

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.02.2020

Delivered on: 26.05.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.739 of 2011

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

...Petitioner

Vs.

1. East Coast Constructions & Industries Ltd.,
" Buhari Buildings"
No.4, Moores Road,
Chennai -600 006

2. Thiru K. Natrarajan
Presiding Arbitrator

3. Thiru P. Sivappakasam
Arbitrator

4. Thiru P. Sridharan
Arbitrator

...Respondents

PRAYER: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the impugned Award dated 12.09.2011 passed by the respondents 2 and 4 herein.

For Petitioner : Mr. Sricharan Rangarajan,
Special Government Pleader (CS)
For Respondents : Mr. Rahul Balaji for R1
R2 - R4 - Served- No appearance

ORDER

The respondent before the Arbitral Tribunal has challenged the award dated 12.09.2011 by filing this petition under Section 34 of the Arbitration and Conciliation Act, 1996, as it stood prior to the amendment by Act 3 of 2016. The facts in brief are narrated herein below and the parties are referred to in the same litigative status as before the Arbitral Tribunal.

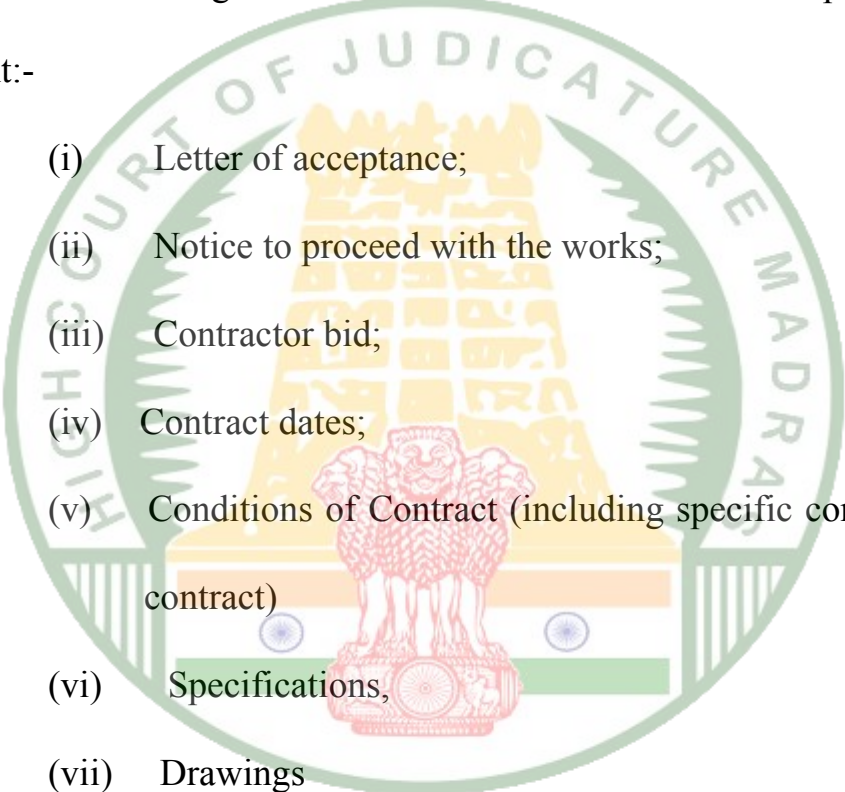
2. The dispute arises out of an agreement entered into between the Claimant and Respondent for the work of Construction of Tamil Nadu New Legislative Assembly at Omandurar Government Estate, Chennai 2. The proposed building was to consist of a Assembly Circle as well as a Public Plaza.

3. The claimant who is a registered Company executing the infrastructure works had emerged as the successful bidder in the tender floated by the respondent in the year 2008. The respondent had accepted the said bid vide his letter of Acceptance dated 25.10.2008 and the contract price was Rs.341,46,08,454/-. The agreement between the parties was entered into on 12.11.2008 and the work was to be completed within a period of 18 months from the date of taking over the site viz; 12.11.2008.

4. The respondent had engaged the services of M/s GMP International GmbH of Germany as their consultants/Architects and the

company was locally represented by M/s Archivista Engineering Project (P) Ltd, Chennai to guide the respondent in the day to day execution of works.

5. The following documents were deemed to form part of the agreement:-

- 
- (i) Letter of acceptance;
 - (ii) Notice to proceed with the works;
 - (iii) Contractor bid;
 - (iv) Contract dates;
 - (v) Conditions of Contract (including specific conditions of contract)
 - (vi) Specifications,
 - (vii) Drawings
 - (viii) Bill of quantities and
 - (ix) Any other document listed in this contract as forming part of the contract
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The general conditions of contract provided for the resolution of dispute

through Arbitration. In the course of the execution of work, disputes arose between the parties with reference to the payments for the Special centering and supporting system, both, with reference to the Assembly Circle as well as the Public Plaza which formed the two segments of the entire construction. In keeping with the terms of the agreement, the claimant first referred the dispute to the Adjudicator named in the contract viz; one Mr.R.Sridharan. The Adjudicator held in favour of the claimant in respect of both Claim 1 and 2 which is the subject matter of the Arbitration. Aggrieved by that decision the respondent invoked the Arbitration clause under Clause 25.3 of the General conditions of the letter of the Superintending Engineer. The claimants accepted the decision of the Adjudicator vide their letter dated 21.06.2010.

6. Claimants Case

The case of the claimant is under two heads :-

(i) (a) Special Centering and supporting system provided for Public.

Plaza;

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

(b) The claimant contends that it was on the basis of the above specifications that the claimant had quoted their rates. The claimant would also contend that it is these specifications that was followed by them for all floor slabs in the Assembly and Public Plaza. The slabs were generally of 3.29 meters height intervals and in some place they varied for which the

claimant had received payment as per BOQ No.18. This BOQ relates to Item 17 dealing with centering for slabs and beams in the floors. In all these works the struts and form works were removed after 21 days as specified in paragraph 12 of the Technical specification.

(c) However, the same method could not be adopted for the upper floor as the plaza circle involved a huge space of beams. The respondent insisted that props similar to the upper floor should be provided in the ground floor over PCC base so that the load of huge beams in the upper floors can be transmitted directly to the ground. This insistence was on account of the fact that the ground floor slab was not designed to carry the load of the upper floor of huge beams which was to be concreted later. That apart, the Architect insisted that the scaffolding and back propping cannot be removed from the 5th floor slab till the concreting and stressing of the top most slab (terrace) is completed. As a result the struts and form works could not be removed within 21 days.

(d) Therefore on the instructions of the respondent the claimant had to purchase special heavy duty tower support system from M/s Larsen and Toubro (L&T in short). The centering work was started on 12.10.2009 and the strut and form work were removed only on 12.03.2010. The respondent had insisted that the strutting system and framework should be retained for 5 months instead of 21 days as presumed by the claimant while submitting the tender. The heavy duty centering system purchased from L&T cost Rs. 2,91,26,834/- and the claimant has claimed only 50 % of the said amount from the respondent.

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

(a) The Architects of the respondent had instructed the claimant to provide special strutting system and plywood sheets for form work on the instructions of the Executive Engineer vide his letter dated 26.06.2009. The Executive Engineer had instructed the Architects to design a suitable special type of strutting and centering arrangements for the Assembly Hall roof slab

and also submit necessary supplemental proposal with quotations. For the strutting system required for this work i.e., work in the Assembly circle, the L&T system already procured could not be used in this area as the same could be removed only after 5 months. The Architect had instructed the claimant that the Assembly circle work was also very urgent and therefore the claimant was constrained to purchase yet another system patented by Fedders & Lloyd at an enormous cost.

(b) As the work was nearing completion, the claimant had submitted their quotation dated 17.12.2009, this was as per the instruction of the Executive Engineer dated 26.06.2009. On 11.01.2010 the Architect had rejected this demand after the entire work was completed and the respondent also turned down the request on 11.03.2010. The rejection was on the ground that the claimant was aware of the procedure even while tendering the rates for centering and extra strutting heights.

(c) The claimant would submit that the original methodology for which the rates had been tendered had been changed on account of the respondent giving different instructions while the work was under way. In the process the claimant incurred additional expenses for which they have got all the original vouchers. The claimant would claim a sum of Rs. 1,98,51,360/- under this head.

(iii) The claimant would submit that they are basing their claims in keeping with the provisions of Sec 70 of the Contract Act and as per Clause 11.1 (b) of the General Conditions of the Contract which deals with employers risk of a cause due solely to the design of the works (other than the contractors design) and Clause 44.1(c) which says that design change causing delay and damages is a compensating event. The claimant also claimed a sum of Rs.10 lacs towards cost of Arbitration.

7. Respondent's Case

(a) The case of the respondent in their counter was that the claim made by the claimant was totally misconceived and not maintainable as the work in

question is already covered by the original contract and that there is no change in the design or the format. The respondent would contend that even when the claimant had submitted the tender they were aware of the slab levels in the Assembly circle as the same was indicated in the drawing. That apart the design and drawing of the formwork and its construction was the sole responsibility of the claimant and the same only required the approval of the Engineer and no extra cost was payable to the contractor. The Tender specifications had provided all these details at Paragraphs 4, 7 and 14. As regards Claim 1 the respondent would submit that the claimants contention that BOQ NOs. 17 (a) and 17 (b) specifies only floors and does not cover roof slab without intermediate floor is wholly incorrect as the extra payment for the roof slab under these circumstances is provided in BOQ 18. The respondent would brush aside the contention of the claimant that they were asked to retain the scaffolding for over 5 months till the upper slabs were laid by contending that this is an eventuality that the claimant as a contractor should have envisaged. The respondent would further contend that the claimants submission that BOQ 18 is not properly

worded is erroneous as BOQ 18 is applicable for all heights of 3.3 m or above with the excess height reckoned from 3.8.

(b) As regards claim No.2, the respondent would contend that the instructions given by the Executive Engineer to the Architect on 26.06.2009 was nothing but a professional advise and was not the decision of the respondent. The submission of invoice based on this letter is also erroneous. At best the claim of the claimant would fall under the category of "Variation" contemplated under Clause 40 and for this the claimant ought to have submitted his rate/quotation within an appropriate time. This the claimant had failed to do. The respondent would further submit that they have not denied payment to the claimant for any rightful work done by them. The respondent would once again reiterate that BOQ 17 and 18 covers the work done by the claimant and the same is not an additional work as put forward by the claimant.

8. The claimant had submitted a rejoinder to this counter reiterating the contentions pleaded in the claim statement and highlighting the fact that the very same contention had been raised by the respondent before the Adjudicator who had rejected it. A reply to this rejoinder had been submitted by the respondent. I do not intend to extract those contentions as they are basically repetitions of the claim statement and counter with some addition to the procedure adopted in the work.

9.Arbitral Tribunal:

The Arbitral Tribunal after taking into consideration the pleadings, the oral and written arguments had framed the following issues to be analyzed and answered, to arrive at the conclusion. The following were the issues:

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

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

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

(iv) *Whether the claimant's contention that as against the provisions of Indian Standards, Tamilnadu Building Practice Specifications, recommending the removal of the centering after 21 days, since they were directed to retain the same for a period of 4-5 months in the Public Plaza they were unable to use this system on repetition basis in the Assembly Circle is correct?*

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

(vi) *Whether the methodology adopted by the claimant to arrive at the rate for Claim 1 and 2 is correct ?*

10. The Arbitral Tribunal on a detailed analysis of the documents and the arguments, both oral and written, had ultimately quantified the claims at paragraph 8 of the award and passed the following orders:

"9.2 Claim No.1:

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

Plaza".

9.3. Claim No.2:

The Tribunal awards a sum of Rs.1,98,51,360/- (Rupees One Crore Ninety Eight Lakhs Fifty One Thousand Three Hundred and Sixty Only) and directs the same to be paid to the claimant by the respondent towards the Claim No.2 pertaining to " Special Centering and Supporting System for Assembly Circle".

9.4. Interest

The Tribunal awards a sum of Rs.61,28,937/- (Rupees Sixty One Lakh Twenty Eight Thousand Nine Hundred and Thirty Seven Only) and directs the same to be paid to the Claimant by the respondent towards interest payable on the awarded amount under Claim Nos.1 and 2 from 01.03.2010 to 11.09.2011 upto

the previous day of the date of the award.

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

*a) The Tribunal awards a sum of
Rs.1,87,500/- (Rupees One Lakh Eighty Seven
Thousand Five Hundred Only) to be paid to the
Claimant by the respondent towards the
respondent's share of Arbitrator's fees paid by the
Claimant.*

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

9.6. Future Interest:

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

the Arbitrator and Conciliation Act, 1996.

The Award as above is signed and delivered by the undersigned at Chennai on 12th of September 2011."

11. Challenging this award the respondent is before this Court. Counsels on both sides had made elaborate oral submissions which they had reduced into writing in their written submissions and I am extracting the arguments from the written submissions.

Submissions:

12. Mr. Sricharan Rangarajan, Special Government Pleader (CS), would make the following submissions after briefly elaborating on the tender, the agreement between the parties and the dispute:

(i) The drawings had clearly and concisely provided the unique and distinctive contour of the building which was known to the Claimant when they submitted their bid.

(ii) BOQ 17 and 18 covered the entire work relating to the centering and support system and formwork. Measurements were taken in accordance with these BOQ and payments were made and received by the Claimant. Having accepted the same without demur, the claimant cannot contend that this is an additional work.

(iii) The finding of the Arbitral Tribunal that this is a distinct and different work (additional work) is a patent illegality in as much as the Tribunal has travelled beyond the terms of the contract.

(iv) The Claimant as the contractor was solely responsible for the design, engineering and construction of the staging system and had agreed to do so with no extra costs to the respondent.

(v) The 21 day period provided for the removal of the Staging System is nothing but only a minimum period and as per the contract conditions the

Staging System shall not be removed until the concrete reaches twice its strength.

(vi) The claimant had quoted 408 % over and above the departmental rate and such high rates has been quoted taking into consideration the over all nature of the work.

(vii) The Claimant has signed the Measurement Book accepting the classification of the work based on BOQ items and actual quantities executed. The Measurement Books have also been marked.

(viii) The roof slabs for both circles were flat and not in the shape of a dome or inverted bowl. Therefore there is no necessity to extend the support system to the ground level.

(ix) BOQ 17 and 18 is applicable to all surfaces and the Arbitral Tribunal erred in coming to the conclusion that the BOQs would apply only to the plane portion and not curved or vertical surface.

(x) The work in dispute is not an additional work.

The learned counsel had relied on the judgments in support of his contention under the following heads:

(A) Acceptance of measurements in M-Book and final till-No arbitrable dispute.

(i) "[1994 Supp (3) SCC 126]- P.K.Ramaiah and Co. vs. Chairman and Managing Director, National Thermal Power Corporation."

(ii) "[2011] 12 SCC 349] - Union of India and anr vs. Master Construction Company."

(iii) "[2012 SCC Online Del 2715] - B.B.M. Enterprises vs. National Highways Authority India."

(B) Priced BOQ is final

"[2019 SCC Online Del 9056] – Gammon India Limited vs. National Highways Authority of India".

(C) Award passed without reasoning

"[2019 SCC Online SCC1656] - Dyna Technologies Private Limited vs. Crompton Greaves Ltd."

(D) What is additional work and whether higher rate can be provided without provision for it in the agreement.

(i) "[2001] 4 SCC 241] - Ramachandra Reddy & Co. vs. State of Andhara Pradesh and others."

(ii) "[2007] 13 SCC 544 -FCI & Others vs. Vikas Majdoor Kamdar Sahkari Mandli Limited."

(E) Quantum Merit- Section 70 of Contract Act.

(i) "[2019 (5) SCC 341] - Mahanagar Telephone Nigam Ltd vs Tata Communication Ltd."

(ii) "[2012 (128) DRJ 310 (DB)] - K.K. Cooperative Group Housing Society Ltd vs Goel Associates".

13. Mr. Rahul Balaji, learned counsel appearing on behalf of the claimant had made the following submission as a counter to the grounds raised by the respondent in the Section 34 Petition.

(i) The acceptance of the measurements made in the M-Book and the receipt of payment is accepted. The claimant has raised a dispute only with reference to the additional work which is not covered under the BOQ. The Tribunal has analysed the work done as per BOQ 17 and 18 as well as the work which the claimant claims is an additional work and had and come to the conclusion that the disputed works undertaken does not fall within the BOQs but was an additional work.

(iii) The argument that the work of providing strutting and supporting system for the high raised and circular roofs are covered under BOQ 17 and 18 is not a ground that has been raised in the Section 34 Petition. However the Arbitral Tribunal has given a finding that their works were additional work given in review meetings and through correspondence and not

covered in the original scope of work.. The respondent cannot seek to have the court hearing a petition under Section 34 of the Act to re appreciate evidence as this is not a ground of challenge under Section 34 of the Act.

(iii) It is true that the responsibility of the design and construction of the formwork is that of the Claimant subject to the approval of the Engineer of the respondent. However the design of the formwork provided by Claimant had undergone changes in as much as the respondent had instructed the claimant to provide props similar to the upper floors in the Public Plaza since the ground floor slab was not designed to carry the load of the upper floor beams. This was in contrast to the formwork laid down in the BOQ and Paragraph 14.1 of the Technical Specifications that it had to be removed after 21 days. This had forced the Claimant to purchase heavy duty centering systems. This Support System was directed to be kept till the deshuttering of the 5th floor slab.

(iv) That the Tribunal has rightly given a finding that the work in dispute is an additional work.

(v) The Tribunal has rightly held that the retention of the Support System for a period exceeding 21 days was only on the instruction of the respondent. The retention of the Support System indefinitely has resulted in the claimant incurring huge additional costs.

(vi) The contention of the respondent that the claimant had quoted 408% over the departmental rate was only the excess rate quoted for the works included in the BOQ and not the additional works.

(vii) The Tribunal has rightly held that changes in the work of centering and staging in respect of the Public Plaza and Assembly Circle are additional work undertaken on the instructions of the respondent and therefore the claim of the Claimant is in the nature of a quantum merit and maintainable as per Section 70 of the Indian Contract Act.

The claimant therefore sought for a dismissal of the Petition to set aside the Award.

Discussion

(a) On a perusal of the pleadings, the documents and the Award the point that arises for consideration is whether the centering and strutting work done in respect of the Assembly Circle to a height of 27 m and the Public Plaza to a height of 17 m is covered by BOQ Nos.17 and 18 or whether it is an additional work.

(b) While the Claimant would contend that the work ultimately executed includes an additional work, the respondent had contended that this work is part of BOQ 17 and 18. The respondent has reiterated the above contentions and tried to substantiate the same by producing the M-book (Measurement Book) wherein the claimant had accepted the measurements and also the rates and the fact that the work fell within the

scope of work covered under BOQ 17 and 18. This according to them clinches the fact that the work is not an additional work.

(c) A perusal of the award clearly indicates the painstaking manner in which the Arbitral Tribunal has extracted the pleadings, the oral arguments, the written arguments of the parties for each of the issues and thereafter drawn their conclusion. By no stretch of imagination can the award be called a non-speaking or a unreasoned award. The judgment in **Dyna Technologies** will therefore not apply to the instant Award as the same is a well reasoned one.

(d) The Arbitral Tribunal has analysed the scope and nature of work covered under BOQ 17 and 18 and the scope of work that was actually done for the centering and strutting work of the Assembly Circle and Public Plaza and come to the conclusion that the work involved is a totally varied work compared to BOQ items 17 and 18. The Tribunal in paragraph 7.6 of the Award has compared the two and arrived at a finding that the work done was additional work not specified in BOQ 17 and 18.

(e) This Court exercising jurisdiction under Section 34 of the Act cannot re appreciate the evidence considering the limited scope of interference. The Hon'ble Supreme Court has time and again sounded a word of caution that there should be minimal interference by the courts in the matter of setting aside an award.

(f) In the judgment reported in 2003(5) SCC 705 -*ONGC Limited Vs Saw Pipes Limited*, the Hon'ble Supreme Court had given a wider meaning to the term 'Public Policy of India' and held that an award could be set aside if it is contrary to :-

(a) fundamental policy of Indian Law; or

(b) the interest of India; or

(c) Justice or morality; or

(d) in addition, it is patently illegal

(g) The bench went on to hold that illegality must go to the root of the matter and if it is of a trivial nature, it cannot be said to be against public policy. They held that the award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Only then could it be stated that the award is against public policy.

(h) This judgment was being followed in all the succeeding judgments and in the judgment of the Hon'ble Supreme Court reported in "[2015 (3) SCC 49], *Associate Builders vs. Delhi Development Authority*", the Bench had discussed in detail each of the heads contained in Saw Pipes judgment. While discussing the 4th head, viz., patent illegality, that the learned judge had further sub divided Patent illegality into three sub heads:

- (i) Contravening the substantive law of India
- (ii) Contravention of the Act itself;
- (iii) Contravention of Section 28(3) of the Arbitration Act, i.e. failure to decide in accordance with the terms of the contract or taking into account the usages of trade.

(i) With reference to the contravention of Section 28(3) of the Act, the Bench hastened to add that this contravention must be understood with the caveat.

The Bench held as follows :-

“An Arbitral Tribunal must decide in accordance with the terms of the Contract, but if an arbitrator construes a term of contract in a reasonable manner, it will not mean that the award can be set aside on this ground, construction of the terms of the contract is primarily for an Arbitrator to decide unless that arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could be.”

(j) In the instant case, the Arbitral Tribunal has in detail discussed the scope of work and the technical specification and arrived at their finding.

(k) The finding in ***Associate Builders*** has been once again reiterated in the judgment reported in "[2019(15) SCC 131] (***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***)

In paragraph 40 of the said judgment, the Hon'ble Supreme Court has held as follows:-

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of the contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders

outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction.

(l) In the instant case, the Arbitral Tribunal has given cogent reasons for its award and has also analysed the terms of the contract in detail. It therefore, does not call for the interference of this court.

(m) The argument that the claimant is estopped from making any claim since they had accepted the measurements for the works under the BOQ by signing the M book at first blush appears to be a plausible argument put forward by the respondent. However, on a closer scrutiny the argument cannot be countenanced. The work had been completed in February 2010 and the higher rates claimed by the claimant was rejected in March 2010. The claimant received the payments and simultaneously referred the matter to the Adjudicator on 09.03.2010. The signing of the measurement book was only an acknowledgment that the work executed by the claimant has been properly measured. The measurements related to all the floor slabs in the Assembly Hall and the Public Plaza and was not with

reference to the work done in respect of the roof slab of the Assembly Circle and the Public Plaza.

n) The respondent had relied on the following judgments: *B.B.M. Enterprises vs National Highways Authority of India* 2012 SCC OnLine Del 2715, *P.K. Ramaiah and Co vs. Chairman & Managing Director, National Thermal Power Corpn* 1994 Supp(3) SCC 126 and *Union of India and vs. Master Construction* 2011 (12) SCC 349 in order to buttress their contention that there is no arbitral dispute in the event of acceptance of measurements in the M-Book and the Final Bill. Let us now analyze the aforesaid judgments. In the case of ***B.B.M. Enterprises vs National Highways Authority of India*** the Arbitral Tribunal had held that accepting the Final Bill in which it has been recorded that the "*payment has been made in full and final settlement (excl S/D) of the Final Bill raised against Contract No.021/NH-6/PR works/GM/(E)/2000 dated 25th July 2000 vide Ch.No.881916 dated 5th December*" will not preclude ***B.B.M. Enterprises*** from raising a dispute regarding their entitlement to further amounts. This order became the subject matter of challenge and ultimately the Hon'ble

Supreme Court upheld the order of the Tribunal stating that there was no patent illegality nor was the Award opposed to the public policy of India. Therefore the Hon'ble Supreme Court had rejected the preliminary objection raised by the NHAI that once **B.B.M. Enterprises** has accepted the Final Bill towards full and final settlement they could not raise a fresh claim. In the case of **P.K.Ramaiah and Co.**, the claimant/appellant had acknowledged in writing not only accepting the correctness of the measurements but also the final settlement by making an endorsement "*Final measurement and payment accepted in full and final settlement of the contract*" In the instant case such is not the situation. The claimant had raised invoice for the additional works as soon as the work had been completed in March 2020. The claimant had received the amounts and simultaneously referred the matter to the Adjudicator. Therefore the facts of the instant case is totally at variance to the facts of the case in **P.K.Ramaiah and Co.**, where the claimant had acknowledged full and final settlement of their dues.

o) In the case of ***Union of India vs Master Construction***, the controversy involved was whether after furnishing "*No claim certificate*" and receipt of payment of Final Bill as submitted the contractor, any arbitral dispute survived between the parties or the contract stood discharged. The Hon'ble Supreme Court after referring to the earlier decisions observed that the claimant had endorsed that he had received the amounts towards full and final settlement of all his claims. The learned Judge has observed that having made such an endorsement, the claimant could not thereafter make a fresh claim. The facts of this case is also in contradistinction to the facts of the case on hand. In the instant case, there is no such endorsement made by the claimant. On the contrary the claimant has raised an additional bill for the additional work as soon as the work had come to an end and after receiving the payment raised, a dispute in respect of the payment for additional work.

p) In the light of the above discussion the argument of the learned counsel for the respondent that the claimant is estopped from making the

claim having accepted the measurements does not hold water and is rejected.

(q) The judgments relied to by the learned counsel for the respondent in support of their argument does not advance their case inasmuch as this court exercising jurisdiction under Section 34 of the Act cannot reappreciate that evidence which has already been interpreted by the Arbitral Tribunal in a cogent and detailed manner.

In fine, the Original Petition is dismissed.

26.05.2020

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Index : Yes/No

Speaking order/non-speaking order

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Public Works Department,
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Tamil Nadu New Legislative Assembly Complex,
Chepauk, Chennai- 600 005.

2. East Coast Constructions & Industries Ltd.,
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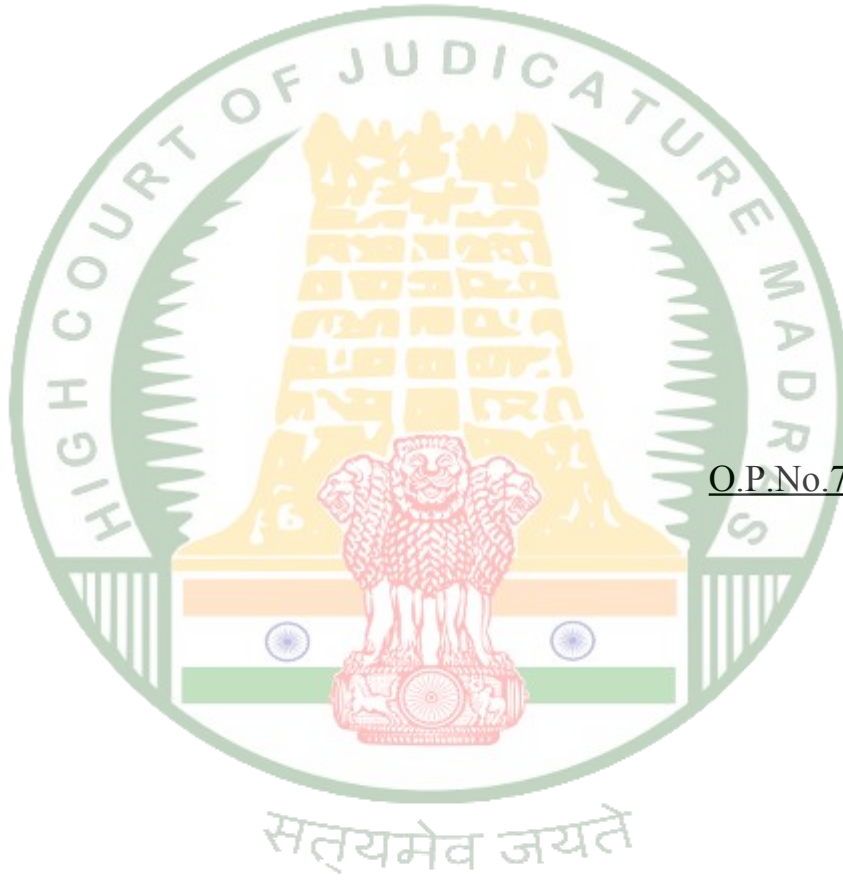


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mrn/mps



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