THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.50 OF 2016

R.J. Shah & Co. Ltd. ... Petitioner
Versus
State of Maharashtra
Water Resource Department
And Others ... Respondents

ALONG WITH
COMMERCIAL ARBITRATION PETITION NO.218 OF 2017

State of Maharashtra
Water Resource Department
And Others ... Petitioners
Versus
R.J. Shah & Co. Ltd. ... Respondent

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Mr. Atul Chitale, Senior Advocate a/w Mr. G.C. Mohanty and Mr. Rahul G. Tanwani I/b Kirit N. Damania & Co. for the Petitioner in Commercial Arbitration Petition No.50 of 2016 and for the Respondent in Commercial Arbitration Petition No.218 of 2017.

Mr. Dinesh B. Khaire a/w Mr. Abhijeet U. Pawar and Ms. Uma Palsuledesai, AGP for the Respondents in Commercial Arbitration Petition No.50 of 2016 and for the Petitioners in Commercial Arbitration Petition No.218 of 2017.

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CORAM : S.C. GUPTE, J.

DATE : 19 MARCH 2019

P.C. :

. These two commercial arbitration petitions are cross-petitions.

The parties are challenging different aspects of the same award. The impugned award is passed by a sole arbitrator in a reference concerning disputes arising out of a contract for construction of a Hydro Electric Project. The Respondents were the employers, whilst the Petitioner was the contractor for this construction work. (The parties are referred to in this order by their nomenclature in Commercial Arbitration Petition No. 50 of 2016.)

2 The short facts of the case may be stated as follows :

By a tender notice issued by the Government of Maharashtra, Irrigation Department, sometime in October 1997, tenders were invited for construction of Tail Race Tunnel (TRT), Tail Surge Well (TSW) and Lower Intake Structure (LIS) of Ghatghar Pumped Storage Scheme near Village Chondhe, Tal. Shahpur, Dist. Thane. The cost of the contract work in the tender was Rs.12,01,43,600. The work was to be completed within 24 months. The Petitioner's bid was accepted and the contract was awarded to it. The bid documents submitted by the Petitioner together with the work order and formal agreement executed between the parties formed the contract. Since the work was delayed for reasons beyond the control of the Petitioner, extension of time was sought from the Respondent employers. Such extension was duly granted. The Petitioner also addressed various communications *inter alia* claiming that there had been tremendous rise in the cost of HSD and other construction material which could not be recovered under the escalation provisions of the contract. It is the case of the Petitioner that in the course of execution of the contract work, the Respondents required the Petitioner to remove a particular natural rock plug, which, according to the Petitioner, could have only been ordered as the last item in the sequence of work. Despite the Petitioner's remonstrations, the Respondents insisted on removal of the rock plug by the conventional method of drilling and blasting. As a result of this inappropriate step, a serious calamity occurred at the site due to water escaping through the opening of the tunnel with gigantic force as a result of removal of the rock plug; and critical damage was caused to men and machinery employed by the Respondents. Fourteen workers of the Respondents died during this calamity and a large part of the machinery was destroyed. (The situation was compounded by a heavy rainfall on 26 July 2005.) On the recommendations of an expert committee appointed by the Respondents, for looking into the calamity, additional protective work was ordered from the Petitioner and the date of completion was further extended. Finally, the contract work was completed on or about 31 July 2006. It almost took eight years as against the original completion period of two years. The Petitioner, accordingly, in its final bill, included various extra items and rates. On 15 November 2007, the Petitioner submitted its final bill in the sum of Rs.3,43,52,990. In addition to this, the Petitioner made various claims towards damages. Since the dues were not paid by the Respondents, the Petitioner sent a notice under Section 80 of the Code of Civil Procedure (“Code”) and finally, filed a suit for various reliefs. The Petitioner filed an application under Section 89 read with Order X

Rule 1(A) of the Code in the suit for reference of the disputes to arbitration. This Court accepted the Petitioner's prayer for reference to arbitration and appointed a sole arbitrator. The parties filed their respective pleadings before the learned arbitrator and also submitted documentary evidence. By the impugned award dated 31 January 2016, the learned arbitrator awarded, fully or partly, thirty-five out of forty-two claims and rejected seven claims of the Petitioner. The Petitioner challenges the impugned award to the extent of its rejected claims as also others which were only partly allowed, whereas the Respondents challenge the award contesting some of the claims awarded by the learned arbitrator. Both petitions are heard together and disposed of by this common order.

3 The Petitioner's challenge pertains to the award on Claim Nos.1, 4, 5, 6, 13, 15 and 26. Each of these challenges are considered separately as follows.

4 Claim No.1 was for compensation for the disaster of 28 June 2005. The claim was for Rs.3.5 crores. The learned arbitrator awarded a sum of Rs.1.30 crores out of this claim along with interest. Both parties have challenged this part of the award. Learned Counsel for the Petitioner submits that the arbitrator has only considered the loss of machinery, which was damaged beyond repair, and has not considered the other aspects, such as wages, salaries and other expenses incurred at the site as a result of the accident as also compensation paid by the Petitioner under the Workmen

Compensation Act. Learned Counsel also submits that even as regards the cost of machinery, particularly the replacement cost of the machinery completely damaged and rendered beyond repair, the learned arbitrator, without any reason, has considered depreciation at the rate of 30 per cent whilst working out such cost of replacement. Learned Counsel submits that there are no reasons stated in support of such depreciation. The Respondent-State, on the other hand, objects to the award on Claim No.1 on the ground that the arbitrator has not considered whether the claim made by the Petitioner towards replacement of machinery was properly founded. Learned Counsel submits that the Respondents had merely accepted the cost of damaged machineries in the sum of Rs.92 lacs and after considering depreciation to the tune of 30 per cent, offered to compensate the Petitioner in the sum of Rs.71 lacs. Learned Counsel, submits that the arbitrator could not have awarded the sum of Rs.1.30 crores to the Petitioner except after satisfying himself about the correctness of the Petitioner's case on facts so far as both aspects of loss of machinery and its cost are concerned. Learned Counsel submits that there was no evidence in this behalf and none is considered by the learned arbitrator.

5 If one has regard to the arbitrator's award on Claim No.1, it appears to be merely on the basis of the report of the committee appointed by the Government for assessing the possibility of recurrence of such calamities and suggesting measures to avoid them. This report was submitted sometime in May 2006. The learned

arbitrator observed that in view of this report, the claim deserved consideration and that he was partly accepting the recommendations of the committee. As for the working out the compensation payable, the learned arbitrator observed that the Respondents had only considered the machinery and material from TRT for working out the claim, whilst the Petitioner had demanded compensation for all machinery and material including compressors installed at the portal of the approach tunnel required for execution of TRT works, electrical and water lines, cables, motors, jack jammers, drill rods, etc. Considering that these items were also required for the work and since photographic evidence of damages produced by the Petitioner was not denied or disputed by the Respondents, the learned arbitrator considered reasonable compensation for these items. When it came to working out of the actual compensation, one is at a loss to understand how the learned arbitrator has computed the actual quantum of damages. The Petitioner had raised a claim of damages towards machinery completely lost or damaged beyond repairs, as also repair charges for those items where repairs had to be made, and wages, salaries and other expenses to be incurred at the site as a result of the accident, compensation deposited as well as *ex-gratia* compensation paid and diesel, petrol, lubricant expenses and other continuous expenses incurred. The total value of all these items worked out to Rs.3.50 crores. Without discussing any single element of computation, the arbitrator considered a certain rate of depreciation. For the reasons stated by the learned arbitrator, he considered Government directives to the Respondent to account 30 per cent depreciation. Government directives are internal matter for the Respondents. There is nothing to suggest that these directions were binding on the Petitioner. There is nothing to indicate on which amount 30 per cent depreciation was allowed by the arbitrator. The learned arbitrator also allowed 10 per cent overheads simply by stating that "as the same were necessary in this situation". Paragraph 12 of the award which stated the amount of compensation on Claim No.1 also does not add anything to this discussion. The arbitrator simply awarded a sum of Rs.1,30,24,000 to the Petitioner with interest at the rate of 12 per cent from 31 March 2008 till the date of the award. The entire award on compensation payable to the Petitioner, thus, exhibits a more or less complete want of reasons. There is nothing to indicate the basis for working out such compensation. There is no reason why 30 per cent depreciation was granted and there is no reason why 10 per cent of allowance was made towards overheads. The statement of reasons in the award, however, brief they may be, is a fundamental feature of a legally sustainable award and their complete lack as in the present case would vitiate the award. The entire award on Claim No.1, thus, cannot be sustained and deserves to be interfered with.

6 Claim No.4 was for flood damages occurring on 3 August 2004 in Workshop Store Area. This claim was part of a group of three claims concerning camp related issues. These three claims (Claim Nos. 2, 4 and 8) were considered by the arbitrator at one place. Learned Counsel for the Petitioner has no objection as regards Claim Nos. 2 and 8. This claim was for damage on account of flood which

occurred on 3 August 2004 to the camp established by the Petitioner. The damage resulted from the encroachment of existing nalla course allowed by the Respondents' to the dam agency, who had established a construction plant at the earlier camp site. The Respondents' answer to the claim was that as per the stipulations for the work and site conditions in the contract, it was the responsibility of the Petitioner to observe and maintain in safe condition all works, materials, machinery, tools and plants, etc. from flood and rains and no compensation was payable on that account. The arbitrator rejected this claim on the ground that the Respondents having intimated the Petitioner about protection of their works and premises from flood during monsoon, it was the duty of the Petitioner to be watchful and protect the same. The arbitrator's view on the subject is based on a reasonable construction of the contract. It cannot be termed as a view which is either impossible or a view which no fair or judiciously minded person would take or a view that would shock conscience of the Court.

7 Claim No.5 pertains to idling charges due to non-supply of cement, steel and delayed decisions of the employer. The arbitrator accepted the Petitioner's contention that compensation was admissible in respect of machinery rendered idle and salary and wages paid to the labour engaged, wherever suspension of work was not occasioned by the contractor's fault. The arbitrator also accepted the Petitioner's case that though there were no written instructions for suspension of work by the employer, the prevailing circumstances delayed the start

of the work and that, in the premises, claim for idle charges needed consideration. The arbitrator considered three distinct components, namely, TRT, TSW and LIS, which could be executed independently. The arbitrator considered the idling charges for each of these components separately. The arbitrator also considered the period for which such idling claims should be allowed. The Petitioner had asked for compensation from December 1998 onwards, that is to say, after a period of four months from the award of the contract. The arbitrator observed that TRT works were taken up by the Petitioner with the Respondents' consent from the link tunnel executed as an extra item of another contract joining the Approach Tunnel and TRT near draft tubes of power house and accordingly, the arbitrator did not endorse the Petitioner's demand for TRT execution from December onwards. The arbitrator observed that in case of TRT, the Petitioner started the work after completion of the link tunnel executed in mid-November 1998 and no outfall face as per contract planning was available to the Petitioner due to huge deposition of debris brought by the adjoining nallas; the Petitioner, therefore, had to modify the execution methodology by working with two faces from link tunnel to power house and link tunnel to lower intake. The arbitrator considered that 'Face I' towards the power house was required to be suspended as per the logbook record produced by the Respondents from 8 December 1998 to 2 February 1999 due to non-finalization of B.F. level which was essential for fixing the gradient of the tunnel. However, work on 'Face II' was continued till it was stopped from 3 May 1999 to 31 August 1999 due to rock fall requiring elaborate supporting treatment.

During this period, work on 'Face I' was in progress. Thus the TRT excavation work continued with intermittent stoppage on either faces. Accordingly, the arbitrator considered the common periods of stoppages and held that for excavation the number of days to be considered was net 76 days, excluding holidays. For concreting activity, the arbitrator considered the fact that drawings were supplied in May 2000; these drawings required further enlargement of tunnel section already excavated as per tender drawings to accommodate increased lining thickness. The arbitrator observed that this work could only start from January 2001. Considering the fact that in underground works the concreting activity could start only when sufficient excavation is completed so that during blasting at the face, the flying rocks do not hit the objects erected for lining like shutter, reinforcement, placer, water and air lines equipment, etc. Normally the reasonable period required in basalt formation at one face ranges between 45m to 60m, and hence, the arbitrator was of the considered view that concreting activity could commence only from four months onwards and hence, the period beyond mid-March 1999 was suitable for compensation of suspension for concreting activity. The arbitrator did not consider suspension during concreting due to non-availability of the schedule materials, since Clause 15A of the contract did not permit payment for such suspension. (As per Clause 83 of Special Conditions of Contract, for such suspension only wages and overheads were permitted.) Accordingly, after considering the contract conditions and material placed before him, the learned arbitrator considered 190 days' suspension period for starting of concreting activity. As regards Tail Surge excavation, the arbitrator considered that the location was not finalized till March 1999 and thereafter, protection works were executed so that pilot excavation could be started in the later part of April 1999. The arbitrator considered suspension of work due to washout of roads, lands, etc. since 17 May 1999, whereafter the work could restart as per the Respondents' logbook record only from 3 May 2000. Since Tail Surge excavation was executed as an open excavation, the arbitrator held that the monsoon period, when no work was possible, had to be excluded for working out the suspension period for arriving at the compensation towards excavation of TSW. The arbitrator was, thus, of the view that Tail Surge excavation could have commenced from mid-October 1999 and therefore, considered 105 working days between 8 December 1998 to 15 April 1999 as eligible for compensation towards suspension in the work for surge excavation. Even here, the learned arbitrator held that the concreting activity could only start from 3 July 2002 as per the record submitted by the Respondents, since the concreting activity could have commenced only after sufficient length of excavation was achieved and an experienced contractor would always be expected to account for it in his bid. The learned arbitrator held that accordingly no compensation was payable for suspension of concreting work for Trail Surge Well (TSW).

8 As regards Lower Intake Structure (LIS), the arbitrator held that the entire area was submerged with huge deposits of debris initially due to adjoining nalla flows bringing lot of material along with water

and depositing the same at the place. The Respondents had given this work to another agency before the contract was awarded to the Petitioner. The debris removal was done by that agency till about May 1999. During monsoon, the area got flooded with huge deposits, which were again required to be cleared post monsoon. The arbitrator observed that at that juncture, the drawings were not available and neither were nalla diversion works nor protection works undertaken. The arbitrator observed that detailed drawings were received by the Petitioner in January 2002 and only thereafter, could foundation excavation works be undertaken. Considering, however, that as per the tender and the Petitioner's planning, TRT excavation was planned from outfall portal face, the excavation could be tackled after four months thereafter, i.e. April 1999. The arbitrator observed that this being an open excavation, no work was possible during monsoon and hence, he excluded monsoon periods. The learned arbitrator also observed that during monsoon periods in the years 1998, 1999 and 2000, the area had experienced huge deposition of debris in the intake channel, which was a natural phenomenon, not attributable to the Respondents. In the face of this material, the arbitrator held 120 days' suspension as reasonable towards working out the compensation for excavation. As the concreting work had to be done after excavation was completed, a total suspension period of 180 days was considered appropriate for the concreting work in LIS. After critical examination of damage to machinery claimed by the Petitioner, and taking into account the items of machinery which were common for all works, then undertaken by the Petitioner under different contracts, the arbitrator considered only those items of machinery which were required exclusively for the various components of the contract work referred to above. Considering the planning of the Petitioner as per the contract, the arbitrator considered its machinery requirement for three components of the present contract referred to above and accordingly worked out the idling claim of the Petitioner for different components. Considering thus the entire material in the light of the contract, the arbitrator awarded a claim of Rs.44,64,400 towards idling charges together with interest at the rate of 12 per cent per annum from 31 March 2008 till the date of the award.

9 The assessment of the material and construction of contract and the findings arrived by learned arbitrator on this particular claim are clearly possible views which a fair or judiciously minded person may well take. There is nothing shocking about these views. Learned Counsel for the Petitioner submits that the contract did not have any particular sequence of work. It was to be executed within a stipulated period, and as a whole and simultaneously. According to learned Counsel, even monsoon periods could not be excluded. Though the contract did not provide for any particular sequential pattern of work to be undertaken by the contractor, it is natural to assume that the work would be carried out in a natural sequence. For example, when land is to be excavated and concreting work has to be carried out in such excavated land, it is natural to assume that excavation would be carried out first and concreting work would be done later. It is but a reasonable construction of the contract and the

manner of its execution. The assessment, thus, clearly passes muster and is not amenable to any challenge under Section 34 of the Act.

10 The Respondents also question the arbitrator's award on Claim No.5. The objection of learned Counsel for the Respondents on this part of the award is that the arbitrator has not taken into account 60 days' period of suspension, for which nothing is payable to the contractor under the contract. Learned Counsel in this behalf refers to Clause 83.1 of Special Conditions of Contract and Clause 15.3 of General Rules and Directions for the Guidance of Contractors. Relying on these clauses, it is submitted that compensation was payable only if suspension of work continued in excess of 60 days. Learned Counsel submits that if there was 60 days' suspension, nothing was payable to the contractor. Clause 15.3 applies in a situation where the Engineer-in-charge requires the contractor to suspend the work for a period in excess of 30 days at any time or 60 days in the aggregate. The Clause provides that the contractor shall be entitled to apply to the Engineer within 30 days of resumption of work after such suspension for payment of compensation to the extent of the pecuniary loss suffered by him in respect of working machinery being rendered idle on the site or on the account of his having to pay to the salary and wages of labour engaged by him during the period of suspension. For the first 30 days, the contractor is not entitled to any claim in this behalf, whether the days are consecutive or in the aggregate. Clause 83.1, on the other hand, provides for adverse effect on the progress of the work due to reasons such as shortage of fund,

non-availability of cement or other key construction materials, as also land acquisition and any other reasonable cause beyond the control of the Government. The Clause provides that if the effected period is continued in excess of 60 days at any time, the contractor shall be entitled to apply to the Engineer immediately thereafter for providing relief to him to the extent of the progress thus affected. There is nothing in this clause to suggest that the initial period of 60 days is liable to be excluded for working out any compensation under it. The Clause merely provides for the point of time at which the contractor would be entitled to apply to the Engineer for providing reliefs. So far as Claim No.5 is concerned, it is a claim which is clearly covered by Clause 83.1. The suspension referred to thereunder was due to non-availability of construction material and other reasonable causes beyond the control of the Government and not due to any instructions of the Engineer-in-charge. The contractor applied for reliefs in this behalf when he became entitled to apply for the same. After taking into account the sequence of work and the relevant periods which are liable to be excluded, as noted above, the arbitrator has worked out compensation for net suspension days for each of the activities referred to above. The arbitrator's view in this behalf is based on a reasonable construction of the contract and on a fair and reasonable assessment of the evidence placed before him by the parties. There is no infirmity to be found in such assessment. The objection of learned Counsel for the Respondents, thus, has no merits.

11 Claim No.6 was for hire charges of winch at TSW recovered by

the Respondents after the disaster of 20 June 2005. The arbitrator has based this part of the award on construction of the contract. Clause 27 of the contract contains a provision concerning hire charges of machinery taken from the employer. The factum and liability of hire charges payable by the Petitioner for having hired such machinery is one thing. There may be adequate discussion for the same. However, if one goes to the quantum of compensation to be worked out on this score, one finds that there is a complete want of reasons. The arbitrator simply puts it thus : After so called careful consideration of facts, he considers the charges worked out by the Respondents in the sum of Rs.98,800/- as reasonable and awards the same. The reasons required to be stated in an award are meant to be real reasons and not pseudo reasons. No judge could simply say whilst adjudging a claim that he found the claim to be reasonable after consideration of facts; this is no valid reason within the meaning of Sub-section (3) of Section 31 of the Act. This part of the award, thus, cannot be sustained. It suffers from a patent illegality appearing on the face of the award, inasmuch as it is devoid of any reason for working out the quantum of damages, when giving of such reason is a requirement of law.

12 Claim No.13 was for road repair works for the visit of experts. This claim was on the footing that after the entire work of intake structure and approach bridge with hoisting structure and subsequent channel works were completed by 31 May 2005 by the Petitioner, and it withdrew from the site after joint inspection of works, there was a

disaster which struck heavy damage to the roadwork, which, in turn, required restoration prior to the visit of experts to the site. The Respondents had directed the Petitioner to engage machinery for road restoration so as to seek advice on remedial measures for protection and the Petitioner, accordingly, deployed the machinery for restoration work and carried out the same. The Petitioner claimed compensation for this work. The arbitrator rejected this claim on the ground that it was the responsibility of the contractor to maintain all works executed by it for a period of one year after the completion certificate. It is pertinent to note that it was nobody's case that this work was necessitated as a result of the contractor's mandate or scope of works under the contract. This work was specially carried out on express instructions and orders of the Respondents-employer. There was a separate work order issued for such work. If that was so, it was but natural that the contractor deserved to be compensated for this work. This part of the award, thus, contains an impossible view or a view which no fair or judiciously minded person would or, at any rate, should take, and accordingly, deserves to be interfered with.

13 Claim No. 15 was for machinery given for clearance of link tunnel and TRT post disaster. This claim was on the footing that the Respondents' had approached the Petitioner during the course of execution of the work to make available certain machinery and carry out clearing work of TRT and Link Tunnel. Since the Petitioner was busy with clearance of compensation of labour and other related

issues which cropped up post disaster, the Petitioner made the machinery available to the Respondents. Local persons were engaged by the Respondents' as agencies for clearance work. The Petitioner claimed compensation for machinery used for clearance work by the Respondents. The arbitrator rejected the claim on the ground that the initial payment for this machinery was received by the Petitioner directly from the third party agencies and it was well within the Petitioner's knowledge that agencies were engaged in the clearance work by the Respondents. The arbitrator held that it was the Petitioner's responsibility to claim the balance payment directly from the agencies. The view expressed by the learned arbitrator is clearly a possible view. It is supported by evidence on record. It cannot be described as view based on no evidence. The arbitrator has taken into account all relevant and germane material and has not disregarded any. So also, there is no irrelevant or non-germane material considered by the arbitrator for arriving at this conclusion. The view, accordingly, should pass muster under the law of challenge to an arbitral award under Section 34 of the Act and no interference is warranted.

14 Claim No. 26 was on account of deduction of 14.64 per cent under Clause 38. It was connected with Claim No.12, which was for revision of rates of deviated items and extra items. Clause 38 of the contract provided for claim for quantities in excess of the tender or estimated quantities. Clause 38 provides for percentage of permissible variation. It also provides for the contractor's duty, if ordered in

writing by the Engineer to do so, to carry out any quantity in excess of the permissible limit. The work was to be carried out on the same conditions as, and in accordance with the specifications of, the contract, but at rates which were (i) derived from the rates entered in the current schedule of rates and (ii) in the absence of such rates at the rates prevailing in the market, such rates being increased or decreased, as the case may be, by the percentage which the total tendered amount bears to the estimated cost of the work put to tender, based upon the schedule of rates applicable to the year in which the tenders were invited. The arbitrator held that the work order had clearly stipulated that the tender offer was accepted at 9 per cent below the estimated cost which was indicated as Rs.12,01,43,600/-; the same cost was indicated under Clause 38 of the contract. The arbitrator held that in most cases, rates sanctioned by the Respondents' for quantities beyond deviation were less than the applicable contract rates plus escalation due on the date of reaching the deviation limit. The arbitrator considered this improper, as according to him no contractor would work for demand rates lower than the rate paid at the date of reaching the deviation limit. The learned arbitrator observed that the revision of rates was claimed on deviated and extra items. These items were separately considered by the learned arbitrator in para 12 of the award. The arbitrator, in para 12, discussed the basis, on which the claim was to be considered. The learned arbitrator held that while working out payment due for deviated quantities executed year wise, in no case, rates for deviated quantities could be less than the rates payable as per the contract rate plus escalation as on the date of reaching the deviation limit; every successive year's rates shall not be less than rates worked out for earlier years inclusive of escalation during that year. The arbitrator, accordingly, awarded the total admissible amount based on quantities and rates thus determined. This discussion is to be found in the clarification of the award issued on 18 March 2016. The arbitrator has explained in this clarification the manner of computation of the claim by citing an example. This again is a possible view of the material placed by the parties before the learned arbitrator. It is based on a reasonable construction of the contract and on a fair assessment of the evidence. It cannot be described either as an impossible view or a view which no fair and judiciously minded person would take or view which would shock the conscience of the court. Learned Counsel for the Petitioner submits that 9 per cent deduction which was originally made whilst submitting the bid should not have been applied to these rates since these were to be applied at a much later period. 9 per cent deduction was a contractual matter. It flows from the contractual rates. Further rates for both the contract period and the extended period could only be considered after applying escalation to such rates. The arbitrator has obviously done that and it can only be described as a reasonable and possible view of the contract and the evidence placed before him. There is no infirmity to be found in it within the parameters of Section 34 of the Act.

15 Coming now to the Respondents' challenge to the impugned

award, though the challenge has been generally laid to the whole of the award, at the hearing of the petition, only particular individual claims were debated by the parties. Learned Counsel for the Respondents focused on two groups of claims. The first group of claims concerns Claim Nos.12, 16 (c), 24, 26 and 42, whilst the second group concerns Claim Nos. 20, 21 and 23 and the third group consists of Claim Nos.8, 28 and 28. Claim Nos.12 and 26 have already been discussed above, whilst considering the Petitioner's challenge and as observed above, the award on those claims does not merit any interference. So far as Claim No.16(c), which was for revision in rates of reinforcement for Tail Surge, is concerned, the learned arbitrator, firstly, observed that the item included work due to changes introduced in the detailed designs requiring additional efforts which were not covered in the tendered rates. The arbitrator held the Petitioner to be entitled to compensation for these extra efforts. The arbitrator held that the rates for deviated quantity could not be less than the applicable contract rate and it was pragmatic to continue these rates till the completion of the work and until its execution. There is no infirmity to be found in this part of the award. When it comes to working out of the quantum of this claim, the learned arbitrator, however, appears to have lost the point. He appears to have simply awarded additional payment for extra efforts, stating that such additional payment was set out in para 12 of the award. Para 12 of the award, however, directs the additional rate of Rs. 1947 per MT to the Petitioner towards such extra efforts for the total executed quantity of reinforcement plus escalation, without indicating how this rate has been worked out. It is one thing to say that in no case, rates for deviated quantity should be less than the applicable contract rate, but quite another to say that for the particular rate of deviation additional sum would become payable. On such additional sum, there must be a reasonable and valid reason. The arbitrator must indicate briefly the reasons for awarding such additional sum. Since the award in the present case exhibits none, it obviously cannot be sustained. The award, for want of reasons, on that account, denotes a patent illegality appearing on the face of the award.

16 So far as Claim Nos. 24 and 42 are concerned, these obviously dealt with quantities beyond deviation limits. So far as the award on these claims is concerned, the award contains an adequate discussion. The conclusion of the arbitrator on this deviated quantity is unexceptionable. So far as the rate to be applied to these quantities is concerned, the award is based on revised rates approved by the Respondents themselves and through what was known as Extra Item Rates List (EIRL). This again cannot be taken exception to. The rates are clearly supported by evidence. The arbitrator's view cannot be described as a view based on no evidence. It cannot be described as a view which no fair and judiciously minded person would take on the material placed before him. This part of award, accordingly, does not merit any interference.

17 So far as the second group of claims, namely, Claim Nos.20, 21 and 23 are concerned, the claims involve two aspects, (i) whether works referred to in these claims were extra items and as such

scheduled rates of EIRL were not applicable and (ii) whether what particular rates should be awarded. The award exhibits adequate discussion on first of the above two aspects, namely, whether or not the items described therein were extra items. When it, however, came to quantification of these claims, the award, once again, exhibits a woeful lack of reasons. After reflecting on the factum of damages, the learned arbitrator simply observes as follows: "I have taken into consideration all the aspects of case and looked into various rates sanctioned by the Respondents for similar works executed earlier as well as purchase cost of sluice valve, fittings, pipe line tech and decided the claim for the amount as stated in para 12 herein below." Para 12, for its part, simply states the total compensation awarded. This as I have explained above, is no reason. The statement made by the arbitrator in his impugned award does not satisfy his duty to give reasons within the meaning of Sub-section (3) of Section 31 of the Act.

18 So far as the third group of claims, namely, Claim Nos.8, 28 and 38 are concerned, these, respectively, pertain to accommodation to be provided to the Petitioner-contractor, additional cost of welding for strengthening of the webs, ribs, arch, etc. and shuttering charges. The Petitioner's case was that accommodation had to be provided to it by the Respondent free of charge. The Respondents contested this claim. According to them, the tender document did not provide for any such free accommodation to the contractor during the execution of the work and hence, the rent was properly recovered from the

latter. The arbitrator, after having regard to the records, came to a conclusion that Respondents had agreed in principle to compensate the contractor for camp shifting and accordingly should bear the additional cost of camp shifting, which together comprises of Claim Nos.8 and 2, though running cost claimed as part of Claim No.8 was denied to the contractor. This is a possible view of the material placed before the arbitrator. What was awarded by the arbitrator was not the entire cost of accommodation, but expenses towards camp shifting. So far as additional cost of welding for strengthening of the webs, ribs, arch etc. is concerned, the arbitrator considered the estimate prepared by the Respondents for working out additional rates in Clause-14 for additional cost of Load Intake Protection Work (LIPW). The arbitrator was of the view that the estimate did not reflect the provision for additional elements which had cropped up during execution of the work, which entailed extra efforts on the part of the Petitioner-contractor. The learned arbitrator, after making allowances for Claim No.27 already dealt with in the award, refused to award additional cost of steel, but awarded additional cost towards return of material, welding efforts, platforms, etc. The arbitrator's view in this behalf is supported by some evidence on record and cannot be said to be based on no evidence. It involves a possible view of the material placed before the arbitrator by the parties. So far as shuttering charges are concerned, the arbitrator observed that the agreement did not intend backfilling with M-15 originally; that this item was introduced after March 2006 by the Respondents. The Petitioner's contention was as only one side shutter was sufficient to place concrete, other being excavated face of channel, and the shuttering on rear face which they had to provide just to separate M-20 & M-15 concrete which was not intended in the contract. This contention was accepted by the arbitrator and accordingly, the arbitrator awarded additional cost of Rs.1,58,808 along with interest. This part of the award cannot be termed either as an impossible view or a view which no fair or judiciously minded person might take. No interference is, accordingly, warranted under Section 34 of the Act.

19 In the premises, though the petitions must partly succeed and it is accordingly ordered as follows :

(i) Award on Claim Nos.1, 6, 13, 16C, 20, 21 and 23 is set aside. The rest of the award sustained;

(ii) From out of the amount deposited by the Respondents at the time of admission of the petition, the Petitioner may be permitted to withdraw the amount of the award as is sustained in this order. In the event, the amount withdrawn by the Petitioner is unable to satisfy that part of the award as is sustained by the present order, the Respondent shall pay the balance amount to the Petitioner after deducting TDS in accordance with law.

(S.C. GUPTE, J.)