

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.1027 OF 2014

M/s Mahendra Sanitation	...	Petitioner
Versus		
Mahanagar Telephone Nigam Ltd.		
And Another	...	Respondents

.....

Mr. Ramesh Ramamurthy for the Petitioner.
None for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 4 FEBRUARY 2019

P. C. :

. Heard learned Counsel for the Petitioner. The Respondents are absent though served. Even on the last occasion, i.e. on 21 January 2019, none had appeared for the Respondents and the matter was stood over as a last chance.

2 The disputes between the parties arise out of a contract for miscellaneous and civil work to be carried out at Khar and Juhu telephone exchanges owned by the Respondents. The contract was in pursuance of notice inviting tenders for such work. The Petitioner had submitted a tender. The declared tender cost was about Rs.31.71 lacs. The Petitioner had quoted 15 per cent below the tender cost. The rate quoted by the Petitioner was valid only upto 150% of the contract value. It is not in dispute that the actual work carried out by the Petitioner exceeded 150 per

cent. There is an admission to that effect in the reply of the Respondent before the arbitrator, as also before this court. What is in dispute is whether the arbitrator could have rejected the Petitioner's claim for extra work merely on the ground that there was no demand made for seeking compensation for extra work at the appropriate time. The Petitioner has placed on record letters addressed by it to the Respondents. These were acknowledged by the Respondents. Despite producing original office copies of the letters with endorsements in original by the Respondents, the arbitrator appears to have brushed aside this submission simply by observing that they do not appear to be genuine. The arbitrator also appears to have relied on the Respondents' submission that the documents were produced subsequent to the conclusion of the arbitration proceedings. The relevant clause of the agreement, which talks about extra items has a provision for the contractor to make a claim supported by proper analysis for extra work and Engineer in charge to determine the rate for such extra work on the basis of market rates. The clause provides for payment to the contractor on the basis of the rate to be so determined. Even if it is assumed that there was no demand by the contractor for determination of rates, the fact remains that the Petitioner had in fact carried out the work far beyond the permissible variation and for which he had to be compensated. If the Engineer in charge was not given the option to determine a proper rate after submission of rate analysis by the contractor, it may at the most reflect on interest to be paid to the contractor; it certainly cannot result into non-payment of the extra work. There is no provision in the contract that if such rate analysis is not submitted or rate for payment for extra work is not determined, the matter cannot be brought before an arbitral forum. In any event, there is no such case made

out at the hearing of the petition.

3 In the premises, the impugned award cannot be sustained. It takes a view which no fair or judiciously minded person would have taken. The reading of the contract by the learned arbitrator appears to be clearly unreasonable, warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.

4 Accordingly, the arbitration petition is allowed, by setting aside the impugned award dated 11 December 2013.

(S.C. GUPTE, J.)