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OSA (CAD) NO.133 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 05 / 01 / 2024

JUDGMENT DELIVERED ON: 19 / 02 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

OSA (CAD) NO.133 OF 2022

AND

CMP NO.15302 OF 2022

The Superintending Engineer
Public Works Department
Building Construction Circle
Tamil Nadu New Legislative Assembly Complex
Chepauk, Chennai – 600 005.

... Appellant /
Petitioner

Vs.

1.M/s.East Coast Constructions & Industries Ltd.,
Buhari Buildings,
No.4, Moores Road,
Chennai – 600 006.

2.Thiru K.Natarajan
Presiding Arbitrator
No.220, VIII Sector,
42nd Street, K.K.Nagar,
Chennai – 600 078.



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3.Thiru P.Sivapparakasam
Arbitrator

No.23/12, Fifth Main Road,
Kasthuriba Nagar, Adyar,
Chennai – 600 020.

4.Thiru. P.Sridharan
Arbitrator
Plot No.50, U.R.Nagar Extn.,
Anna Nagar West Extension,
Chennai – 600 101.

... Respondents /
Respondents

PRAYER: Original Side Appeal filed under Clause 15 of Letters Patent read with Order XXXVI Rule 1 of Madras High Court Original Side Rules, praying to set aside the Judgment and Decree, dated 26.05.2020 made in O.P.No.739 of 2011.

For Appellant : Mr.R.Shunmugasundaram
Advocate General
Assisted by Mr.Edwin Prabhakar
Additional Government Pleader

For Respondent-1 : Mr.Rahul Balaji

J U D G M E N T

R.SAKTHIVEL, J.

This Appeal has been filed under Section 37(1)(c) of 'The Arbitration and Conciliation Act, 1996 (26 of 1996)' (henceforth 'A&C Act')



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for the sake of brevity) praying to set aside the order dated May 26th, 2020

passed in O.P.No.739 of 2011 by the Hon'ble Single Judge of this Court

while exercising powers under Section 34 of A&C Act.

2.The appellant herein is the petitioner and the first respondent herein is the first respondent / claimant before the Hon'ble Single Judge of this Court.

I.Background of the case:

1.The Superintending Engineer, Public Works Department, Building Construction Circle, Tamil Nadu Legislative Assembly Complex, Chepauk, Chennai – 600 005 (appellant herein) invited tender for the Execution of work of Construction of Tamil Nadu Legislative Assembly at Omandurar Government Estate, Chennai – 600 002. M/s.East Coast Constructions and Industries Limited (first respondent herein) submitted its bid dated September 5th, 2008 and the same was accepted by the appellant



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on October 25th, 2008 for a contract price of Rs.341,46,08,454/-. An

Agreement dated November 12th, 2008 was executed between the appellant and the first respondent. During execution of works, certain disputes arose between the appellant and the first respondent in respect of payments for Special Centering and Supporting System provided for the first roof slab over the floor slab at a height of 17m without any intermediate slab in the public plaza and for the roof slab laid at height of 27m in the Assembly circle.

2.The Agreement between the appellant and the first respondent is based on MDSS (Tamil Nadu Building Practice) and National Building Code. The Contractor had to quote his rates for all the items of work proposed in the Bill of Quantities (henceforth 'BOQ'). The contract provides a mechanism for settlement of disputes under Clause 24 and 25 of the General Conditions of Contract (henceforth 'G.C.C'). As per clause 24.1, if the Contractor believes that a decision taken by the



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Engineer/Architect was either outside the authority given to them by the

contract or that decision was wrongly taken, the decision shall be referred

to an 'Adjudicator' within 14 days of the notification of the Engineer /

Architect's decision.

3. Contractor (first respondent) referred the disputes pertaining to Special Centering and Supporting System for Public Plaza (henceforth referred to as 'Claim No.1' for the sake of brevity and convenience) and Special Centering and Supporting System provided for Assembly Circle (henceforth referred to as 'Claim No.2' for the sake of brevity and convenience) to the Adjudicator - Thiru.R.Sridharan. The Adjudicator gave his decision / award in favour of the first respondent – Contractor in respect of both claims No.(1) and (2) on May 19th, 2010. Appellant herein not satisfied with the decision of the Adjudicator had invoked Arbitration Clause under the Agreement vide its letter dated June 15th, 2010. As per the Agreement, Arbitration Tribunal consisting of three Members was



constituted. Both sides filed their supporting documents. After hearing

both sides, Arbitration Tribunal allowed the claim petition filed by the first

respondent Contractor. Operative portion of the Award reads as follows:

“9.2.Claim No.1:

The Tribunal awards a sum of Rs.2,02,07,052/- (Rupees Two Crores Two Lakhs Seven Thousand and Fifty Two Only) and directs the same to be paid to the claimant by the respondent towards the Claim No.1 pertaining to “Special Centering and Supporting System for Public Plaza.”

9.3.Claim No.2:

The Tribunal awards a sum of Rs.1,98,51,360/- (Rupees one crore ninety eight lakhs fifty one thousand three hundred and sixty only) and directs the same to be paid to the Claimant by the Respondent towards the Claim No.2 pertaining to “Special Centering and Supporting System for Assembly Circle”.

9.4.Interest

The Tribunal awards a sum of Rs.61,28,937/- (Rupees sixty one lakh twenty eight thousand nine hundred and thirty seven only) and directs the same to be paid to the Claimant by the Respondent towards interest payable on the awarded amount under Claim Nos.1 and 2 from 01.03.2010 to 11.09.2011 upto the previous day of the date of award.

9.5.Respondent's share of fees paid by the Claimant to the Arbitrators

a)The Tribunal awards a sum of Rs.1,87,500/- (Rupees one lakh eighty seven thousand five hundred only) to be paid to



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the Claimant by the Respondent towards the Respondent's share of Arbitrator's fees paid by the Claimant.

b)The Tribunal does not award any cost to either party.

9.6.Future Interest:

The amounts awarded under Claim Nos.1 and 2 together with interest and Respondent share of Arbitrator's fees paid by the Claimant to the Arbitrator will also carry simple interest at the rate of 10% per annum as per Section 31(7)(b) of the Arbitration and Conciliation Act, 1996.”

4. Feeling aggrieved with the Award, appellant herein had filed Original Petition in O.P.No.739 of 2011 under Section 34 of A&C Act before the Hon'ble Single Judge of this Court. The Hon'ble Single Judge after hearing both sides, dismissed the Original Petition. Feeling aggrieved with the order passed in O.P.No.739 of 2011, the appellant herein has filed this Appeal under Section 37 of A&C Act.

5. For the sake of convenience, henceforth, the parties are referred to as per their array in O.P.No.739 of 2011 i.e., appellant herein will be referred as 'petitioner' and the first respondent herein will be referred as 'first respondent'.



II. Case of the First Respondent who is the claimant before the Arbitral Tribunal is as follows:

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1. The case of the first respondent is categorized into two heads as hereunder:

(i) Special Centering and supporting system provided for Public Plaza;

As per the contract, the staging and centering for the formwork had to be laid as per the base slab at a height of almost 17 meters without any intermediate floor over the floor slab which was at a height of 5 m above the ground level. The first respondent contends that these slabs were to be laid in a circular manner with a radius circle of 42 meters in 5 arc shaped segment, having a width of 14 meters; that all these slabs carry deep and wide beams in the shape of concentric arcs; that BOQ 17 contained the details of how these slabs were to be laid and the technical specifications also contained more details; and notably that, these specifications had specified that only steel tabular staging of acrow type was to be used after obtaining the approval of the Engineer.



2.The first respondent contends that it was on the basis of the

above specifications that the first respondent had quoted their rates; that it is these specifications that was followed by them for all 'floor slabs' in the Assembly and Public Plaza; that the slabs were generally of 3.29 meters height intervals and in some place they varied for which the claimant had received payment as per BOQ No.18. This BOQ relates to Item 17 dealing with centering for slabs and beams in the floors. In all these works the struts and formworks were removed after 21 days as specified in paragraph 12 of the Technical specification.

3.Further contention of the first respondent is that however, the same method could not be adopted for the upper floor as the plaza circle involved huge beams; that the petitioner insisted that props suitable for the upper floor should be provided in the ground floor over PCC base so that the load of huge beams in the upper floors can be transmitted directly to the ground; that this insistence was on account of the fact that



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the ground floor slab was not designed to carry the load of the huge beams of upper floor which was to be concreted later, and that, besides, the Architect insisted that the scaffolding and back propping cannot be removed from the 5th floor slab till the concreting and stressing of the top most slab (terrace) is completed and as a result the struts and formworks could not be removed within 21 days.

4.Further contention of the first respondent is that therefore, on the instructions of the petitioner, the first respondent had to purchase special heavy duty tower support system from M/s Larsen and Toubro (henceforth 'L&T'); that the centering work was started on October 12th, 2009 and the strut and formworks were removed only on March 12th, 2010 and the petitioner had insisted that the strutting system and framework should be retained for 5 months instead of 21 days; and that heavy duty centering system purchased from L&T cost Rs. 2,91,26,834/- and the first respondent has claimed only 50 % of the said amount from the petitioner.



(ii)Special Centering and Support System for the Assembly circle

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5.Under this head, contention of the first respondent is that the Architects of the petitioner had instructed the first respondent to provide special strutting system and plywood sheets for formworks; that this was based on the instructions of the Executive Engineer vide his letter dated June 26th, 2009 to the Architects to design suitable special type of strutting and centering arrangements for the Assembly Hall roof slab and also submit necessary supplemental proposal with quotations; that for the strutting system required for this work i.e., work in the Assembly circle, the L&T system already procured could not be used in this area as the same was at use and could be removed only after 5 months; and that the Architect had instructed the first respondent that the Assembly circle work was also very urgent and therefore the claimant was constrained to purchase yet another system patented by Fedders & Lloyds at an enormous cost.



6. Further contention of the first respondent is that, as the work

was nearing completion, the first respondent had submitted their quotation dated December 17th, 2009, as per the instruction of the Executive Engineer vide letter dated June 26th, 2009; and that on January 11th, 2010 the Architect had rejected this demand after the entire work was completed and the petitioner also turned down the request on March 11th, 2010; and that the rejection was on the ground that the first respondent was aware of the procedure even while tendering the rates for centering and extra strutting heights.

7. Further contention of the first respondent is that, the original methodology for which the rates had been tendered had been changed on account of the petitioner giving different instructions while the work was under way; and that in the process the first respondent incurred additional expenses for which they have got all the original vouchers. The first respondent claim a sum of Rs. 1,98,51,360/- under this head.



III. Case of the petitioner is who is the first respondent before the Arbitral Tribunal is as follows:

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1. The contention of the petitioner is that the claim made by the first respondent was totally misconceived and not maintainable, as the work in question is already covered by the original contract and that there is no change in the design or the format. The petitioner's further contention is that even when the claimant had submitted the tender, they were aware of the slab levels in the Assembly circle as the same was indicated in the drawing; that the design and drawing of the formwork and its construction was the sole responsibility of the claimant and the same only required the approval of the Engineer and no extra cost was payable to the contractor; that the petitioner contends that extra payment for the roof slab is covered in BOQ 18; that as far as retaining scaffolding over five months till the upper slabs were laid is concerned, it is an eventuality that the first respondent as a Contractor should have envisaged; and that BOQ No.18 is applicable for all heights of 3.3m or above with excess height reckoned from 3.8m.



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2.As regards claim No.2, the petitioner contends that the instructions given by the Executive Engineer to the Architect on June 26th, 2009 was nothing but a professional advise and was not the decision of the respondent; that the submission of invoice based on this letter is also erroneous; and that, at best, the claim of the first respondent would fall under the category of “Variation” contemplated under Clause 40 and for this, first respondent ought to have submitted his rate/quotation within an appropriate time, which first respondent had failed to do. Further submission of the petitioner is that BOQ 17 and 18 covers the work done by the first respondent and the same is not an additional work as put forward by the first respondent; and that the petitioner has not denied payment to the first respondent for any rightful work done by them.

3.Notably, before the Arbitral Tribunal, the claimant / first respondent, to counter the petitioner's contention had submitted a rejoinder reiterating the contentions pleaded in the claim statement and highlighting the fact that the very same contention had been raised by the petitioner



before Adjudicator who had rejected it. A reply to the rejoinder had been submitted to the petitioner which is essentially mere repetitions of the claim statement and counter with some addition to the procedure adopted in the work. This Court finds no need to extract the same here.

(IV) Points for consideration framed by the Arbitral Tribunal

1. Based on the above pleadings, the Arbitral Tribunal framed the following points:

(i) Whether the objections raised by the respondent on the admissibility of the claim is sustainable?

(ii) Whether the BOQ item Nos.17 and 18 are applicable to the centering and strutting designed as per the instructions of the respondent and provided by the claimant at a height of 17m in Public Plaza and at a height of 27m in the Assembly Circle without any intermediate floor?

(iii) Whether the work executed under Claim Nos.1 and 2 can be termed as a varied work, or additional or supplemental work when there is no change in slab level as contended by the respondent?

(iv) Whether the claimant's contention that as against the provisions of Indian Standards, Tamil Nadu Building



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Practice Specifications, the removal of centering after 21 days, the same was ordered to be retained for a period of 4 ½ months in public plaza and so could not use this system on repetition basis in the Assembly Circle is correct?

(v) Whether the claimant is justified in claiming cost for the centering materials used for the full retention period in his rates claimed in Claim Nos.1 and 2?

(vi) Whether the methodology adopted by the claimant to arrive at the rate for Claim No.1 and 2 is correct?

V) Decision of the Arbitral Tribunal on point nos.(i), (ii), (iii), (iv), (v) and (vi)

1.The Tribunal has held that the first respondent's claims are maintainable and the objections raised by the appellant are to be rejected; that the work of centering and supporting system executed by the first respondent pertaining to Claim Nos.1 and 2 are additional works for which there is no provision in the BOQ of the agreement and the existing BOQ 17 and 18 of the agreement are not applicable to these works. The first respondent was instructed to retain the centering and staging for almost five months for 6th and 7th floor is completed in Public Plaza, whereas, as



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per the terms of the contract, the period for removal of formwork is 21

days only; that the reason for the detention of heavy-duty centering system

and for the other delays caused not solely attributable to the first

respondent; that the first respondent has to be compensated for the above

delays when the rate for these additional items are finalized. Further held

that the first respondent cannot be held responsible for not using L&T

heavy-duty system in Assembly circle on repetition basis; and that the

methodology adopted by the first respondent for arriving at the above

rates, in respect of claim nos.1 and 2 is correct. To the above extent, the

Tribunal allowed the Claim Petition on May 19th, 2010 and passed the

award on May 19th, 2010 as stated supra.

VI) 1. Feeling aggrieved with the Award, the petitioner filed a petition under Section 34 of the A&C Act before Hon'ble Single Judge of this Court.



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1.2.The Hon'ble Single Judge, after considering the

submissions made on either side and perusing the case file dismissed the Original Petition.

1.3.Feeing aggrieved with the said order, the appellant has preferred this Appeal under Section 37(1)(c) of the A&C Act.

3.The learned counsel for the petitioner has argued that the subject claim is covered under item nos.18 and 19 of BOQ and hence, the first respondent is not entitled to claim additional amount; that it is the contractual obligation of the first respondent to complete the building as per the drawings; that, hence it is not an additional constructions or out of the contractual terms; and that the findings of the Arbitral Tribunal that Claim Nos.1 and 2 are additional constructions is patently illegal.

4.The learned counsel for the petitioner has further argued that BOQ 17 and 18 covered the entire work relating to the Centering and



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Support System and formwork; that on the basis of the measurements

taken in accordance with these BOQs', payments have been made; and that

the claimant and that the claimant having accepted the same without demur

cannot contend that this is an additional work. Further, the learned counsel

has argued that the Arbitral Tribunal has travelled beyond the terms of the

contract by concluding that these works are distinct and different and that

the same is patently illegal. Further submitted that the first respondent was

solely responsible for the design, engineering and construction of the

staging system and had agreed to the petitioner to do so with no extra cost;

and that 21 days period provided for the removal of the staging system is

nothing but a minimum period and as per the contract conditions, the

staging systems shall not be removed until the concrete reaches towards its

strength. Further submitted that considering the nature of the works, the

respondent had quoted high rates, hence, he cannot turn around and claim

additional cost. Accordingly, he prayed to set aside the award passed by the

Arbitral Tribunal.



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5.Per contra, the learned counsel appearing for the first

respondent has submitted that the Adjudicator has rendered findings that Claim Nos.1 and 2 are additional constructions; and that the Arbitral Tribunal after anxiously considering the submissions on either side and perusing the documents, came to the conclusion that Claim Nos.1 and 2 are additional constructions and accordingly, passed the Award. The learned counsel further submitted that the said findings of the Arbitral Tribunal is a factual finding based on records and evidence adduced by both sides; that the Hon'ble Single Judge after considering all the materials and evidences, has dismissed the Original Petition; and that this petition under Section 37 of the A&C Act is narrower than Section 34. Accordingly, he prayed to dismiss the appeal.

5.1.The learned counsel appearing for the first respondent has further submitted that the first respondent has raised a dispute only with reference to the additional work which is not covered under BOQ; that the



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Tribunal only after careful consideration of the BOQ 17 and 18 as well as

the work done by the respondent has decided that the disputed works

undertaken by the first respondent do not get slotted under the BOQs' and

that the same is an additional work. Further submitted that the claim nos.1

and 2 are additional works given in review meeting and therefore,

correspondence which are not covered under the original scope of work.

Further submitted that the design of the formwork provided by the first

respondent had undergone changes as instructed by the appellant to

provide slabs similar to the upper floors in the public plaza since the

ground floor slab was not designed to carry the load of the upper floor

beams; that this was deviant from the formwork laid down in the BOQ;

and that para 14.1 of the technical specifications specifies that formwork

has to be removed after 21 days. He further submitted that in view of the

additional works, the first respondent was to purchase heavy duty

centering systems and this support system was directed to be retained as it

is till the destrutting of the 5th floor slab. Further submitted that the



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Tribunal after careful analysis of the documents, came to the conclusion that the disputed work is an additional work; that there is no patent illegality in the award; and that, hence, Hon'ble Single Judge has not interfered with the Tribunal's award. Accordingly, he prayed to dismiss the appeal.

6.This Court has considered the submissions made on either side and perused the material records.

7.For ready reference BOQ 17 and 18 reads thus:

S.No	Quantity in Figures and in words	Description	T.N.B.P. No. Or NBC No.	Rate in Figures and in words (Rupees)	Unit in Figures and in words	Amount (Rupees)
17		Supplying and erecting centering for sides and soffits including supports and strutting upto 3.29m height for plane surfaces such as RCC floor slab, roof slab, rectangular, square tee or ell beams, lintels, staircase, waist slab, landing slab, landing beam, portico slab, portico beams in all floors with all cross bradings using mild steel sheets of size 90cm x 60 cm and 10 gauge stiffened with weided mild steel.				
		Angles of sizes 25mm x 25mm x 3mm for boarding laid over using adjustable span, adjustable jack supported by G.I / M.S. Pipe of 50mm dia spaced 1200mm C/C and stiffened horizontally and vertically at 2000mm C/C. The alternate bay shall be brased diagonal to avoid sliding. The pipe				



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S.No	Quantity in Figures and in words	Description	T.N.B.P. No. Or NBC No.	Rate in Figures and in words (Rupees)	Unit in Figures and in words	Amount (Rupees)
		should be jointed by using "U" or "C" clamp. The base of pipe shall be properly strengthened with suitable plate or base catcher etc. Complete complying with standard specification and as directed by the departmental officers.				
a)	45000.00 Sq.m (Forty five thousand square metres only)	For RCC Rectangular / square columns, Sunshades etc.		399 (Three Hundred and Ninety Nine Only)	1 sq.m. (One Square metre only)	17955000 (One Crore Seventy Nine Lakhs and Fifty Five Thousand Only)
b)	127000.00 Sq.m (One lakh twenty seven thousand square metres only)	For floor slabs, roof slabs, rectangular beams, Tee beams, Ell beams, Lintels, landing slabs, waist slabs, canopy slabs etc.		399 (Three Hundred and Ninety Nine Only)	1 sq.m. (One Square metre only)	50673000 (Five Crore Six Lakhs and Seventy Three Thousand Only)
c)	22200.00 Sq.m (Twenty two thousand and two hundred square metres only)	For sides and soffits including the vertical surfaces of walls, RCC drops etc.		399 (Three Hundred and Ninety Nine Only)	1 sq.m. (One Square metre only)	8857800 (Eighty Eight Lakhs Fifty Seven Thousand and Eight Hundred Only)
d)	32500.00 Sq.m (Thirty Two thousand and five hundred square metres only)	For sides and soffit for curved surface etc., using 12 mm thick weather proof plywood instead of M.S sheet for boarding		471 (Four Hundred and Seventy One Only)	1 sq.m. (One Square metre only)	15307500 (One Crore Fifty Three Lakhs Seven Thousand and Five Hundred Only)
18	164000.00	Providing additional strutting to centering for RCC		73	1 sq.m.	11972000



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S.No	Quantity in Figures and in words	Description	T.N.B.P. No. Or NBC No.	Rate in Figures and in words (Rupees)	Unit in Figures and in words	Amount (Rupees)
	Sq.m (One lakh sixty four thousand square metres only)	slabs of plane surfaces for every additional 1M height or part thereof but not less than 0.30m over initial height of 3.00m etc., complying with standard specifications		(Seventy Three Only)	(One Square metre only)	(One Crore Nineteen Lakhs and Seventy Two Thousand Only)

8. On June 26th, 2009 (Ex-C.53) the petitioner had sent a letter to the Architects wherein he had instructed the Architects to design a suitable special type of shuttering and centering arrangements for the Assembly Hall roof slab and also to submit necessary supplemental proposal with quotation. On August 17th, 2009 the first respondent sent a letter (Ex-C.56) to the appellant proposing to use M/s.L&T System for the above centering requirement of the petitioner to use special heavy-duty tower supply system. Further, the first respondent enclosed therein a design calculation for the heavy-duty support system for the appellant's study and approval. Further, the first respondent has stated therein that, considering



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the height of the support system required for Public Plaza viz., 16.8 metres

and the enormous load of heavy beams and slabs falling on the support

system, the rates quoted in BOQ under item Nos.17(a) and 17(b) will not

be applicable and workable. Further, the first respondent has stated that

this will be an additional item of work. Ex-C.58 is the Minutes of the

Review Meeting held by the Principal Secretary to the Government and the

Public Works Department, for discussing the work progress of the project.

In the letter dated December 17th, 2009 (Ex-C.66) the first respondent has

stated that the proposal is a special intricate nature of the work and

requested the petitioner to consider the same while approving the rate

quoted by the respondent detailed in the enclosures. On January 11th, 2010,

under Ex-C.71 the Architect rejected the first respondent's claim. Petitioner

has rejected the first respondent's Claim Nos.1 and 2 on February 19th,

2010 and March 11th, 2010 respectively viz., Ex-C.74 and Ex-C.76. To be

noted, Claim Nos.1 and 2 were rejected while nearing the completion of

the work. The first respondent had used special heavy-duty power support



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system of M/s.Larsen & Toubro for public plaza from October 12th, 2009

to March 12th, 2010 for a period of five months as against nominal period

of 21 days. Further, Tribunal has stated that the material purchased from

M/s.Larsen & Toubro was used for the project and cannot be re-used

elsewhere. Further, the Tribunal has stated that the Architect did not design

the slab of 17m level to take care of the load coming from 6th and 7th floor

and so the Architect directed to retain the supporting system till the

deshuttering of the 5th floor slab and to be retained till the completion of

6th and 7th floor. In case of Assembly Circle, the system patented by

M/s.Fedders Lloyds was purchased and adopted. Centering system adopted

for Public Plaza could not be used for Assembly Building as the centering

was removed only in January 2010. Further, based on the documents

adduced by both sides, the Tribunal has come to the conclusion that the

BOQ item nos.17 and 18 cannot be made applicable to the works order.



9. Admittedly, the Arbitral Tribunal consists of three

Arbitrators who are experts in the field. In fact, all the Members of the Tribunal inspected the building. At the time of inspection, both the parties explained to the Members of the Tribunal, about the details of works involved under claim Nos.1 and 2. After inspecting the site physically and after considering the documents, the Arbitral Tribunal in para 7.6.7 and 7.6.8 held as follows:

“7.6.7. From a plain reading of the BOQ item No.17 and 18, the following facts emerge for consideration:

i. BOQ item No.17(b) provides for supplying, erecting, centering including supports and strutting up to 3.29m height of plane surfaces such as RCC Floor Slab, roof slabs and beams, etc.

ii. BOQ item No.18 provides for rate for additional strutting to centering for plane surfaces for additional 1m height or part thereof but not less than 0.30 m over initial height of 3.00. This means there must be a slab at a height of around 3.29m first for BOQ No.17 and if there is any additional height of 1m above this, for the same type of plane surface of slab as in BOQ17, the BOQ item No.18 becomes operative and applicable.



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7.6.8. In this instant case, under disputed claim Nos.1 and 2, the slabs were overhanging at height of 17m and 27m respectively for Public Plaza and Assembly Circle without any intermediate slab and consisted of curved beams of very heavy size and depth. Hence, BOQ item Nos.17 and 18 cannot be made applicable to the works under claim 1 and 2.”

10. The Tribunal has concluded that centering and supporting system of work executed by the first respondent in Claim Nos.1 and 2 are additional works for which there is no provision in the BOQ of the agreement and BOQ 17 and 18 of the agreement cannot be made applicable to the work. Accordingly, the Arbitral Tribunal passed the award in favour of the first respondent. This Court does not find any perversity or illegality in the award.

11. The Hon'ble Single Judge after considering the arguments advanced by both sides and also considering Section 70 of the Contract Act, 1872, has decided that the petitioner does not make out any slot



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adumbrated in Section 34 of A&C Act. Keeping in mind that scope of

Section 37 is very limited, this Court does not find any reason to interfere with the findings of the Section 34 Court. Therefore, this appeal deserves to be dismissed.

12.In the result, this Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.SUBRAMANIAN, J.] [R.SAKTHIVEL, J.]

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Neutral Citation : Yes
Speaking Order
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PRE-DELIVERY JUDGMENT MADE IN

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