

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 133 OF 2022
IN
ARBITRATION PETITION NO. 159 OF 2017

BM Chapalkar and Sons ...Appellant
Versus
Union of India ...Respondent

Mr Ajit Anekar, *with Prithvi Aringale, i/b Auris Legal, for the Appellant.*
Mr NR Bubna, *for the Union of India.*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 12th September 2022

PC:-

1. The Appeal is directed against an order of 24th June 2018 made by AK Menon J dismissing the Appellant's Petition under Sections 33 and 34 of the Arbitration and Conciliation Act 1996. The contract was in relation to the Puntamba -Shirdi New BG Line Project. The dispute related to Earthwork in the construction of Hume Pipe balancing culverts.

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2. The Appellants contend that for the Earthwork item they were short paid or under paid Rs. 64,85,520/-. They claim, specifically, that they had done earthwork blanketing for the uppermost 1.00 meter thick layer of an embankment.

3. The blanketing item is part of the bill of quantities of schedule of rates at item No. 3/H7. The rate is Rs. 155.25 per cubic meter. According to the Appellants, they had never been paid for the blanketing work but have been paid for earthwork under item No. 1/H1 of the same BOQ at Rs. 58 per cubic meter.

4. On the face of it, this is a question of fact. Evidence is required of work done and bills raised as also of measurements taken. The submission however is that since the BOQ is appended to the scope of work, if the Respondent claimed that they had never asked for the blanketing work to be done, then this is an impermissible variation or deviation in the scope of work.

5. The submission is only to be stated to be rejected. The BOQ is an item-wise schedule of quantities proposed or anticipated to be used in construction and their rates. It does not mean that every item has to be used. The scope of work is separately defined.

6. The submission that the tribunal had not considered this aspect is incorrect. Menon J found that the tribunal had indeed dealt with such a submission. In fact it found that the Appellant could not produce any documentary proof of the soil used.

7. The tribunal also found as a matter of fact on the material before it that the Respondent had not considered blanketing to be necessary and had issued no instructions for it to be undertaken. More importantly, the measurements taken did not indicate that any blanketing was ever done by the Petitioners. The claim seems to have been made not on the basis of actual measurements or actual work done but only on the basis of an entry in the BoQ.

8. As Menon J correctly observed, the contentions all seek a merit-based review. That is clearly impermissible. The law in this regard is well settled and requires no reiteration.

9. The Appeal is without substance. It is dismissed.

(Gauri Godse, J)

(G. S. Patel, J)