

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01~08~2019	14~08~2019

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Original Petition No.324 of 2009

Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Stating Road,
Chennai 600002.

through the Managing Director

... Petitioner

Vs

1. M/s.Subhash Projects and Marketing Ltd.,
8/2, Ulsoor Road,
Bangalore 560042
Through Sh.Anil Sethi, Chairman

2. Dr.T.S.Sethurathnam
Presiding Arbitrator
C-137, Sarvodaya Enclave,
New Delhi 110017.

3. Capt.S. Raja Rao
Arbitrator
House No.279, 1st B-Cross,
8th Main Road, 4th Block,
Basaveswara Nagar,

Bangalore-560079.

4. Mr.K. Ramalingam
Arbitrator,
AP-506, 16th Street,
Vaigai Colony, Anna Nagar West,
Chennai 600040.

... Respondents

Prayer :- This Original Petition has been filed under section 34 of the Arbitration and Conciliation Act to set aside the Award dated 15.12.2007 passed by the Arbitrator in relation to the dispute between the petitioner and the first respondent as illegal, without jurisdiction and not a proper disposal of the case with cost.

For Petitioner : Mr. Vijay Narayan
Advocate General
Assisted by:
Mr.D.Balaraman

For Respondents : Mr.R. Venkatavaradan
for M/s.S.M.Loganathan [for R1]

ORDER

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Challenging the majority view of the Arbitral Award, the present petition has been filed.

2. The Claimant has preferred 16 claims. Out of which claim Nos.2, 5, 6, 7(a), 7(c), 7(d), 8, 9 and 12 have been Ordered by the majority Arbitrators and awarded a sum of Rs.15,23,23,648/- with interest at the rate of 12% per annum for the above amount from 01.09.2003 till the date of realization. As far as the other claims are concerned, they are rejected. Whereas in the minority Award, the learned Arbitrator has awarded only a sum of Rs.68,000/- for claim No.1 and rejected the claim Nos.2, 3, 4 and awarded a sum of Rs.1,29,68,812/- towards the claim No.5. The claim No.6 has been rejected. For claim No.7(a) a sum of Rs.12,54,164/- has been awarded, for claim No.7(b) a sum of Rs.48,957/- has been awarded. Claim Nos.7(c), (d) and (e) have been rejected. For claim No.8(b) Rs.9,93,508/- has been awarded. Claim Nos.8 (a) (c), (d), (e), claim No.9 have been rejected. For claim No.10, a sum of Rs.1,06,263/- has been awarded. Claim Nos.11(a), (b), (c), (d), 12, 13, 14 have been rejected. For claim No.15 a sum of Rs.54,61,676/- has been awarded. Claim Nos.16 and 17 have been rejected. Similarly, he had also rejected the counter claim

of the respondent. For the sake of convenience, the parties are arrayed as per their own rankings in the Arbitral proceedings.

3. Brief facts leading to filing of this petition is as follows :

3(a). The respondent invited a tender for construction of permeate conveyance pipeline. The work in question is a part of Chennai Sewerage Renovation and Functional Improvement Project funded by the Overseas Economic Co-operation Fund. The scope of work under the contract consisted of inter alia supply and laying of 28,767 meter of pipeline of different diameters from 200mm to 1000mm within the stipulated completion period of 17 months. On 11.07.1998, the Claimant submitted their tender for the above work. The respondent accepted the tender on 17.11.1998. The agreement between the parties has been executed on 26.11.1998. As per the contract the Respondent were required to discharge various contractual obligations namely,

a) The respondent has to pay 10% of the basic contract price as advance upon the Claimant submitting Bank Guarantee of equal amount

b) To provide clear and un-obstructed possession of the site of works

c) To issue required drawings, revised drawings, additional drawings in time

d) To make payment of R/A bills in line with Billing Schedule without delay.

e) To fulfil various other contractual obligations of the Respondent as will appear from the contractor.

3(b). It is the case of the Claimant that the respondent failed and neglected to discharge their contractual obligations in right time for which the Claimant was prevented from completing the work in time and was further exposed to various losses and injuries.

3(c). According to the Claimant, the Claimant in compliance

with the Clause 3.4 of Instructions to Tenderers submitted a detailed programme in the form of a Bar Chart showing various activities needed to be carried out in order to complete the work in time. The respondent did not raise any objection with regard to the said detailed work programme and thereby necessary implication agreed to discharge their reciprocal contractual obligations in proper time. The respondent made abnormal delay in making payment of mobilization advance and ultimately paid the same on or about 03.09.1999 after a delay of about 225 days. Similarly, the respondent delayed in reimbursement of sales tax payment which caused the Claimant to pay penalty of Rs.6,12,010/- to the Sales Tax Department. The charges for opening of Bank Guarantee was to be borne by the respondent. The respondent failed and neglected to provide free and unobstructed site works and right of way to the work site. The work of laying pipes could not be started till March 2000 due to non-availability of right of way. Despite the efforts of the Claimant to do as per the agreement to obtain necessary permission from the Statutory authorities, public bodies, it was

only on 06.03.2000, the Claimant was given oral permission. But the work was again stopped by villagers because of non-payment of their compensation money by the Respondent.

3(d) The respondent/consultant wrongfully withheld payment of running account bills for minor imperfection without any justification. As per the terms of the contract, the respondent were to issue drawings indicating the alignment of the pipelines work. Due to such changes, it was necessary to have fresh drawings as per the revised/changed alignment. The respondent abnormally delayed in issuing such drawings which were made available long after expiry of stipulated date of completion. The contract restricted the variation limit on the various items of works upto $\pm 20\%$. The respondent violated the contractual provisions and made repeated post contract abnormal reduction, omission, alteration to the scope of work. The respondent reduced quantity of supply of pipes by more than 65% and also reduced the quantity of laying pipelines.

Supply of Pipes

Dia of Pipes (in mm)	Qty. as per original agt (in m)	Qty. revised on 05.05.1999 (in m)	Qty. in revised agt. dt. July 1999 (in m)	Qty. Again revised on 01.01.2000 (in m)
1000	5792	18525	18525	5792
900	13733	1000	1000	1000
700	1096	-	-	-
600	248	-	-	-
500	2628	4628	4628	2628
350	4352	-	-	-
200	918	918	918	918
Total	28767	25071	25071	10388

3(e). The final drastic post contract changes will appear from the following table :

Sl. N o.	Description	Qty. as per agt. In m.	Revised Qty. in m.	% redn. From original agt.
1.	Scope of pipe supply	28767	10338	65%
2	Scope of Pipe laying	28767	5792	80%
3	Alignment of pipe laying	To be given by 17.12.1998	Not given till April 2000	Delay period 17 months

3(f). The permission from the railway authorities for laying

of pies at Railway crossing took about 3 years time against the stipulated completion period of 17 months. Similarly increase in the depth of excavation due to post contract changes in the alignment of pipe lines. It is the contention of the Claimant that their performances was prevented and the completion of the work was delayed abnormally due to reasons beyond the control of the Claimant, but were attributable to the respondent. The respondent ultimately terminated their contract with their Consultant CDM while the Claimant's work was in progress. They did not appoint any other Consultant after termination of the contract with the Consultant CDM and the same was a violation of the terms of the contract between the parties.

4. It is the case of the respondent that the contract is a turnkey contract and it was so understood between the parties and acted upon as a turnkey contract. The Claimant willfully neglected to perform their contractual obligations on some plea or other. The Claimant shall be held to have visited the site, examined the nature thereof, perused the drawings and to have

made himself thoroughly acquainted with by independent observation and no monitory or other claims can be made by the Claimant on the ground of want of knowledge of any matter which can influence his tender price. In the result, the Claimant had made 16 claims on the ground of want of knowledge of any matter which can influence his tender price. The claimant were to check all dimensions or figures shown on the drawing and obtained his own information in all the matters. The schedule of price shall be firm and fixed during the currency of contract. Any extension of time granted by the Engineer shall be subjected to the conditions to the respondent except as provided in the tender condition and there will be no additional financial implication to the respondent except as provided in the tender condition. The pipeline structures etc shall be located substantially as indicated on the drawings. The claimant also signed the printed letter of tender in Appendix 4, which, inter alia stated that the claimant inspected the site of work and careful evaluation of the site condition, agreed that they shall not be entitled for any additional financial claim over and above the contract price for any variation

in the site condition.

5. Clause 15.1 of the General Conditions of the Contract stipulate that the execution of the work the Contractor shall make at his cost all necessary provisions for the temporary diversion of roads, cars, trucks, footpaths, drains, water courses, channels etc. Under Clause 20.1 of the General Conditions of the Contract, the Claimant cannot make any claim on account of any error inaccuracy or omissions in the drawings. Clause 88.1, it shall be the Contractor's responsibility to obtain all approvals from any authority. The claims of the Claimant are not based in terms of the Contract. The Claimant has not completed the work in terms of the Contract and there is no final acceptance of work by the respondent and the Claimant had unreasonably delayed the execution of the work for the respondent is entitled for compensation and claimed counter claim.

6. The majority Arbitral Tribunal after considering the entire materials has passed the majority Award for a sum of

Rs.15,23,23,648/-. The above Award has been put into challenge in this petition.

7. The learned Advocate General appearing for the petitioner submitted that the contract is for 28.7 kilometers and the Contract was reduced to 5 kilometers and supply of pipes also reduced to 10 kilometers. As per the contract, the petitioner has to pay for the pipes. In Clause 20.1 of the Contract, it is agreed that the Contractor shall make his own examination and he shall draw his own conclusion as to the underground facilities which will be encountered and he shall have no claim for damages of any kind on account of any errors, inaccuracies or omission that may be found. Protection and temporary removal and replacement of existing utilities and structures shall be part of the Contract and all costs in connection therewith shall be included in the Contract Price in the Tender. Clause 8.1 also makes it clear that the Contractor have full knowledge of the nature of the work, particularly, laying of the pipe lines. Clause 28.1 of the Contract Conditions makes it very clear that no variation shall

vitate the contract. Clause 28.2 deals with right of the Engineer to increase or decrease the tender work shall be limited ± 20 of the Contract value on a cumulative basis. The additional payment in case of any increase in the tender work or reduction in the tender value in case of any decrease in tendered work, shall be based on the schedule of Prices on a prorata basis. Clause 28.4 Sub Clause (iii) deals with payment for additional work which cannot be determined in the manner specified in sub clause (i) or (ii). The same indicate that the Contractor shall be allowed an amount of twenty (20) percent over and above the cost to cover the Contractor's supervision. As per Clause 88.1, it shall be Contractor's responsibility to obtain all approvals from any authority. Clause 88.3 makes it clear that any change or addition at no additional cost to the Board. Clause 28.4 deals only in respect of additional work.

8. Whereas, the learned Arbitrators passed the majority Award and has Awarded the amount beyond the terms of the Contract. In the name of interpreting the Contract, the

Arbitrators cannot go beyond the Contract. As far as claim No.6 is concerned, absolutely there is no evidence for loss or profit and such an Award is also not according to law. In support of his contentions, he relied on the following judgments :

1. *General Manager, Northern Railway and another Vs. Sarvesh Chopra* reported in **(2002) 4 Supreme Court Cases 45**

2. *Ramnath International Construction (P) Ltd. Vs. Union of India* reported in **2007 (2) Supreme Court Cases 453**

3. *Delhi Development Authority Vs. R.S.Sharma and Company, New Delhi* reported in **2008 (13) Supreme Court Cases 80**

4. *State of Rajasthan and another Vs Ferro Concrete Construction Private Limited* reported in **2009 (1) Supreme Court Cases 1**

5. *Associate Builders Vs. Delhi Development Authority* reported in **2015 (3) Supreme Court Cases 49**

6. *Chennai Metropolitan Water Supply and Sewerage Board, through the Managing Director Vs. Subhash Projects and Marketing Ltd., through Sh. Anil Sethi, Chairman and others reported in 2017 (6) MLJ 582.*

9. The learned counsel for the respondent would contend that clause 73.4 states that the Board may terminate the Contract or part thereof for convenience. Clause 73 deals termination of the contract. According to him, if the contract has been terminated, the four consequences has to be followed. Hence, it is his contention that the learned Arbitrators have factually considered the entire materials and awarded compensation as per the formula and Clause 28.6 provides for additional work. Arbitrators have rightly come to the conclusion that the actual work was carried out. When there is a factual finding of the Arbitrators, the Award cannot be interfered by re-appreciating the entire evidence. Compensation was awarded as per the Hutson formula. Hence, it is submitted that the

Arbitrators being technical persons have considered the entire evidence and found that the work was actually carried out and passed the Award and such an Award cannot be interfered. In support of his contentions, he relied upon the following judgments :

1. M/s.A.T.Brij Paul Singh and others Vs. State of Gujarat reported in 1984 (4) Supreme Court Cases 59

2. National Fertilizers Vs. Puran Chand Nangia reported in 2000 (8) Supreme Court Cases 343

3. MSK Projects India (JV) Limited Vs. State of Rajasthan and another reported in 2011 (10) Supreme Court Cases 573

10. From the submissions of the Respondent/petitioner herein, the main challenges are Claim No.5,6 and 12. The petitioner mainly focused on the above claims.

Claim No.5

11. It is the contention of the learned Advocate General

that as per the contract, the petitioner is entitled to terminate the contract as per owner's convenience as per clause 73.4 of the contract and the same is read as follows:

"73.4. Notwithstanding the above, the Board may terminate the Contract or part thereof for convenience."

12. Clause 73.3 (i) of the Contract reads as follows:

"73.3. In any of the above clauses the following shall apply, viz.,

(i) The Board may carry out and complete the Works departmentally or employ and pay another agency to carry out the complete the Works and they may enter the Site and use all materials, temporary buildings, plant and appliances thereon, and may purchase all materials necessary for the purposes aforesaid."

13. The revised clause of 73.5 of the contract deals with termination of contract. The engineer shall cause the following

events viz., issue certificate for the value of the work done and reasonable cost of removal of the equipments and cost of repatriation of the contractor's personnel employed solely on the works and the contractor's costs of protecting and securing the Works. The learned Arbitrator in this regard has held that as per Clause 73.4 of General Conditions of Contract, the part termination can be done for the owner's convenience only by the Board. Whereas in the instant case, the letter dated 01.01.2000 was signed by the Superintending Engineer (C), Sewerage and not by the Board as per definition of the Board given in the contract at page CC-1 of GCC. Hence, it is the finding of the Arbitrator that the Superintending Engineer (C) was not the Board and as such any letter not signed by the Board cannot be treated as letter under 73.4 of GCC. Learned Arbitrator in this regard has ignored the letter dated 4.10.2000 sent by the respondent to the Superintending Engineer (C) Chennai Metro Sater Supply and Sewerage Board, wherein the respondents clearly admitted as follows:

"We have claimed Rs.19.75 Crores arising out of

the reasons consequent to the partial termination of the contract and termination has been effected for convenience of the Owner. "

14. They also referred clause 73.5 of the Contract:

"If the contract is terminated at owner's convenience, the Engineer shall issue a certificate for the value of work done. The reasonable cost of removal of equipment, repatriation of the contractor's personnel employed solely on the Works and and the Contractor's costs of protecting and securing the works and less advance payments received upto the date of certificate."

15. By letter dated 15.11.2000, the Respondent has requested the Petitioner to furnish details of reasonable cost of removal of equipment, the cost of repatriation of the contractor's personnel employed solely on the works, the contractor's cost of protecting and securing the works and advance payments received upto date. They have also sought for details before 30.11.2000 and made their intention if failing it will be presumed that there will not be any claim from the above heads.

16. However, before the learned Arbitrator the petitioner submitted that since the contract clause 28.2 provides variation to the limit of $\pm 20\%$. Such reduction was not under Clause 28.2, but under Clause 73.4 of the General Clauses of Contract. However, such contention has been rejected by the learned Arbitrator. Clause 73.4 reads as follows:

"73.4. Notwithstanding the above, the Board may terminate the Contract or part thereof for convenience."

17. The said clause does not contemplate continuation of work upon part termination. Further the invocation of the said clause also required the petitioner to provide the respondent with a certificate for the value of work done and also to provide cost for the removal of equipment, repatriation of the contractor's personnel employed solely on the works and the contractor's costs of protecting and securing the works. The learned Arbitrator has noted that the extent of variation in the case was 65% in respect of supply of pipes and was 80% in respect of the

quantity of laying of pipelines. Such abnormal variation was beyond the contemplation of the contract which limited the variation within $\pm 20\%$ and held that abnormal post contract reduction in the scope of work was beyond the provisions of the contract and was the violation of the terms of the contract for which the Claimant is entitled to compensation.

18. The Claimant has claimed the compensation at the rate of 20% of the value of the work which the Claimant was not allowed to execute by drastic post contract reduction. As the entire contract has been interpreted by the learned Arbitrators since they are bound to make such interpretation. They are technical personnel and they made any such interpretation, such interpretation cannot be normally interfered by the Court as held by the Apex Court in ***M.S.J.Projects Ltd.,J.B.Limited vs. State of Rajasthan [2011(10)SCC 573]***.

19. Therefore, when the Arbitrator has considered the entire scope of works, and held as variation beyond $\pm 20\%$ as per

clause 28 and not termination under Clause 73.4. Such interpretation is based on the evidence and nature of the work, this court cannot interfere the same. In this regard Apex Court's judgment reported in **National Fertilizers vs. Puran Chand Nangia [(2000) 8 SCC 343]** it is held as follows:

"We are of the view that the above said clause "+25%" was understood by the arbitrator in a reasonable manner as being applicable to a case where the value of the sum total of the additions and deletions exceeded 25% of the contract price. That construction, in our view, cannot be said to be vitiated by any serious error of law. The following are our reasons. When a contractor bids in a contract, he has to offer reasonable rates for the works which are both difficult to perform and other works which are not that difficult to perform. Every contractor tries to balance his rates in such a manner that the employer may consider his offer reasonable. In that process the contractor tries to get a reasonable margin of profit by balancing the more difficult (and less profitable items) and the less difficult (and more profitable items). His bid is, normally, a package. If the employer is permitted in law to make variations upwards and downwards - even if it be upto a limit beyond which market rates become payable - then the interpretation of the clause must be one which balances the rights of both parties. For example, if the plus and minus

variations go beyond 25% and are made in a manner increasing the less profitable items and decreasing the more profitable items, and if the net result of the contract is to be the basis, as contended by the appellant, then it may work out that the contractor could be made to perform a substantially new contract on the same contracted rates."

Therefore, the learned Arbitrators' interpretation on the basis of the entire materials cannot be interfered.

20. Learned Advocate General has placed reliance of the judgment of the ***Associated Builders vs. Delhi Development Authority [2015 (3) SCC 49]*** and ***State of Rajasthan and another vs. Ferro Concrete Construction Private Limited [(2009) 12 SCC 1]*** to the effect when there is no evidence at all the Arbitrator makes an Award merely based on the claim statement without anything more, it is held that the award on that account would be invalid. Absolutely there is no dispute with regard to the above judgments. The fact remains that the learned Arbitrator has taken note of the value of the work executed as against the total work and taking consideration of

reduction in scope of work and allowed the claim. Therefore, the judgment cited by the learned Advocate General will not come to aid. Accordingly, as far as **the relief sought for by the Petitioner under claim No.5 is rejected.**

Claim No.6

21. Though learned Arbitrator has held that there was abnormal prolongation of the contract period due to reasons attributable to the Respondent, but the fact remains that only a small area of the railway work there was a delay and it was completed in the year 2003. Therefore, the contention of the claimant that only after the completion of the work by the Railway they could complete the work in 2011 and there was a prolongation of the contract period cannot be countenanced. Though, the petitioner is also admitted their letter dated 27.04.2000 that there were delay by the Railways and granted extension of time without imposing any rider. The fact remains that upto July 2001 extension was granted. Thereafter no extension time was granted after 31.7.2001. It is to be noted

that the Railway area is only a small portion which is not in dispute. Such being the position till that period in that area all the works should have been completed by the claimant. Though the Railway work has completed in 2013, remaining works, where already extension was granted should have been completed by the claimant, which has not been done so. Therefore, merely invoking the compensation clause 61.6 without any evidence to the nature of the loss sustained the award of the compensation by the Arbitrators is certainly beyond the contract. The records also clearly indicate that except the Railway crossing at Athipattu, the entire work was completed by July 2001 and in respect of Railway, the work was completed in June 2003. Therefore, claiming losses on establishment and profit from August 2001 to August 2003, without any evidence, in view of this Court is not correct. The Arbitrator has not considered the nature of the entire documents in this regard. The Arbitrator simply carried by the delay in railway bridge aspect alone and accepted the formula given in the Hudson Building and Engineering Contracts and allowed the entire claim without any basis. Therefore, the above

claim necessarily has to fail. Accordingly, **Award allowing the Claim No.6 is hereby set aside.**

Claim No.12

22. With regard to the Claim No.12, it is the contention of the Advocate General that the claim has not been substantiated and as per Clauses 8.1 and 20.1 of the contract, the Respondent cannot claim on account of underground structures and there is no proof for additional work also. Clause 8.1 is as follows:

“8.1. The Contractor shall be deemed to have inspected the site and its surroundings and to have satisfied himself before submitting the Tender as to the nature of the ground and sub-soil, the form and nature of the site, the quantities and nature of the Work and materials necessary for the completion of the Works and the means of access to the Site, the accommodation he may require and in general to have obtained himself all necessary information as to risk, contingencies and other circumstances which might influence or affect his prices.”

23. Similarly Clause 20.1 is as follows:

“20.1. Information on the drawings and any statements in the contract documents referring to the

conditions under which the work is to be performed or the existence of utilities or other underground structures are not guaranteed to be correct or to be a complete representation of all existing data with reference to conditions affecting the Work. Every effort has been made, however, to make this information complete and accurate on the basis of all data and information which could be procured by the Engineer. The Contractor shall make his own examination and shall draw his own conclusions as to the underground facilities which will be encountered, and he shall have no claim for damages of any kind on account of any errors, inaccuracies or omission that may be found. Protection and temporary removal and replacement of existing utilities and structures shall be part of this Contract and all costs in connection therewith shall be included in the Contract Price in the Tender.”

24. Though Clause 8.1. makes it clear that the Contractor shall be deemed to have inspected and examined the site and nature of the ground and sub-soil, the form and nature of the site, etc., Similarly Clause 20.1 also indicates that the contractor shall make his own examination and shall draw his own conclusions as to the underground facilities which will be

encountered and he shall have no claim for damages of any kind on account of any errors, inaccuracies or omission etc., The learned Arbitrators taking into consideration of the amendment introducing Clauses 61.4 to 61.6 and heading "Compensation Events" held that Clauses 8.1 and 20.1 made subordinate to Clause 61.6. Clause 61.6 would entail claimant to claim compensation unless the said additional work caused by the Contractor and noted that as the execution of the work was leading to abnormal delay solely attributable to the Respondent and awarded the compensation.

25. The learned Arbitrator also found that major post contractual changes including in the average depth of excavation from 2.7 meters to 3.2 meters was made by the Petitioner. It is also noted by them increase in depth was on the basis of pipe laying cards which indicate the depth of excavation. This itself proves the increase depth and additional work in changing the alignment resulting from the same were with the approval of the Engineer. The Arbitrator has recorded that due to post contract

changes in the alignment the pipe line had to be laid down at much lower depth than what is shown in the contract drawing. The average depth of excavation as per the original contract drawing was 2.7 meters. Due to post contract changes in the alignment the average depth of excavation increased to 3.2 meters as will appear from as built drawings. The original ground level invert level as per the contract drawings and actual ground level and invert of pipe lines actually laid in the change alignment were recorded in the pipe laying cards which was jointly signed by both the parties.

26. Further the learned Arbitrator also recorded the finding on factual basis that work of laying pipes could not be started till March 2000 for one reason or other. The claimant intimated the change in alignment to the respondent within one month from the date of starting the laying of pipes. As early as on 20th April 2000 the Claimant recorded the major changes in the alignment and also increased in the depth of excavation and also indicated his claim for such changes. The same is also reiterated by their

letters dated 28.4.2000, 16.5.2000 and 25.5.2000. Further it is recorded, details of pipe laying works indicating the depth of excavation, thickness of concrete, invert level of the pipe line were jointly recorded in job cards and signed by both the parties which indicated the execution of the works by the Claimant under day-to-day supervision, inspection and approval by the Respondent.

27. By recording the factual findings the Arbitrators have held that except making a bald denial the Respondent have not pin pointed any error or omission in the calculation/computations submitted by the Claimant. With the factual findings recorded by the Arbitrators, this Court cannot re-appreciate the entire evidence in this regard. It is also contended by the learned Advocate General that the contract was turnkey contract and the Respondent is not entitled to extra payment beyond the contract price. The learned Majority Arbitrators have noted that various activities under the contract were done by the Petitioner and their consultants and the major drawings were prepared by the

Petitioner and their consultants with the unit rate for various items being quoted lumpsum or per meter basis. Therefore, the contention of the learned Advocate General in this regard cannot be countenanced.

28. Though clause 8.1 requires the claimant to have a necessary information as to risk, contingencies as to the nature of the ground and soil etc., by letter dated 25.5.2000 itself the Respondent has informed that due to change of alignment they will have to encounter various underground utility services, networks such as telephone cables, electronic cables etc., all these details were not existed in the original alignment and also informed the petitioner that they will have to do the excavation manually instead of employing machineries to avoid damages to the existing utility network. Thereafter, the learned Arbitrators recorded that every work was executed on the basis of the job cards signed by both parties. Therefore, the learned Arbitrators factually found that there were post contract changes that works were extra or additional work and they are entitled to

compensation as per the amended clauses. This Court does not find any infirmity in the Award. Accordingly, the **Award under Claim No.12 is confirmed.**

29. In view of the above discussion **Award in Claim No.6 alone is set aside.** Except the Claim Nos.5,6 and 12 in respect of other claims there is no serious contest. Hence, except the Award in Claim No.6 the Majority Award is confirmed in all other aspects.

30. In the result, the Original Petition is partly allowed. Award in Claim No.6 alone set aside. In respect of other Claims, the Award is confirmed. No costs.

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14.08.2019

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Through Sh.Anil Sethi, Chairman

N.SATHISH KUMAR, J.

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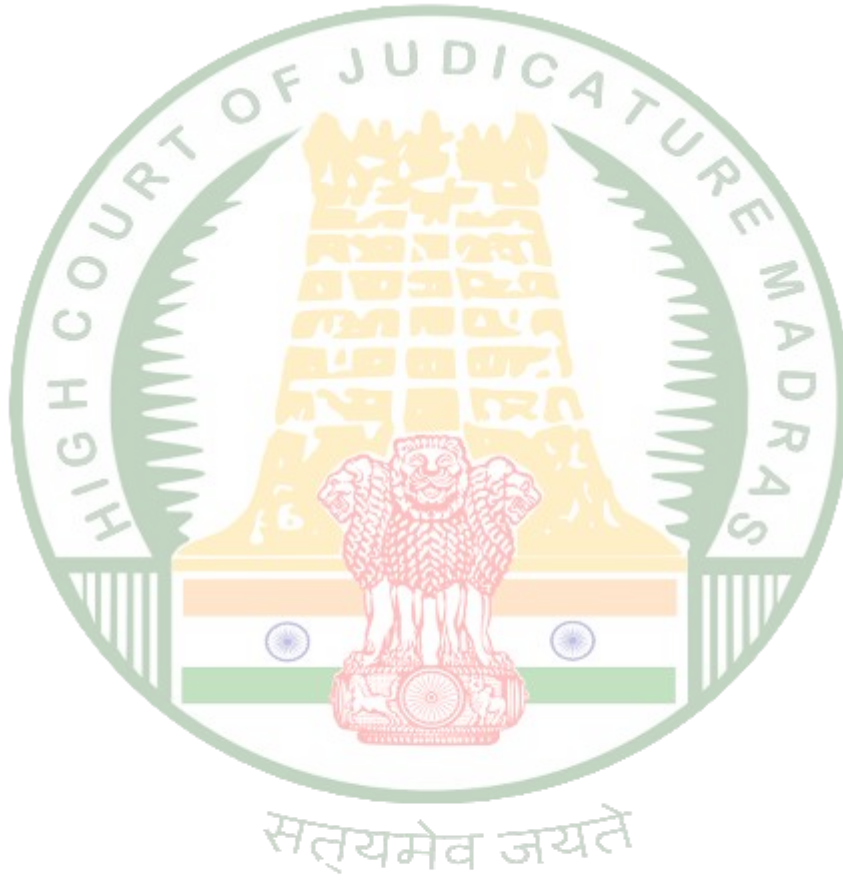


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