee had not acceded to his prayer about conduct of the proceedings. It is the reasonableness and apprehension D E F G H

A of an average honest man that must be taken note of. There was no substance found in the alleged grounds of apprehension of bias, examined in this light. [378D-G; 379D-H; 380A-B]

The High Court had examined five circumstances advanced before it. The first was that the arbitrator did not record the minutes of B the meetings after September 29, 1987. The petitioner insisted that the arbitrator should record the minutes setting out the entire oral arguments advanced on behalf of the petitioner. This was not a reasonable request and the arbitrator rightly declined to do that. This was no basis of any reasonable apprehension of bias. [380C-E]

C The next circumstance urged was that the preliminary objections raised by the petitioner were rejected without a speaking order. It was not necessary for the arbitrator to record a long reasoned order on the preliminary objections, and indeed the law does not demand writing such a long order. In any case, it would be open to the petitioner to file a petition under section 33 of the Act if the petitioner felt that the D arbitrator had no jurisdiction to entertain the reference. It would be open to the petitioner to challenge the award to be declared by the arbitrator, including on ground of jurisdiction. [380E-H]

The third circumstance was that the petitioner had filed an application under section 13(b) of the Act calling upon the arbitrator to state E a special case for the opinion of the Court and the failure of the arbitrator to raise the question of law was indicative of bias. This argument could not be accepted. Section 13(b) confers power on the arbitrator to state a special case but it does not make it obligatory on the part of the arbitrator to state a special case as soon as the party desires it. In this case, the petitioner itself agitated the issue of jurisdiction and F other questions of law before the arbitrator. Once having done so, it was not proper for the petitioner to ask the arbitrator to state a special case. This was no ground for bias. [381A-C]

The fourth ground was that the first reference, involving a claim for Rs.85 lakhs, was heard for a considerable time, while the arguments G in respect of the second and third references covering claims of Rs.1.17 crores and Rs.5.81 crores were concluded by the respondent No. 2 within one and one-fourth of a day. The length of the time taken is no indication of either speeding up or any abuse of the proceedings. The Court agreed with the High Court that there is no rule which requires that the length of the argument should depend upon the magnitude of H the claim made. [381D]

The other point urged by the petitioner was that the venue of arbitration was changed and this change was without the consent of the petitioner. Change of venue would in no manner indicate that the arbitrator was prejudiced against the petitioner. This was solely a fallacious ground to make out a case of alleged bias. [381E-G]

The other ground was that as, since 9th June, 1987, the petitioner had not paid for the air-ticket of the arbitrator from Delhi to Bombay and for his residential accommodation, the respondent No. 2 must be providing for the air-ticket and the hotel accommodation for the arbitrator, and the arbitration was likely to be biased. As rightly pointed out by the High Court, the petitioner, after the 9th June, 1987, seemed to have decided that the arbitrator should not proceed with the reference and in order to frustrate the arbitration proceedings, started raising all sorts of frivolous and unsustainable contentions. Having realised that the arbitrator was not willing to submit to its dictates, the petitioner declined to contribute for the air-ticket, etc. No party should be allowed to throw out the arbitration proceedings by such tactics, and if the arbitrator did not surrender to the pressure, he could not be faulted nor could the proceedings of the arbitrator be allowed to be defeated by such a method. [381G-H; 382B-D]

Another ground made was that there was a loss of confidence. There was no reasonable ground for such a loss of confidence. Every fancy of a party cannot be a ground for removal of the arbitrator. [382D]

The Court was in agreement with the learned Judge of the High Court expressing unhappiness over the manner in which attempts had been made to delay the proceedings. [382G]

The Court found no ground to conclude that there could be any ground for reasonable apprehension in the mind of the petitioner for revocation of the authority of the arbitrator appointed by the petitioner itself. While endorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be led to the erroneous impression that justice should appear to be done than it should in fact be done. There was no reasonable ground of any suspicion of bias of the arbitrator. The conduct of the arbitrator did not fall within the examples given and principles enunciated in the instances of cases where bias could be found in the Commercial Arbitration by Mustill and Boyd, 1982, Edn. [383A-C]

Russell on Arbitration, **18th Edition, page 378,** *Re Brion and Brien,* **[1910] 2 I.R. 83, 89;** *The King (De Vesci)* **v.** *The Justices of Queen's Country,* **[1908] 2 I.R. 285;** *The Queen* **v.** *Rand & Ors.,* **[1986] 1 Q.B. 230;** *Ramnath* **v.** *Collector, Darbhanga,* **ILR 34 Pat. 254;** *The Queen* **v.** *Meyer and Ors.,* **[1875] 1 Q.B. 173;** *Ekersley and Ors.* **v.** *The Messey Docks and Harbour Board,* **[1894] 2 Q.B. 667;** *Gallapalli Nageswara Rao* **v.** *The State of Andhra Pradesh,* **[1960] 1 SCR 580;** *Mineral Development Ltd.* **v.** *State of Bihar,* **[1960] 2 SCR 609;** *Ranjit Thakur* **v.** *Union of India & Ors.,* **A.I.R. 1987 SC 2386 and** *R.V. Camborne Justices Ex parte Pearce,* **[1954] 2 All. E.R. 850, 855 referred to.**

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 2545 of 1988.

From the Judgment and Order dated 2.2.1988 of the Bombay High Court in Arbitration Petition No. 234 of 1987.

G. Ramaswamy, Additional Solicitor General, K.V. Kini, S. Bharthari and P.H. Parekh for the Petitioner.

K.S. Cooper, D. Karkali, R. Karanjawala and Mrs. M. Karanjawala for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. After hearing the parties fully we had by our order dated 10th March, 1988 dismissed the special leave petition under Article 136 of the Constitution. We stated therein that we would indicate the reasons by a separate judgment later. We do so by this judgment.

This is a petition for leave to appeal under Article 136 of the Constitution from the judgment and order of the learned Judge of the High Court of Bombay dated 2nd February, 1988. By the impugned judgment the learned Judge has rejected the application for revocation of the authority of respondent No. 1, Shri K.D. Bali, sole arbitrator under sections 5 and 11 of the Arbitration Act, 1940 (hereinafter called 'the Act'). In order to appreciate the contentions raised, it may be stated that the International Airport Authority of India which was the petitioner in the High Court and is the petitioner herein had invited tenders for the work of construction of terminal building of new international passenger complex (Phase II) at the Bombay Airport at

Sahar, Bombay. Respondent No. 2, M/s. Mohinder Singh and Company, a partnership firm having registered office at Delhi and carrying on business in Bombay submitted a tender and it was accepted for the value of Rs.7,26,31,325. A formal agreement followed on 22nd January, 1982. It is not necessary to refer to the clauses of the agreement for the present purposes. It may be reiterated, however, that there was provision in the agreement for settlement of disputes through appointment of sole arbitrator under clause 25 of the Conditions of Contract by the competent authority. Certain disputes arose in which the petitioner sought claims amounting to Rs.85 lakhs. Respondent No. 2 contractor approached the petitioner by letter dated 22nd February, 1985 to refer the disputes with regard to claims amounting to Rs.85 lakhs to the arbitration. One Shri K.K. Sud, the Chief Engineer of the petitioner by his letter appointed respondent No. 1 as the arbitrator and made the reference with regard to the claim of Rs. 85 lakhs on 23rd February, 1985. On 8th March, 1985, it appears from the narration of the events in the judgment impugned that the arbitrator gave directions to the parties regarding submission of pleadings. Respondent No. 2 filed pleadings within time, but the petitioner filed its pleadings after a delay of two and a half months. On 17th March, 1986 respondent No. 2 addressed a letter to the Chief Engineer asking for reference of further disputes to the arbitration and accordingly on 16th May, 1986 a second reference was made referring 11 further points of dispute. A third reference was sought by respondent No. 2 on 22nd May, 1986 in respect of seven more claims but the petitioner informed on June 12, 1986 that the third reference was premature. It appears that in respect of the second and third references the assertion of the petitioner was that these disputes were not referable to the arbitrator. The arbitrator had directed the parties to submit their statements in respect of second reference and though respondent No. 2 submitted its claim within the stipulated period, the petitioner had again delayed doing so according to the learned Judge and according to the assertions of respondent No. 2 for a period of three months. On 16th May, 1986 the Chief Engineer made reference No. 2 with regard to claims amounting to Rs.1.17 crores to the arbitrator. On 23rd December, 1986 the Chief Engineer of the petitioner made another reference being reference No. 3 to the arbitrator with regard to claims amounting to Rs.5.81 crore. The petitioner by its applications of 8th and 9th June, 1987 expressed its objections to the references Nos. 2 and 3 made by the Chief Engineer as according to the petitioner the said references were null and void as these were irregularly made. On 26th June, 1987 the petitioner by its written submissions took preliminary objection before the arbitrator

A B C D E F G H

A to the said arbitration proceedings, being lack of jurisdiction of the arbitrator on account of the fact that he was not validly appointed as far as references Nos. 2 and 3 were concerned. The petitioner by its application dated 3rd August, 1985 noted that respondent No. 1 had not noted the minutes of the meeting dated 10th of June, 1985 correctly. The petitioner by its application on 15th of June, 1987 B requested respondent No. 1 not to proceed with the arbitration proceedings till its preliminary objections regarding jurisdictional aspects were decided and also made it clear that it was appearing under protest in the proceedings before him. The petitioner on 17th June, 1987 made oral submissions before respondent No. 1 with regard to its preliminary objections. Respondent No. 1 directed the petitioner to submit C the rest of its submission by way of written submissions. The petitioner by its applications dated 22nd and 25th June, 1987, respectively objected to respondent No. 1 directing it to make submissions by way of written submissions and thus hurrying up the proceedings. On 26th June, 1987 the petitioner submitted written submissions to respondent No. 1. Respondent No. 1 by his order dated 27th June, 1987 directed D that further proceedings would be undertaken only after the extension of time. Respondent No. 2 applied for enlargement of time and the same was granted by the High Court. On 7th August, 1987 application under section 13(b) of the Act was made before the arbitrator with a request to state the matter before it as Special Case for the opinion of the Court. E

The arbitrator by his order dated 3rd October, 1987 rejected the said application of the petitioner and also rejected the preliminary objections of the petitioner at the same time. On 14th October, 1987 the petitioner by its letter noted the fact that it has sent the minutes of F the meeting with regard to the proceedings held on 28th and 29th September, 1987 to the arbitrator as directed by him. In the said letter the petitioner also protested against the arbitrator's decision of changing the venue of the proceedings and also the inconvenient dates being fixed by him. The petitioner by its letter dated 11th October, 1987 conveyed its concern to the arbitrator that he has been rushing through G the proceedings. On 16th December, 1987 the petitioner alleging apprehension that respondent No. 1 had formed his own opinion regarding the matters in issue. The petitioner approached the High Court with the instant application. This application was rejected by the High Court. The learned Judge changed the date fixed for hearing of the application for extension of time by enlarging the time to make the H award by 15th February, 1988.

The main contention for the revocation of the authority of the arbitrator was about the alleged apprehension in the mind of the petitioner about bias of the sole arbitrator. The learned Judge of the High Court was unable to accept any ground for alleged apprehension. It is apparent as the learned Judge noted that respondent No. 2 had complied with the directions of the arbitrator about the conduct of the proceedings but the petitioner went on seeking adjournments after adjournments. Respondent No. 2 complained to the arbitrator on 4th May, 1987 about the delaying tactics adopted by the petitioner and thereupon the arbitrator directed that the hearing would take place on 8th and 9th June, 1987 and no further adjournment would be granted. After this direction was given by the arbitrator, the petitioner addressed a letter dated 25th May, 1987 to the arbitrator objecting to the jurisdiction in respect of the second and third references. The objections to the jurisdiction raised by the petitioner were, that the claim made in the second and third references were barred by principles analogous to Order II Rule 2 of the Code of Civil Procedure, the Chief Engineer had no authority to refer the disputes to the arbitration, the claims made by respondent No. 2 were beyond the stipulated period of 90 days and therefore were not arbitrable and the time for declaring the award having expired, the Arbitrator could not continue with the arbitration proceedings. On 8th June, 1987 as mentioned hereinbefore the learned advocate for the petitioner orally made submissions on the issue of jurisdiction and thereafter sought adjournment till June 9, 1987 for filing written submissions. On 9th June, 1987 apart from filing written submissions further oral arguments were advanced and thereafter an adjournment was sought beyond June 1987. This adjournment was sought because the time to declare the award was expiring by June, 1987. The hearing was adjourned till June 17, 1987 and again the petitioner's advocate argued on preliminary objections about jurisdiction. The arguments were advanced on the next adjourned dates, that is, June 26 and June 27, 1987. It further appeared that as the time for making the award had expired and the petitioner did not consent to the extension of time, respondent No. 2 filed petition to the High Court of Bombay for extension of time on June 21, 1987. Thereafter the petitioner made an application before the arbitrator under section 13(b) of the Act calling upon the arbitrator to state special case for the opinion of the High Court on certain alleged legal objections. In the meanwhile the petition for extension of time filed in the Bombay High Court was granted and the time for declaring the award was extended till January 15, 1988. Thereafter the arbitrator fixed the hearing on September 28, 1987 and the advocate for the petitioner again reiterated the preliminary objections to the jurisdiction of the arbitrator and

A B C D E F G H

A insisted upon the arbitrator, passing an order on the application under section 13(b) of the Act. The arbitrator rejected the preliminary objections by his order dated 3rd October, 1987 and also the application for stating special case to the High Court under section 13(b) of the Act. The Petitioner's advocate thereupon sought adjournment of the hearing and accordingly hearing was adjourned on several dates. Ultimately, the arbitrator fixed the hearings on 30th October, 1987 and 31st October, 1987. The hearing was postponed to 2nd November, 1987 and on that day the petitioner's advocate remained absent. Thereafter the hearing proceeded on 6th November and 11th November, 1987 as well as on 13th, 18th and 19th November, 1987. Respondent No. 2 concluded arguments, while the arguments on behalf of the petitioner were advanced on December 3, 1987. The arguments further proceeded on December 8 and 9, 1987. Thereafter on December 17, 1987 the present petition was filed for revocation of the appointment of respondent No. 1 as the sole arbitrator. In our opinion, the above narration gives a glimpse how a party can try to prolong a proceeding.

Several points were taken in support of the application for revocation. It was sought to be urged that the petitioner had lost confidence in the sole arbitrator and was apprehensive that the arbitrator was biased against the petitioner. It is necessary to reiterate before proceeding further what are the parameters by which an appointed arbitrator on the application of a party can be removed. It is well settled that there must be purity in the administration of justice as well as in administration of quasi-justice as are involved in the adjudicatory process before the arbitrators. It is well said that once the arbitrator enters in an arbitration, the arbitrator must not be guilty of any act which can possibly be construed as indicative of partiality or unfairness. It is not a question of the effect which misconduct on his part had in fact upon the result of the proceeding, but of what effect it might possibly have produced. It is not enough to show that, even if there was misconduct on his part, the award was unaffected by it, and was in reality just; arbitrator must not do anything which is not in itself fair and impartial. See *Russell on Arbitration,* 18th Edition page 378 and observations of Justice Boyd in *Re Brien and Brien,* [1910] 2 I.R. 83 at p. 89. Lord O'Brien in *The King (De Vesci)* v. *The Justices of Queen's Country*, [1908] 2 I.R. 285 observed as follows:

> "By bias I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must in my opinion be reasonable evidence to satisfy us that there was a real likelihood of bias. *I do not think that their*

vague suspicions of whimsical capricious and unreasonable people should be made a standard to regulate our action here. It might be a different matter if suspicion rested on reasonable grounds was reasonably generated and but certainly mere flimsy grounds elusively generated and morbid suspicions should not be permitted to form a ground of decision." A B

(Emphasis supplied)

See *The Queen* v. *Rand and others*, [1866] 1 Q.B. 230; *Ramnath* v. *Collector, Darbhanga*, I.L.R. 34 Pat. 254; *The Queen* v. *Meyer and others*, [1875] 1 Q.B. 173 and *Eckersley and others* v. *The Mersey Docks and Harbour Board*, [1894] 2 Q.B. 667. C

In the words of Lord O'Brien, LCJ there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. See in this connection *Gullapalli Nageswara Rao* v. *The State of Andhra Pradesh*, [1960] 1 SCR 580 and *Mineral Development Ltd.* v. *State of Bihar*, [1960] 2 SCR 609. Recently this Court in a slightly different context in *Ranjit Thakur* v. *Union of India and others*, A.I.R. 1987 S.C. 2386 had occasion to consider the test of bias of the Judge. But there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension because the arbitrator being the appointee of his client was not acceding to the request of his client which the petitioner considered to be reasonable. We have heard this submission with certain amount of discomfiture because it cannot be and we hope it should never be in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his D E F G H

A prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be B taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner.

The learned Judge had examined the five circumstances advanced before him. The first was that the arbitrator did not record C the minutes of the meetings after September 29, 1987. The learned Judge found that there was no merit in this complaint. After 29th September, 1987 the petitioner's advocate orally made submissions that the arbitrator had no jurisdiction to entertain the dispute. The advocate for the petitioner also desired to file written arguments and D the arbitrator did not object to the same. In spite of it, the petitioner insisted that the arbitrator should record the minutes setting out the entire oral arguments advanced on behalf of the petitioner. This in our opinion was not a reasonable request to make and the arbitrator had rightly declined to do so. This is no basis of any reasonable apprehension of bias.

E

The next circumstance urged was that the preliminary objections raised by the petitioner were rejected without a speaking order. It was not necessary for the arbitrator to record a long reasoned order on the preliminary objections and indeed the law does not demand writing such a long order. In any case, it will be open to the petitioner F to file any petition in the Court under section 33 of the Act, if the petitioner felt that the arbitrator had no jurisdiction to entertain the reference, but the petitioner did not choose to adopt that course and proceeded to argue for a considerable length of time, the issue of jurisdiction before the arbitrator. The arbitrator was not bound to give a reasoned order at every stage of the proceedings. The arbitration G proceedings would then never come to an end. It was not in dispute that the terms of reference required the arbitrator to give reasons for the award to be declared. It would be, therefore, always open for the petitioner to challenge the award to be declared by the arbitrator including on the ground of jurisdiction. The learned Single Judge of the High Court has so held and we are in agreement with him on this H point.

The third circumstances was that the petitioner had filed application under section 13(b) of the Act calling upon the arbitrator to state a special case for the opinion of the Court on the question of law and the failure of the arbitrator to raise this question of law was indicative of the bias. We are unable to accept this argument. Section 13(b) confers power on the arbitrator to state special case but it does not make it obligatory on the part of the arbitrator to state a special case as soon as the party desires to do so. In the instant case the petitioner itself agitated issue of jurisdiction before the arbitrator and by its conduct submitted the question of jurisdiction and other questions of law for determination of the arbitrator. Once having done so, it was not proper for the petitioner to ask the arbitrator to state a special case. This, in our opinion, is no ground for bias.

The fourth ground was that the first reference, where the claim involved was Rs.85 lakhs, was heard for a considerable time, while the arguments in respect of second and third references, which covered the claim of Rs.1.17 crores and Rs.5.81 crores were concluded by respondent No. 2 within one and one fourth of a day. The length of the time taken is no indication either of speeding up or of any abuse of the proceedings. We agree with the learned Judge that there is no rule which requires that the length of argument should depend upon the magnitude of the claim made.

The other point sought to be urged by the petitioner was that the venue of the arbitration was changed from conference room at Santacruz Airport, Bombay, to the conference room at Indian Merchants Chambers at Churchgate, Bombay. It is the claim of the petitioner that this change of venue was without the consent of the petitioner. It appears from the affidavit filed before the High Court that the venue was changed because of disturbance at the conference room at Santacruz and this fact was known to the petitioner all along. Change of venue in no manner would indicate that the arbitrator was prejudiced against the petitioner and no prayer was made to the arbitrator not to change the venue. This is solely a fallacious ground to make out a case of alleged bias. The other ground was that the petitioner and respondent No. 2 used to share the costs of the air ticket of the arbitrator from Delhi to Bombay and back. It was submitted that since 9th June, 1987 the petitioner has not paid for the ticket and also not provided for residential accommodation at Santacruz Airport. It was further submitted that respondent No. 2 must be providing the air-ticket and also hotel accommodation to the arbitrator and the receipt of these facilities was enough, according to the petitioner, to

A establish that the arbitration was likely to be biased. It is said that the petitioner made these allegations because the petitioner declined to contribute for the costs of the air-ticket and providing for the accommodation. The petitioner obstructed at all stages of the proceedings of arbitration, what the arbitrator did he did openly to the knowledge of the respondents. As the learned Judge has rightly pointed out the B petitioner after 9th June, 1987 seems to have decided that the arbitrator should not proceed to hear the reference and in order to frustrate the arbitration proceedings started raising all sorts of frivolous and unsustainable contentions. Having failed and realised that respondent No. 1 was not willing to submit to the dictates of the petitioner, the petitioner declined to contribute for the air-ticket and C providing for accommodation. No party should be allowed to throw out the arbitration proceeding by such tactics and if the arbitrator has not surrendered to pressure in our opinion, the arbitrator cannot be faulted on that score nor the proceedings of the arbitrator be allowed to be defeated by such method.

D There was another ground sought to be made before us that there was a loss of confidence. We find no reasonable ground for such loss of confidence. Every fancy of a party cannot be a ground for removal of the arbitrator. It was alleged that there were counter claims made by the respondents. These counter claims have not yet been dealt with by the arbitrator. Our attention was drawn to page 188 of E Volume II of the paper book where a counter claim had been referred to. It appears that the petitioner has separately treated these counter claims. These counter claims have not yet been considered by the arbitrator. That is no ground for any apprehension of bias. An affidavit was filed before us that on 6th March, 1988 a letter was served indicating the dates for hearing as 7th to 10th March, 1988.

F

It appears that the matter was adjourned thereafter but by merely making an application for adjournment and refusing to attend the arbitration proceeding, a party cannot forestall arbitration proceeding.

G We are in agreement with the learned Judge of the High Court expressing unhappiness as to the manner in which attempts had been made to delay the proceeding. There is a great deal of legitimate protest at the delay in judicial and quasi-judicial proceeding. As a matter of fact delay in litigation in courts has reached such proportion that people are losing faith in the adjudicatory process. Having given H our anxious consideration to the grounds alleged in this application,

we find no ground to conclude that there could be any ground for reasonable apprehension in the mind of the petitioner for revocation of the authority of the arbitrator appointed by the petitioner itself. While endorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be led to the erroneous impression that justice should appear to be done that it should in fact be done. See the observations of Slade, J. in *R.* v. *Cambore Justices Ex parte Pearce*, [1954] 2 All. E.R. 850 at 855. We are satisfied from the facts mentioned hereinbefore that there is no reasonable ground of any suspicion in the mind of the reasonable man of bias of the arbitrator. Instances of cases where bias can be found in Commercial Arbitration by Mustill and Boyd, 1982 Edn. The conduct of the present arbitrator does not fall within the examples given and the principles enunciated therein.

The petition for leave to appeal, therefore, fails and it is accordingly dismissed.

S.L. Appeal dismissed.