A

M/s. BHARAT BARREL & DRUM MFG. CO.

v.

L. K. BOSE & ORS.

October 5, 1966

B [K. N. WANCHOO, J. M. SHELAT AND G. K. MITTER, JJ.]

Essential Commodities Act, 1955—Steel Control Order, 1956—Controller cancelling allotment of steel sheets—In subsequent inquiry refusing to record oral evidence—Natural justice whether violated—Error apparent on face of award, what is.

C The appellant company carried on the business of manufacturing barrels and for that purpose required steel sheets. By reason of the Essential Commodities Act, 1955 the Iron & Steel (Control) Order, 1956 and diverse orders passed by the Iron and Steel Controller the appellant company could get supply of steel sheets only by obtaining release orders from the Controller on stockists and importers. The Controller would direct under such a release order an importer or a stockist to supply steel sheets to the appellant company at rates and on terms and conditions specified by him therein. By three such release orders of D October 28 and 29, 1960 the Controller directed the 6th respondent to supply to the appellant a certain quantity of steel sheets at a specified rate. There was dispute between the appellant and the 6th respondent as to the quantity to be supplied and the rate of supply. The appellant claimed that it had already paid an excess sum of Rs. 7 lacs and odd to the 6th respondent in respect of earlier release orders. On the dispute being referred to the Controller he ordered the 6th respondent to supply steel sheets to the appellant at the specified rate after making allowance E for the excess of Rs. 7 lacs and odd already paid. He also ordered that if the appellant did not pay the price and the transaction was not completed within a certain time owing to the fault of the appellant he would allot the steel sheets to some other party. Owing to the persistence of differences with the 6th respondent the appellant could not carry out the transaction but instead filed a suit in the High Court. The Controller then cancelled the allotment in favour of the appellant. Against this order of cencellation the appellant filed a writ petition in the High F Court. The High Court passed a consent order asking the Controller to 'hear' the parties and decide whether the appellant was at fault in not lifting the goods. At the hearing the appellant wanted to examine a witness but the request was refused by the Controller. The Controller decided against the appellant. The appellant filed another writ petition in the High Court. The writ petition and the subsequent letters patent appeal filed by the appellant were both dismissed. The appellants came to this G Court and contended :

(1) The Controller by refusing to examine the appellant's witness violated natural justice.

(2) On the question of the refund of the excess charges the Controller's order suffered from an error apparent on the face of the record; and

H (3) The finding of the Controller that the appellant wanted to pick and choose the goods was without evidence.

HELD : (i) While considering the question of breach of the principles of natural justice the court should not proceed as if there are any

inflexible rules of natural justice of universal application. The Court has to consider in each case whether in the light of the facts and circumstances of that case, the nature of the issues involved in the inquiry, the nature of the order passed and the interest affected thereby, a fair and reasonable opportunity of being heard was furnished by the person affected. A refusal to record oral evidence does not necessarily mean contravention of the rules of natural justice. [746 D; 747 G-H] A

Local Government Board v. *Arlidge*, [1915] A.C. 120, *New Prakash Transport Co. Ltd.* v. *New Suwarna Transport Co. Ltd.* [1957] S.C.R. 98, *Western India Match Co.* v. *Industrial Tribunal, Madras*, [1962] 1 L.L.J. 629, *De Verteuil* v. *Knaggs & Anr.* [1918] A.C. 557, *General Medical Council* v. *Spackman*, [1943] A.C. 627 and *Union of India* v. *T. R. Varma*, [1958] S.C.R. 499, referred to. B

The Controller had heard the case of the parties through their counsel. The witness was a director of the appellant company. Being present at the hearing, he could have instructed counsel to state all that he wanted to depose. That not having been done the company could have no grievance of not having been heard. The witness produced by the appellant was not of a material character. On the facts of the case the refusal of the Controller to examine the witness in question did not constitute a breach of natural justice. [749 C-D; 750 C] C

(ii) An error of law on the face of an award means that the court must first find whether there is any legal proposition which is the basis of the award. Reading the impugned order it was difficult to say what legal proposition it contained in respect of which it could be said that there was an error on the face of the record. [750 D-E] D

(iii) It could not be said that there was no evidence that the appellant company wanted to pick and choose the goods. [751 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 928 of 1965. E

Appeal by special leave from the judgment and order dated April 24, 1964 of the Calcutta High Court in Appeal from Original Order No. 269 of 1963.

Bishan Narain, *B. Dutta*, *S. C. Chagla*, *Ravinder Narain*, for the appellant. F

B. Sen and *R. H. Dhebar*, for respondents Nos. 1—5.

A. K. Sen, *Rameshwar Nath*, *S. N. Andley*, *P. L. Vohra*, *Mahinder Narain*, for respondent No. 6.

G

The Judgment of the Court was delivered by

Shelat, J.—This appeal by special leave is directed aganist the judgment and order of the High Court at Calcutta which upheld the judgment and order of the Single Judge of that High Court dismissing the writ pettition filed by the appellant company.

H

The appellant company was at all material times carrying on the business of manufacturing barrels and for that purpose required steel sheets. By reason of the Essential Commodities Act,

A 1955, the Iron and Steel (Control) Order, 1956 and diverse orders passed by the Iron and Steel Controller the appellant company could get supplies of steel sheets only by obtaining release orders from the Controller on stockists and importers. The Controller would direct under such a release order an importer or a stockist to supply steel sheets to the appellant company at rates and
B on terms and conditions specified by him therein. By three such release orders, of October 28 and 29, 1960 the Controller directed the 6th respondent M/s. Amichand Pyarelal & Co., to supply to the appellant company 3406.386 metric tons of steel sheets. Prior to these three orders certain other release orders had been issued on the 6th respondent and the appellant company had paid large amounts
C in respect of steel sheets supplied thereunder on the basis of *pro forma* invoices issued by the 6th respondent and their sister concerns. An amount of Rs. 7 lacs and odd said to be excess payment was claimed by the appellant company from the 6th respondent to recover which the appellant company had filed suits in August 1961 and January 1963 in the High Courts at Bombay and Calcutta. In pursuance of the said three release orders the 6th respondent sent its *pro forma*
D invoice but only for 2,168 tons and odd stating that it had already delivered between November 1961 and February 1962, 1238 tons and odd in part satisfaction of the said release orders. In these invoices the 6th respondent claimed Rs. 975.55 per metric ton which was a higher rate than the one fixed by the Controller. The appellant company thereupon tendered the price at
E the rate fixed by the Controller also deducting therefrom the said excess of Rs. 7 lacs and odd. The 6th respondent declined to accept the same whereupon the appellant company apprised the Controller about the difference between them. By his order dated 1/2 May, 1962 the Controller directed that the 6th respondent should charge the appellant company at the rate of Rs. 921 per metric ton and deduct the excess charges paid to it earlier. He also directed the
F 6th respondent to send to the appellant company revised *pro forma* invoice within three days. The order also stated that the appellant company should make arrangement for payment within three days of the receipt of the revised *pro forma* invoice and that if the transaction was not completed by May 12, 1962 due to any fault on the part of the appellant company he would consider the
G disposal of the said sheets in favour of some other party. The Controller sent a copy of this letter to the appellant company and in the note appended thereto informed the company that it should lift the materials before May 12, 1962. The 6th respondent thereafter sent its revised invoice at the rate directed by the Controller but without adjusting the said excess and insisting that 1,238 tons and
H odd were already delivered and that only 2,168 tons remained to be delivered. In the said invoice it also included the price of 1,238 tons at Rs. 921 per metric ton. The appellant company tendered its banker's slip at the rate of Rs. 921 per ton after deducting therefrom

the said amount of Rs. 7 lacs and odd as excess payable to it by the 6th respondent. The 6th respondent refused to accept the said slip and instead sent on May 7, 1962 another invoice without adjusting the said excess thus, according to the appellant company, making it impossible for it to lift the steel sheets. The appellant company filed another suit in the High Court at Bombay *inter alia* for a mandatory injunction directing the 6th respondent to deliver the entire quantity of 3,406 tons and odd at Rs. 921 after deducting from the price therefor the said excess of Rs. 7 lacs.

By his order dated 24/26 May, 1962 addressed to the 6th respondent the Controller allotted 2,168 and odd tons of the said steel sheets in favour of the 7th respondent cancelling the allotment in favour of the appellant company. Appended to the said order was a note of the Controller addressed to the appellant company which ran as follows :—

> "Due to their non-lifting of Drum sheet 18G for 2168.25 M/T against.... (the said three release orders), they are advised to note that the same quantity of allotment against the said R/Os has been treated as cancelled, matter is treated as closed finally."

Against this order of cancellation the appellant company filed a writ petition in the High Court at Calcutta. It came up for hearing on September 14, 1962 before Banerjee J. when the parties took a consent order. The said consent order provided, *inter alia*, that the Controller shall himself "hear" the parties and ascertain for himself which of them was at fault in making the said order of 1/2 May, 1962 ineffective. It also provided that if the Controller were to find that the appellant company was not at fault but that the order could not be complied with by it because of any unreasonable stand taken by the 6th respondent he should reconsider his said order of cancellation of allotment. On the other hand if he were to find that the appellant company was at fault he need not change the said cancellation order.

In pursuance of the said consent order the Controller fixed December 13, 1962 for hearing the parties and gave permission to them to appear through counsel. On the 13th and the 18th December, 1962 the Controller heard the parties who appeared through counsel and took on record correspondence, affidavits and other documents produced by the parties. The appellant company contended that the 6th respondent failed to implement the said order and thereby made it ineffective. The contention was that the 6th respondent was not justified in offering delivery of 2,168 and odd tons only instead of 3,406 and odd tons, that it was not justified in claiming that the delivery of the said 1,238 tons and odd was under the said release orders, that the said 1,238 tons and odd were delivered under and in pursuance of an oral agreement arrived at between

A Lalta Prasad Goenka, a director of the appellant company and one Jitpal on behalf of the 6th respondent whereunder the 6th respondent had agreed to deliver 4,500 tons from out of its free sale stock at Rs. 875 per ton, that the said 1,238 tons having been delivered under the said agreement the entire quantity of 3,406 tons and odd remained undelivered and that therefore its offer to deliver only 2,168 and odd B tons was not a proper offer. The appellant company also contended that the 6th respondent failed to deduct the excess amount of Rs. 7 lacs and odd though directed by the Controller and further that it was not entitled to charge the said 1,238 tons and odd at Rs. 921 per ton as the said quantity as aforesaid was delivered under the said oral agreement and therefore could charge at Rs. 875 per C ton. It also contended that in spite of specific directions from the Controller the 6th respondent failed to send its said revised *pro forma* invoice within three days. The last contention however was not pressed and it need not therefore detain us. At the time of the hearing the appellant company offered to examine the said Lalta Prasad Goenka as its witness to prove the said oral agreement. The Controller, however, refused to record his evidence.

D

On December 21, 1964 the Controller passed his order holding the appellant company responsible for not carrying out his directions in the order dated 1/2 May, 1962 and held that the cancellation of allotment in favour of the appellant company need not be reconsidered. As regards the appellant company's application to E examine the said Lalta Parsad, he gave three reasons for refusing it: (1) that he was not in a position to take down the evidence; (2) that it was not possible for him to examine him on oath or on solemn affirmation; and (3) that his evidence would not have been conclusive as one party would have asserted and the other party would have denied the aid agreement.

F Aggrieved by this order the appellant company filed a writ petition in the High Court at Calcutta for having the said order quashed. The writ petition was heard by Banerjee J. who dismissed it on the ground that the said order could not be held to be *mala fide* or one made at the instance of or with a view to help the 6th respondent as alleged. He held that even if the Controller was wrong in refusing to record the testimony of Lalta Prasad such a G refusal was not perverse or wanting in *bona fides*. The learned Judge also held that the finding of the Controller that the appellant company's demand for inspection and survey of the goods offered by the 6th respondent was unreasonable was in the circumstances of the case neither perverse nor arbitrary. He also held that though the Controller's refusal to examine Lalta Prasad was unfortunate H and the reasons given by him were open to criticism it could not be said to be perverse. He observed that though a different view could be taken on the question as to blame worthiness the view taken by the Controller could not be said to be arbitrary or perverse, for,

it was difficult for the Controller to decide on the evidence adduced by the parties whether the 6th respondent was guilty of not offering the full quantity of goods under the said release orders. The learned Judge added that the Controller may be right in condemning the appellant company for its insistence that goods should be of standard and merchantable quality. The pendency of the appellant company's suit to recover the said excess may also have made it difficult for the Controller to hold that the 6th respondent was to be blamed in not adjusting the said excess in the said revised *pro forma* invoice. If, in these circumstances, the Controller held that the appellant company was more to be blamed than the 6th respondent it would not be possible to quash his order either on the ground of its being arbitrary or perverse. The learned Judge examined the appellant company's letters dated the 9th, the 11th, the 17th of January, 1962 and February 6, 1962 and found that its case with regard to the oral agreement suffered from contradictions, for, at one stage its case was that the 6th respondent had agreed to supply 4,500 tons over and above 3,400 and odd tons under the said release orders and the said 1,238 tons were delivered under the said oral agreement while in the letter of February 6, 1962 its case was that the 6th respondent was to deliver 4,500 tons which would include the said 3,400 and odd tons deliverable under the said release orders and charge at the rate of Rs. 875 per ton. Therefore, the delivery of 1,238 tons, if this letter were to be true, would be not under the oral agreement but under the release orders and consequently the 6th respondent could not be said not to have offered the full quantity under the said release orders. On the other hand, there was also the letter of the 6th respondent to the Steel Minister in which it had complained of the appellant company not having taken delivery at all. If its case that 1,238 tons were delivered under the release orders, was correct the statement made by it to the said Minister would obviously be not correct. In the view of Banerjee J. the Controller took a very lenient view when he simply characterised the letter as unethical. He observed that instead of speculating about the unethical attitude of the 6th respondent the Controller could well have agreed to record the evidence of the said Lalta Prasad. According to the learned Judge, howsoever unfortunate that refusal was the order could not be held to be perverse or arbitrary and since the case of the appellant company regarding the oral agreement was inconsistent the Controller could not be blamed for not accepting it though it might be that a court of law might come to a different conclusion.

Against the order of Banerjee J. the appellant company filed a Letters Patent Appeal which was heard by a Division Bench consisting of Bachawat and A. K. Mukherjee JJ. Before the Division Bench the Controller's finding that it was for the first time that in its letter dated May 8, 1962 the appellant company made it a condition

A that it would accept delivery only of goods found on inspection to be of standard and merchantable quality, was challenged. The appeal court found that even before the said letter of May 8, 1962 there was correspondence in which allegations of the goods having become rusty and damaged were made and a demand for inspection was also made. But the appeal court found that those letters indi-
B cated that the appellant company was agreeable to take delivery of the goods in their present condition but was insisting upon a certificate of their being merchantable or not so as to enable it to demand rebate. Therefore the Controller was in a way right when he said that it was for the first time in its letter of the 8th May, 1962 that the appellant company insisted that it would accept only those goods
C which were of standard and merchantable quality. The appeal court also rejected the company's contention that until May 7, 1962 when the 6th respondent sent its revised invoice asking the appellant company to take delivery of the goods as "it is lying with us" the appellant company had no chance to raise this point. The learned Judges observed that that contention was not sustainable as the appellant company could have made a demand for the goods
D being of standard and merchantable quality earlier as the correspondence showed that it was all along aware that the said goods had become rusted. The proper thing for the appellant company therefore was to waive the said condition assuming it was entitled to insist upon it and subsequently claim rebate particularly as the demand for inspection was only with the object of claiming rebate. As re-
E gards the Controller's finding that the appellant company was more to be blamed for the non-implementation of the order of 1/2 May, 1962, the learned Judges observed that though the Controller had directed the 6th respondent to deduct the said excess and though the 6th respondent had not done so there was difficulty in the way of the Controller to throw the blame on the 6th respondent. Neither
F party had asked the Controller to fix the amount of the said excess and the time when the appellant company should withdraw its suit. There was besides discrepancy in the amount of excess claimed by the appellant company. In its letter dated February 23, 1962 to the Controller the excess amount claimed was Rs. 7,40,595 whereas in its letter dated April 23, 1962 to the 6th respondent the claim was for Rs. 7,64,438.40 nP. The difficulty therefore was as to what was
G the amount which the 6th respondent was expected to refund. As regards the Controller's refusal to record the evidence of the said Lalta Prasad the learned Judges were of the view that it was not incumbent upon the Controller to record such evidence, that the Controller had given adequate opportunity to both the parties to adduce their respective case, that all the relevant correspondence
H and documents were produced by them before the Controller and that therefore it was impossible to hold that there was any breach of the principles of natural justice. In this view the Division Bench confirmed the order of Banerjee J. and dismissed the appeal.

Challenging the order of the High Court Mr. Bishan Narain for the appellant company raised three contentions : A

(1) that the Controller did not hear the appellant company in full and violated the principles of natural justice by refusing to record the evidence of Lalta Prasad;

(2) that on the question of refund of the excess charges the Controller's order suffered from an error of law apparent on the face of the record; and B

(3) that the finding of the Controller that the appellant company wanted to pick and choose was without evidence.

In order to appreciate the first contention it is necessary first C to consider the content of the principles of natural justice. That question has been the subject-matter of a number of decisions. It is now well-settled that while considering the question of breach of the principles of natural justice the court should not proceed as if there are any inflexible rules of natural justice of universal application. The Court therefore has to consider in each case whether in the light of the facts and circumstances of that case, the nature of D the issues involved in the inquiry, the nature of the order passed and the interests affected thereby, a fair and reasonable opportunity of being heard was furnished to the person affected. In *Local Government Board v. Arlidge*(1), Lord Parmoor observed as follows:—

> "Where, however, the question of procedure is raised E in a hearing, before some tribunal other than a court of law, there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with F in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the Tribunal."

A similar approach to the question is also to be found in *New Prakash Transport Co., Ltd.* v. *New Suwarna Transport Co. Ltd.*(2), where this Court laid down the following guiding criterion :— G

> "Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the H relevant Act."

(1) [1915] A.C. 120. (2) [1957] S.C.R. 98.

A In that case r. 73 of the Rules framed under the Motor Vehicles Act, IV of 1939 provided that the Chairman of the Provincial Transport Authority on receipt of an appeal shall appoint the time and place for hearing the appeal and shall give a notice of not less than thirty days to the appellant, the origial authority and any other person interested in the appeal and on such appointed or B adjourned date the appellate authority "shall hear such persons as may appear and, after such further enquiry, if any, as it may deem necessary, confirm, vary, or set aside the order against which the appeal is preferred." At page 105 of the report the Court observed that neither the sections nor the rules framed under the Act contemplated anything like recording oral or documentary evidence in the usual way as in courts of law, nor did they contem- C plate a regular hearing as in a court of justice. The Court also observed that the provisions of the Act and the Rules did not provide for any elaborate procedure as to how the parties interested had to be heard in regard to the question as to who should be granted a stage carriage permit. This Court held on a consideration of the provisions of the Act and the Rules that though the appellate authority D had to function in a quasi-judicial capacity but not as a court of law, it was not required to record oral or documentary evidence and that the only requirement was that in considering the rival claims for the stage carriage permits the authority had to deal with such claims in a fair and just manner. Similarly, in *Western Indian Match Co.* v. *Industrial Tribunal, Madras*(1) this E Court once again stated that the Industrial Tribunal was not bound by the strict rules of procedure of the Evidence Act and that if having regard to the fact that the agreement alleged was denied by the respondents, it came to the conclusion that proof of the agreement would not really matter, that clearly would be a decision within its jurisdiction and it would be unreasonable to invoke the prerogative jurisdiction of the High Court under Art. 226 to overrule or reverse F such a conclusion. As in the present case the dispute between the parties there was as to the existence of an agreement said to have been arrived at before the conciliation officer. The Tribunal had held that the agreement reached between the parties had been recorded by the conciliation officer in some of his letters and so it was only a matter of construction of those letters and in that view G refused to examine the conciliation officer. It was in connection with the Tribunal's refusal to examine that officer that this Court made the aforesaid observations. (See also *De Verteuil* v. *Knaggs & Anr.*(2)). It is thus clear that a refusal to record oral evidence does not necessarily mean contravention of the rules of natural justice.

Mr. Bishan Narain, however, relied upon two decisions in H *General Medical Council* v. *Spackman*(3) and *Union of India* v. *T. R. Varma* (4). In *Spackman's* case(3) a registered medical practi-

(1) [1962] 1 L.L.J. 629.
(2) [1918] A.C. 557.
(3) [1943] A.C. 627.
(4) [1958] S.C.R. 499.

tioner who was a co-respondent in a divorce suit, was held by the Divorce Court to have committed adultery with Mrs. Pepper, the respondent therein, with whom he had professional relationship and a decree *nisi* was pronounced which was subsequently made absolute. The General Medical Council appointed under the Medical Act, 1958 served upon Spackman a show cause notice why his name should not be erased from the medical register for infamous conduct and professional misconduct. At the hearing Spackman's attorney applied for permission to lead evidence to challenge the finding of adultery of the Divorce Court which evidence though available was not produced during the hearing of the Divorce Suit. The Council rejected the application on the ground that the practice followed by it did not permit leading of additional evidence and accepted the decree *nisi* as *prima facie* proof of adultery and directed that the petitioner's name should be removed from the register. On appeal the House of Lords held that while the Council was entitled to regard the decree in the divorce suit as *prima facie* evidence of adultery, it was bound to hear any evidence tendered by the practitioner and that having refused to hear such evidence, it had not made "due inquiry" as contemplated by s. 29 of the Act. It should be observed that this conclusion was based on the provisions of s. 29 which provided for "due inquiry" and (as is clear from page 645 of the Report) on Rule 9 which, *inter alia*, provided that the Council shall call upon the practitioner "to state his case and to produce evidence in support of it." That Rule also provided that the practitioner may address the Council either before or at the conclusion of the evidence but only once. It is thus clear that the Council's order was set aside on the footing that it had failed to hold "due inquiry" within the meaning of s. 29 and the said Rule, as contrary to the provisions of that Rule the Council had prevented Spackman from leading evidence. The decision in *Union of India* v. *T. R. Varma*[1] was in connection with an inquiry held under Art. 311 of the Constitution. The observations made in that case therefore would bear no analogy to the inquiry held by the Controller in the instant case. Neither of those two decisions therefore can help Mr. Bishan Narain.

It is clear from the said consent order that the Controller was not a judicial tribunal in the sense of a Court of law and though the inquiry held by him was a quasi-judicial inquiry it certainly was not a trial. It was confined to one question only, *viz.*, whether he should reconsider the order made by him cancelling the allocation in favour of the appellant company. In order to decide that question he had to ascertain who was to be blamed as between the appellant company and the 6th respondent for non-implementation of his order dated 1/2 May, 1962. No doubt the consent order required him "to hear" the parties. But it is obvious that the order never contemplated that he should follow an elaborate procedure and take

(1) [1958] S.C.R. 499.

A oral evidence of witnesses tendered by the parties. The order did not lay down any such procedure or any procedure at all, with the consequence that he was left to devise his own procedure. So long as the procedure devised by him gave a fair and adequate opportunity to the parties to put forward and explain their respective case such procedure would be sufficient and cannot be challenged B on the ground of any contravention of natural justice. The dispute between the parties was as to the existence of an oral agreement under which the 6th respondent was to deliver 4,500 tons of steel sheets. From that arose the question whether the delivery of 1,238 and odd tons was made under the said alleged agreement or under the said release orders. It is not disputed that the Controller heard the C parties on the 13th and the 18th December, 1962 and the respective cases of the parties were put forward before him through counsel who, we have no doubt, made their submissions fully. The said Lalta Prasad was present at the hearing presumably giving instructions to the company's counsel. He had therefore ample opportunity to put forward the case of the appellant company in regard to the said alleged oral agreement. The parties also produced before D the Controller such correspondence and documents as they thought proper and necessary to establish their case. There is no doubt that the letters already referred to above in which the appellant company has set out the said alleged agreement were produced before the Controller and considered by him. In these circumstances it is difficult to appreciate what difference it would have made if E Lalta Prasad's oral testimony had been recorded. The letters presumably contained all that he had to say in regard to the alleged agreement arrived at between him and the said Jitpal. Obviously he could not have added anything to those letters nor could he have deposed contrary to them. This position seems to have been realised by the appellant company. It was therefore that though the Controller had rejected the application for recording the evidence of Lalta F Prasad no protest was made by the appellant company or on its behalf at that stage. No such protest was also placed on record between the 18th and 21st December, 1962 when the Controller declared his order. It was only on the 5th January, 1963 that the attorneys of the appellant company complained for the first time about the Controller's decision rejecting the application to record G Lalta Prasad's evidence alleging that the said order of the Controller was *mala fide*. The appellant company filed the present writ petition on January 7, 1963. It would appear from these facts that the grievance of Lalta Prasad not being allowed to give evidence was made in the letter of the 5th January, 1963 to bolster up the case in the proposed writ petition that the said order of the Con- H troller was perverse and *mala fide*. It is true that the Controller rejected the appellant company's case about the said oral agreement on the ground that the correspondence indicated that it had been putting up its case inconsistently. It may perhaps be said that if

Lalta Prasad had been examined he might have explained the inconsistency. But as already stated Lalta Prasad had ample opportunity through his counsel to explain the said inconsistency. If that inconsistency had been explained by the company's counsel during the hearing it cannot be doubted that the Controller would have considered such explanation tendered by counsel. That being so, the refusal of the Controller to record Lalta Prasad's evidence cannot be said to have precluded the company from offering an explanation of the said inconsistency. Nor can it be said that the refusal amounted to any breach of natural justice. Since the procedure for inquiry was left to be devised by the Controller and the procedure followed by him was not in any way in contravention of the said consent order nor contrary to natural justice the contention urged by Mr. Bishan Narain must be rejected.

The next contention of Mr. Bishan Narain was that on the question of refund of the excess charges the impugned order suffered from an error of law apparent on the record. The question is what is an error of law apparent on the record. In *Champsey Bhara & Co.* v. *Jiraj Palle Spinning and Weaving Co.*(1). Lord Dunedin observed that an error on the face of an award means that the court must first find whether there is any legal proposition which is the basis of such an award. He also said that where an award is challenged upon such a ground it is not permissible to read words into it or to draw inferences and the award or the order must be taken as it stands. Tucker J. said the same thing in *James Clark (Brush Materials) Ltd* v. *Carters (Marchants) Ltd.* (2) Reading the impugned order it is difficult to say what legal proposition it contains in respect of which it can be said that there is an error of law apparent on the record. The issue before the Controller was whether in refusing to give the refund of the said excess the 6th respondent was guilty of obstructing the implementation of the order dated May 1/2, 1962 or of preventing the appellant company from taking delivery of the said goods. It is true that the Controller had on more then one occasion directed the 6th respondent to deduct the said excess from its *pro forma* invoice and the 6th respondent had in fact expressed its willingness to duduct it. The dispute between the the parties was within a circumscribed compass *viz.*, whether the appellant company should first withdraw the suit. The appellant company would not withdraw the suit and hence the controversy. But then it is not possible to say that there was no difficulty in the way of the 6th respondent in deducting straightaway the said excess from its invoice, for, as already stated, the appellant company, had stated different sums of such excess at different times. The Controller had not fixed the exact amount of the said excess and had not directed as to when and on what condition the appellant company's suit should be withdrawn. If in these circumstances the Controller finds that the appellant company would not have insisted

(1) [1923] A.C. 480. (2) [1944] 1 K.B. 566.

A on the deduction before withdrawing its suit, even if a court were to come to a different conclusion it certainly is not a case of an error apparent on the face of the record.

That takes us to the third and the last contention, *viz.*, that the impugned order that the appellant company wanted to pick and choose was without evidence. The order was based on the finding B that it was for the first time in its letter dated May 8, 1962 that the appellant company claimed that it would only accept goods of standard and merchantable quality. That conclusion, in our view, cannot be said to be without evidence. As explained by the High Court, the appellant company, no doubt, had in its letter of April 23, 1962 claimed survey and inspection but that letter does not show that C the appellant company was not willing to accept the goods in the condition in which they were in the 6th respondent's godown. The demand for inspection and survey was made with a view to claim rebate in the event of the goods being found either rusty or in damaged condition. But in the letter of May 8, 1962 it would seem that the appellant company stiffened its attitude and laid down the D condition that it would accept such of the goods only as were of standard and merchantable quality. As already stated, long before May 8, 1962 the appellant company was well aware that the goods had become rusted as they were lying for a long time in the godown. Even the 6th respondent had complained that the goods were getting rusted. Yet, at no time before May 8, 1962 the appellant company had insisted that it would accept only those goods which were of E standard and merchantable quality. It may perhaps be that the Controller could have taken the view that since the appellant company required the goods for manufacturing barrels, it was entitled to have goods of merchantable quality. At the same time it is also possible to take a different view, *viz.*, that the appellant company could have abided by the Controller's directions in his order F dated 1/2 May 1962 and could have accepted delivery under protest and if necessary claimed damages. But merely because there was the possibility of two views being taken it would not be possible to say, as was contended in the High Court, that the order was perverse. In any event, since it was for the first time in its letter of May 8, 1962 that the aforesaid demand was made by the appellant company it is impossible to say that this part of the order was without any G evidence and therefore liable to be quashed.

These were the only contentions raised on behalf of the appellant company. For the reasons aforesaid it is not possible to uphold any one of them. The result is that the appeal fails and is dismissed. It appears to us, looking at the entire record of the case that the 6th H respondent also was not altogether free from blame. In the circumstances, we decline to make any order as to costs. Each party therefore will bear its own costs.

G.C. *Appeal dismissed.*