

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th April, 2019

+ LPA 206/2019 & CM Nos. 13660-63/2019

UNION OF INDIA (CPWD)

..... Appellant

Through : Mr. Rajesh Gogna, Standing Counsel
for UOI.

versus

SHAPOORJI PALONJI & CO PVT LTD

..... Respondent

Through : None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

CM Nos. 13662-63/2019 (for exemption)

Allowed, subject to just exceptions.

CM No. 13660/2019 (for condonation of delay)

For the reasons stated in the application, the delay of 38 days in filing the appeal is condoned.

The application stands disposed of.

LPA 206/2019 & CM No. 13661/2019 (for stay)

1. The Central Public Works Department (“CPWD”), Ministry of Urban Development, Union of India has filed the present Letters Patent Appeal (“LPA”) under Clause 10 of the Letters Patent of the Delhi High Court challenging judgment dated 13.12.2018 rendered by the learned single Judge in W.P.(C) No. 9281/2017. The writ petition was filed by M/s. Shapoorji Palonji & Co. Pvt. Ltd. (“Shapoorji”); and allowing the writ petition, the single Judge quashed communications dated 18.08.2017, 05.09.2017, 20.09.2017 and 12.10.2017 issued by CPWD demanding that Shapoorji pay-up a sum of Rs.30.80 crores. The single Judge also quashed Memorandum dated 09.10.2017 whereby CPWD had called upon various other CPWD regional offices and establishments to withhold the sum of Rs.30.46 crores from any amounts that may be due and payable to Shapoorji.
2. The demand made by CPWD was premised on its interpretation of Clause 29 of the General Conditions of the Contract in relation to a bid given by Shapoorji for construction of ‘fixed tensile membrane roofing’ over the seating area of the Jawaharlal Nehru Stadium, New Delhi, including civil and electrical works, as part of the upgradation/renovation and new construction of the stadium for hosting the Common Wealth Games, 2010 at New Delhi.
3. Shapoorji's bid was accepted and the work was awarded for a lump sum amount of Rs. 3.08 crores. Disputes arose between the parties by reason of delay in execution of the work awarded, with each party contending that the delay was attributable to default on the part of the other.
4. It is relevant to mention that Shapoorji sought extension of time for

completion of the project milestones from time-to-time, which extension was granted by CPWD. Shapoorji sought extension of time last by letter dated 18.01.2011, in response to which CPWD granted extension by its reply dated 14.12.2011, which reply said thus :

“Dear Sir,

Extension of time for completion of the above mentioned work is granted upto 26.08.2010 (actual date of completion) without levy of compensation by the Competent Authority.

Provided that notwithstanding the extension hereby granted, time is and shall still continue to be the essence of the said agreement.”

(Emphasis Supplied)

As recorded in letter dated 14.12.2011 the project was actually completed on 26.08.2010 ; and therefore *ex-post-facto* extension was in fact granted by CPWD in terms of the letter.

5. It is relevant at this point to extract the provisions of Clause 29 of the General Conditions of the Contract which reads as under:

“CLAUSE 29

i) Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sum in whole or in part from the security, if any deposited by the contractor and for the purpose

aforesaid, the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge of the Government or any contracting person through the Engineer-in-Charge pending finalization of adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in-Charge or Government will be kept withheld or retained as such by the Engineer-in-Charge or Government till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration Clause) by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership firm or a limited company, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain towards such claim amount or amounts in whole or in part from any sum found payable to any

partner/limited company as the case may be, whether in his individual capacity or otherwise.

(ii) Government shall have the right to cause and audit and technical examination of the works and final bills of the Contractor including all supporting vouchers, abstract, etc. to be made after payment of the final bill and if as a result of such audit and technical examination any sum is found to have been over paid in respect of any work done by the contractor under the contract or any work claimed to have been done by him under the contract and found not to have been executed, the contractor shall be liable to refund the amount of over payment and it shall be lawful for Government to recover the same from him in the manner prescribed in sub-clause (i) of this Clause or in any other manner legally permissible and if it is found that the contractor was paid less than what was due to him under the contract in respect of any works executed by him under it, it amount of such under payment shall be duly paid by Government to the contractor without any interest thereon whatsoever.

Provided the Government shall not be entitled to recover any sum overpaid nor the contractor shall be entitled to payment of any sum paid short where such payment has been agreed upon between the Superintending Engineer or Executive Engineer on one hand and the contractor on the other under any term of the contract permitting payment for work after assessment by the Superintending Engineer or the Executive Engineer.”

(Emphasis Supplied)

6. As part of the audit of various contracts relating to work done for the Common Wealth Games 2010, an audit was also conducted by the Comptroller & Auditor General of India (“CAG”) of the project awarded to Shapoorji ; and the report placed by the CAG before the Public Accounts Committee of Parliament (“PAC”) in relation to many such projects contained *inter-alia* a report on Shapoorji’s contract that is subject matter of these proceedings. On the CAG’s report, the Public Accounts Committee (2016-17) (Sixteenth Lok Sabha) made the following observations in relation to the contract awarded to Shapoorji :

“5.46 According to Audit, CPWD in December 2007 awarded a lump sum contract for construction of fixed tensile membrane roofing over the seating area in Jawaharlal Nehru stadium at a cost of ₹308.08 crore to Shapoorji Pallonji & Co. Ltd. (SPCL) for completion by September 2009. Completion of work was delayed by over eleven months due to various reasons, attributable at least partly on the contractor/sub-contractors such as three months delay due to rectification of the defective geometry of the alignment of head plates of the erected columns; non resolving of the issues regarding fabrication and erection of ramps and cat walk, erection of cable, casting of staircase, fixing of railing, drainage pipeline, etc. as of December 2009; non-installation of about 61 curbed beams, 40 RT1 beams, RB beams, flood light most and some catwalk structure units and the entire parapet even as of 4 January 2010; flaws in laying of cable; inadequate deployment of manpower, tools and machinery; inadequate expertise for fabric installation etc. The site became hindrance free by January 2010 and CPWD issued several notices including on 28th April 2010, 5 May 2010 and 16

August 2010 holding the contractor responsible for slippages, slow progress of work and non-achievement of revised milestones: However, CPWD apart from issuing notices for imposition of penalty/compensation, never enforced contractual remedies against the contractor to levy compensation estimated at a maximum of ₹30.80 crore. CPWD also made payment of ₹7.02 crore, as of September 2010 towards escalation of costs for periods beyond the stipulated date of completion i.e. 3rd September 2009.

XXXXX

“5.52 Asked to spell out the steps taken to impress upon the contractor to expedite the work and achieve the milestones, CPWD stated that notices were served on the contractor as an administrative measure to accelerate the work and to achieve the milestone, even though the delay was not on the part of the contractor. The main objective of issuing such notices was for early completion of the work as required. Irrespective of good speed and progress of work, notices were served on the agency for accelerating the work and putting constant pressure to achieve the target and have better performance. Since, this project was time bound, and lot of other activities were to be carried out after the roof work, CPWD had no option but to adopt the above method for better results by serving several letters and notices to the contractor time and again.

XXXXX

“23. ... Considering all the above factors, it is inappropriate on the part of CPWD to say that the contractor was not liable for recovery of compensation upto maximum of Rs.30.80 crore. While deploring inaction in the matter, the Committee recommend that the CPWD recover the compensation from the contractor at the earliest. As for the failure of the Sports Authority of India/Organizing Committee in ensuring timely availability of hindrance free site which had also contributed to time and cost overruns, the Committee desire that the total amount paid towards cost escalation for periods beyond the stipulated date of completion (3rd September 2009), if admissible, be recovered from them.”

(Emphasis Supplied)

7. On the basis of the PAC report, CPWD issued to Shapoorji letters dated 18.08.2017, 05.09.2017, 20.09.2017 and 12.10.2017 purporting to be recovery notices, the relevant portions whereof have been extracted here for ease of reference:

“As regards the above noted work executed by you for CWG-2010, it is submitted that as per PAC's Seventy Fourth Report received recently, You are liable to pay Rs. 30.80 crore to the Govt.

In view of above, as per provision contained in Clause-29 of the contract, I hereby serve a notice to you to deposit the said amount in this office in the form of DD/Pay order in favour of Executive Engineer, SMCD, CPWD, New Delhi, within seven days after issue of this notice, failing which

the department shall recover aforesaid amount by taking legal action under relevant clause of contract.”

(extract from letter dated 18.08.2017)

“With reference to above mentioned letter vide which you were requested to deposit Rs. 30.80 crore in compliance of PAC's Seventy Fourth Report but till date you have not deposited the same to this office.

In view of the above you are once again requested to deposit the same to this office within 7 days after issue of this notice. Failing which the department shall recover aforesaid amount by taking legal action under relevant clause of contract.”

(extract from letter dated 05.09.2017)

“ ... As per provision contained in para No. (ii) of Clause-29 of the Contract, the govt. has right to recover excess/over payment if any found letter on (after final bill) during technical examination/statutory audit by the competent authority.”

(extract from letter dated 20.09.2017)

“Please refer to the enclosed memorandum of the Executive Engineer, SAI Maintenance Civil Division, Indira Gandhi Stadium Complex, New Delhi – 110002 in which it is stated that an amount of Rs. 30,46,80.865 is due from you to the Government of India towards recovery on account of delayed completion of your work "Upgradation, renovation and new construction for commonwealth Games-2010 in JN

Stadium Sports Complex, New Delhi (SH: Construction of New Fixed Tensile Membrane Roofing over the Seating Area of JN Stadium, New Delhi: Agreement No. 01/EE/CWGD-II/2007-08) at New Delhi. Copy from the executive engineer is enclosed herewith for your ready reference.

In this regard, reference is made to clause 29 A of the general conditions of contract of the agreement wherein “Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Engineer-in-Charge or the Government or any other contracting person or persons through Engineer-In Charge against any claim of the Engineer-In-Charge or Government or such other person or persons in respect of payment of a sum of money arising out of or under any other contract made by the contractor”.

You are requested to remit the amount of Rs.30,46,80.565 to the EE, SAI Maintenance Civil Division and submit the proof of the same to this office within 15 days of receipt of this letter, failing which this office shall withhold the amount due to you in respect of the contract under agreement number 03/CE/IIMTPD/2014-15 as per the above mentioned provisions of the agreement.”

(extract from letter dated 12.10.2017)

8. As stated in the extract from letter dated 12.10.2017 quoted above, CPWD also issued a Memorandum dated 09.10.2017 to its regional offices

and establishments calling upon them to withhold a sum equivalent to the amount claimed to be due from Shapoorji or any partial amount thereof from other dues that may be owed by such regional offices of CPWD to Shapoorji in the following words :

“A sum of Rs.30,46,80,565 (Rupees Thirty Crores Forty Six Lakh Eighty Thousand Five Hundred Sixty Five only) towards the recovery on accounts of delayed completion of the subject work as per Public Accounts Committee (PAC) {2016-17} Seventy Fourth Report (Sixteenth Lok Sabha) has become recoverable from M/s. Shapoorji Pallonji and Company Private Ltd. formerly known as M/s. Shapoorji Pallonji Co. Ltd. ...

XXXXX

“It is, therefore, requested that under Clause 29 of the agreement, the said amount/Partial amount whatever is available may please be withheld from the dues of “M/s. Shapoorji Pallonji Company Private Limited” and be intimated to the under signed. In case nothing is due to the said Agency in the Division(s) under your control, an nil report may please be sent to this office.”

(Emphasis Supplied)

9. For purposes of the present appeal it is not necessary for us to delve any further into the factual disputes between the parties, except to say that one of the essential elements of such disputes was CPWD’s claim that it had suffered losses on account of delay in completion of work by Shapoorji; and arising therefrom, CPWD claimed damages from Shapoorji.

10. On the other hand Shapoorji disputed that there was delay on its part in completing the work; and also contended that in any case CPWD had granted extension of time for completion of work, *inter-alia* by letter dated 14.12.2011 as extracted above, with the express understanding that *no compensation would be levied* for such extension.

11. However in the aforesaid circumstances, the final bill raised by Shapoorji was not paid by CPWD in its entirety, whereupon Shapoorji made a claim in arbitration for the balance amount on various counts, including a claim for damages towards alleged loss suffered by Shapoorji by reason of delay in completion of work attributable to CPWD.

12. Counsel for CPWD confirms that arbitral proceedings initiated by Shapoorji against CPWD are still pending and that CPWD has also made counter-claims against Shapoorji in the arbitral proceedings.

13. As is clear from the above, CPWD had claimed the amount of Rs. 30.80 crores from Shapoorji on the premise that the Government was entitled to demand such monies straightaway on the basis of the audit objection raised by the CAG as affirmed by the PAC.

14. In the writ petition, Shapoorji sought quashing of demand letters dated 18.08.2017, 05.09.2017, 20.09.2017 and 12.10.2017 as also Memorandum dated 09.10.2017 issued by CPWD in relation to the claim. Shapoorji's stand was that demand letters dated 18.08.2017, 05.09.2017, 20.09.2017 and 12.10.2017 were untenable ; and prayed that no amount due by CPWD to Shapoorji against other projects and works be withheld on the basis of Memorandum dated 09.10.2017.

15. The claim made in the writ petition was dealt with by the single Judge in the impugned judgement dated 13.12.2018 in the following way :

“17. The aforesaid contentions are unmerited. A plain reading of Sub clause (ii) of Clause 29 of the GCC indicates that the Government has the right to cause an audit and technical examination of the works and final bills of the contractor. If, as a result of such audit and technical examination, any sum was found to be paid in respect of the work done or any work claimed to have been done, the contractor is liable to refund the same. In the present case, the audit has not found that any sum has been overpaid in respect of the works executed by the petitioner. The respondent is not claiming refund of any overpaid amount. The claim made by the respondent is for compensation for the alleged breach of the contract on the part of the petitioner in delaying the execution of the works. This is, essentially, a claim for damages and is, clearly, not covered under Clause 29(ii) of the GCC.

“18. In the present case, the disputes relating to the contract are pending adjudication before the Arbitral Tribunal. It is relevant to note that although the petitioner has raised the claim of loss for delay in completion of the works, the respondent has not raised any counter claim in this regard. Sub-clause (i) of Clause 29 of the GCC, enables the Government to withhold sums due and payable to the contractor on account of any claim pending adjudication of such claims. In the present case, the respondent has not taken any steps for adjudication of its claim and, therefore, it could not have recourse to Sub-clause (i) of Clause 29 of the GCC for recovering any such sum.

“19. Mr Gogna had contended that the levy of compensation was excepted matter and, therefore, could not be referred to arbitration. He further submitted that the report of PAC was received by the CPWD on 12.04.2017 and the disputes relating to the contract had been referred to the Arbitral Tribunal much earlier. He submitted that, therefore, the said disputes could not be referred to arbitration.

“20. The said contentions are also unpersuasive. The import of Subclause (i) of Clause 29 of the GCC is to enable the Government to withhold sums due to a contractor pending adjudication of a claim for such sums. It is clearly incumbent on the Government to take steps for adjudication of such claims and in the absence of taking any such steps the question of invoking Clause 29(i) of the GCC for withholding any amount would not arise. Notwithstanding that the respondent had received the report of the PAC after the reference of disputes to arbitration, it was still necessary for the respondent to take steps for adjudication of such claim. The claim made by the respondent is in the nature of damages for breach of contract which is disputed by the petitioner. Plainly, neither the PAC report nor the communications sent by the respondent are binding on the petitioner and it would be necessary for the respondent to take steps for adjudication of its claim.

XXXXXX

“23. It is also relevant to mention that in the present case, the competent authority had granted extension of time for

completion of the work from time to time. The final extension of time was granted after works had been completed and it was expressly provided that such extension was without levy of compensation by the competent authority. The letter dated 14.12.2011 as set out below :- ...

“24. It is relevant to state that the aforesaid letter has not been withdrawn or cancelled. It is doubtful whether it is open for the respondent to now resile from its agreement to extend time without levy of compensation. However, it is not necessary to examine the said issue in any detail, as this Court is not called upon to decide the merits of the claim now sought to be raised by the respondent. However, suffice it to state that it is not debt due from the petitioner, as the question whether the petitioner is responsible for the delay in completion of the works has not been adjudicated.”

(Emphasis Supplied)

and on the above ratiocination the single Judge disposed of the writ petition; however, reserving for CPWD the liberty to initiate proceedings for adjudication of its claim in accordance with law in the following words :

“29. The impugned memorandum is, accordingly, set aside. The impugned letters calling upon the petitioner to pay a sum of ₹30.80 crores is also set aside leaving it open for the respondent to initiate such proceedings for

adjudication of its claim as may be available in accordance with law.”

16. To be sure, a perusal of Chapter XXVI of the Rules of Procedure and Conduct of Business in Lok Sabha shows that the Public Accounts Committee, formally known as the Committee on Public Accounts, is one of the Standing Committees of the Lok Sabha. On point of law, the probative and evidentiary value of a Parliamentary Standing Committee report has been considered in detail in a recent judgment of a Constitution Bench of the Supreme Court in the case titled ***Kalpna Mehta & Ors. vs. Union of India & Ors.*** reported as (2018) 7 SCC 1. In three separate but concurring judgments authored by Hon’ble Mr. Justice Dipak Misra the then Chief Justice of India, Hon’ble Dr. Justice D.Y. Chandrachud and Hon’ble Mr. Justice Ashok Bhushan, speaking for the Constitution Bench, have opined as under :

“3. ... The factual score that has given rise to the present reference to be dealt with by us is centred on the issue as to whether a Parliamentary Standing Committee (PSC) report can be placed reliance upon for adjudication of a fact in issue and also for what other purposes it can be taken aid of. ...

XXXXX

“9. ..., the two-Judge Bench framed the following questions for the purpose of reference to the Constitution Bench: (Kalpana Mehta case, SCC p. 322, para 73)

“73.1. (i) Whether in a litigation filed before this Court either under Article 32 or Article 136 of the Constitution of India, the Court can refer to and place

reliance upon the report of the Parliamentary Standing Committee?

73.2. (ii) *Whether such a report can be looked at for the purpose of reference and, if so, can there be restrictions for the purpose of reference regard being had to the concept of parliamentary privilege and the delicate balance between the constitutional institutions that Articles 105, 121 and 122 of the Constitution conceive?”*

Because of the aforesaid reference, the matter has been placed before us.

XXXXX

“159. In view of the aforesaid analysis, we answer the referred questions in the following manner:

159.1.

XXXXX

159.2. *Judicial notice can be taken of the Parliamentary Standing Committee report under Section 57(4) of the Evidence Act and it is admissible under Section 74 of the said Act.*

159.3.

XXXXX

159.4. *Where the fact is contentious, the petitioner can always collect the facts from many a source and produce such facts by way of affidavits, and the court can render its verdict by way of independent adjudication.*

159.5.

XXXXX ”

(Emphasis Supplied)

In his concurring judgment, Hon’ble Dr. Justice DY Chandrachud holds as under:

“166. *The issue which arose before the Court was whether a report of a Parliamentary Standing Committee can be relied upon in a public interest litigation under Article 32*

or Article 226. If it could be adverted to, then an allied issue was the extent to which reliance could be placed upon it and its probative value. The then Attorney General for India, in response to a request for assistance, submitted that reports of Parliamentary Standing Committees are at best an external aid to construction, to determine the surrounding circumstances or historical facts for understanding the mischief sought to be remedied by legislation. The Union Government urged that reports of Parliamentary Standing Committees are meant to guide the functioning of its departments and are a precursor to debates in Parliament. However, those reports (it was urged) cannot be utilised in court nor can they be subject to a contest between litigating parties.

XXXXX

*“265. There may, however, be contentious matters in the report of a Parliamentary Committee in regard to which the court will tread with circumspection. For instance, the report of the committee may contain a finding of misdemeanour involving either officials of the Government or private individuals bearing on a violation of law. If the issue before the court for adjudication is whether there has in fact been a breach of duty or a violation of law by a public official or a private interest, the court would have to deal with it independently and arrive at its own conclusions based on the material before it. Obviously in such a case the finding by a Parliamentary Committee cannot constitute substantive evidence before the court. The Parliamentary Committee is not called upon to decide a lis or dispute involving contesting parties and when an occasion to do so arises before the court, it has to make its determination based on the material which is admissible before it. An individual whose conduct has been commented upon in the report of a Parliamentary Committee cannot be held guilty of a violation on the basis of that finding. In *Jyoti Harshad Mehta v. Custodian*, this Court held that a report of the Janakiraman Committee*

could not have been used as evidence by the Special Court. The Court held: (SCC pp. 582-83, para 57)

“57. It is an accepted fact that the reports of the Janakiraman Committee, the Joint Parliamentary Committee and the Inter-Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the learned Judge of the Special Court as evidence.”

XXXXX

“267. In Lok Shikshana Trust v. CIT, a three-Judge Bench of this Court, while construing Section 57(4) made a distinction between the fact that a particular statement is made in Parliament and the correctness of what is stated on a question of fact. The former could be relied upon. However, the truth of a disputable question of fact would have to be independently proved before the court. H.R. Khanna, J. observed thus: (SCC p. 272, para 33)

“33. We find that Section 57 clause (4) of the Evidence Act not only enables but enjoins courts to take judicial notice of the course of proceedings in Parliament assuming, of course, that it is relevant. It is true that the correctness of what is stated, on a question of fact, in the course of parliamentary proceedings, can only be proved by somebody who had direct knowledge of the fact stated. There is, however, a distinction between the fact that a particular statement giving the purpose of an enactment was made in Parliament, of which judicial notice can be taken as part of the proceedings, and the truth of a disputable matter of fact stated in the course of proceedings, which has to be proved aliunde, that is to say, apart from the fact that a statement about it was made in the course of proceedings in Parliament (see

Rt. Hon'ble Gerald Lord Strickland v. Carmelo Mifsud Bonnici ; and “The Englishman” Ltd. v. Lajpat Rai .”

A statement made by the Finance Minister while proposing amendment could, it was held, be taken judicial notice of. Judicial notice would be taken of the fact that “such a statement of the reason was given in the course of such a speech”.

XXXXX

“274. ... The correctness or validity of the report of a Parliamentary Committee is not a matter which can be agitated before the Court nor does the Court exercise such a function. Where an issue of fact becomes contentious, it undoubtedly has to be proved before a court independently on the basis of the material on the record. In other words, where a fact referred to in the report of the Parliamentary Committee is contentious, the court has to arrive at its own finding on the basis of the material adduced before it.”

(Emphasis Supplied)

In the third judgment, Hon'ble Mr. Justice Ashok Bhushan concurs with the same view in the following words :

“393. ... When a party relies on any fact stated in the report as the matter of noticing an event or history, no exception can be taken on reliance on such report. However, no party can be allowed to “question” or “impeach” report of Parliamentary Committee. The parliamentary privilege that it shall not be impeached or questioned outside Parliament shall equally apply both to a party who files claim in the court and other who objects to it. Both parties cannot impeach or question the report. Insofar as the question of unfair disadvantage is concerned, both the parties are free to establish their

claim or objection by leading evidence in the court and by bringing materials to prove their point. The court has the right to decide the “lis” on the basis of the material and evidence brought by the parties. Any observation in the report or inference of the Committee cannot be held to be binding between the parties or prohibit either of the parties to lead evidence to prove their stand in court of law. Unfair disadvantage stands removed in the above manner.

XXXXX

“448. The apprehension of the respondents that their case shall be prejudiced if this Court accepts the Parliamentary Committee report in evidence, in our opinion is misplaced. By acceptance of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues, facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it and in which adjudication Parliamentary Committee report may only be one of the materials, what weight has to be given to one or other evidence is the adjudicatory function of the court which may differ from case to case. The Parliamentary Committee reports cannot be treated as conclusive or binding of what has been concluded in the Report. When adjudication of any claim fastening any civil or criminal liability on an individual is up in a court of law, it is open for a party to rely on all evidence and materials which is in its power and court has to decide the issues on consideration of the entire material brought before it. When the Parliamentary Committee report is not adjudication of any civil or criminal liability of the private respondents, their fear that acceptance of report shall prejudice their case is unfounded. We are, thus, of the opinion that by accepting Parliamentary Committee report on the record in this case and considering the Report by this Court, the respondents' right to dispel conclusions and

findings in the Report is not taken away and they are free to prove their case in accordance with law.”

(Emphasis Supplied)

And thereby, the Supreme Court concludes as follows:

“449. XXXXX

“449.5. That mere fact that document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents are also true and correct.

“449.6. When a party relies on any fact stated in the Parliamentary Committee report as the matter of noticing an event or history no exception can be taken on such reliance of the report. However, no party can be allowed to “question” or “impeach” report of Parliamentary Committee. The parliamentary privilege, that it shall not be impeached or questioned outside Parliament shall equally apply both to a party who files claim in the court and other who objects to it. Any observation in the report or inference of the Committee cannot be held to be binding between the parties. The parties are at liberty to lead evidence independently to prove their stand in a court of law.

XXXXX

“449.11. Admissibility of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues of facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it.”

(Emphasis Supplied)

17. It therefore stands authoritatively concluded that a *lis* between parties, where there are disputed questions of facts, cannot be decided merely on the

basis of what is contained in the report of a Parliamentary Standing Committee. Therefore, the claim made by CPWD merely on the basis of what is contained in the PAC report is unsustainable in view of the fact that Shapoorji has denied the claim and has in fact filed arbitral proceedings against CPWD seeking the recovery of monies under various heads of claims. It is of course open to CPWD to cite the observations in the PAC report as evidence in support of its claim against Shapoorji; but the observations in the PAC report alone would not be dispositive of the demand made by CPWD against Shapoorji.

18. On a conspectus of the foregoing, the following position emerges :

- (a) the claim of Rs.30.80 crores made by CPWD against Shapoorji is towards alleged delay in completion of work;
- (b) admittedly, CPWD had granted extension of time as sought by Shapoorji from time-to-time; and letter dated 14.12.2011 issued by CPWD even recorded in so many words that extension was being granted “*without levy of compensation by the Competent Authority*”.
- (c) a claim by CPWD for delay in completion of work would, at the highest, be a claim for damages towards alleged loss suffered by CPWD by reason of such delay;
- (d) whether there was delay in completion of work ; and if so, what was the extent of the delay ; on whose account; resulting in what loss to CPWD ; and whether CPWD had waived its claim for compensation for such delay, are all disputed questions of fact and/or law which have not yet been

adjudicated as between the parties;

(e) the contents of the CAG report and observations made thereon in the PAC report do not constitute *adjudication* of CPWD's claim against Shapoorji ; nor do they afford reason for CPWD to invoke Clause 29 of the General Conditions of Contract.

19. Accordingly, we are of the view that on the strength of Clause 29 of the General Conditions of the Contract and based merely on the audit objection raised by the CAG as approved by the PAC in its report, CPWD could not have claimed any amount from Shapoorji by issuing demand notices dated 18.08.2017, 05.09.2017, 20.09.2017 and 12.10.2017 or through Memorandum dated 09.10.2017. Neither the CAG report nor the PAC report amounts to adjudication of CPWD's claim against Shapoorji.

20. We also note that while disposing of the writ petition, the single Judge has left it open for CPWD to initiate appropriate proceedings for adjudication of its claim in accordance with law and thereby CPWD's right has neither been pre-judged nor foreclosed.

21. Accordingly, finding no infirmity in the impugned judgment, the present appeal is dismissed; without however, any order as to costs.

22. All the pending applications, if any, stand disposed of accordingly.

ANUP JAIRAM BHAMBHANI, J

CHIEF JUSTICE

APRIL 24, 2019/j