



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 6th October, 2023
Pronounced on: 20th February, 2024*

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FAO(OS) (COMM) 214/2023 & CAV. 523/2023

M/S JAIPRAKASH HYUNDAI CONSORTIUM Appellant
Through: Mr. Amarjit Singh Chandhiok, Sr.
Advocate with Mr. Aman Anand, Mr.
Aman Dixit, Ms. Natasha Debroy,
Ms. Simran Kohli & Ms. Vidushi
Keshan, Advocates.

versus

M/S SATLUJ JAL VIDYUT NIGAM LTD. & Anr. Respondents
Through: Mr. Sanjay Jain, Sr. Advocate with
Mr. Uttam Datt, Ms. Sonakshi Singh,
Mr. Yuvraj Sharma, Mr. Nishank
Tripathi, Ms. Harshita Sukhija & Mr.
Kumar Bhaskar, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CAV. 523/2023

Since the respondent-caveator has put in appearance, the caveat stands discharged.

FAO(OS) (COMM) 214/2023

1. The appeal under Section 37 of the Arbitration and Conciliation Act,



1996 (*hereinafter referred to as the “Act, 1996”*) read with Section 13 of Commercial Courts Act, 2015, has been filed against the Order dated 12.07.2023, *vide* which the challenge to the Award dated 26.02.2009 under Section 34 of the Act, 1996, was allowed and the Arbitral Award was set-aside.

2. The appellant, who was the claimant before the learned Arbitrator, (*hereinafter referred to as “the appellant”*) had filed its claims in respect of the disputes which had arisen between the parties, pertaining to contract for construction of Civil Works of Pressure Shafts and Power House complex of Nathpa Jhakri Hydro-electric Project. The dispute essentially was around the increase in the quantum of Minimum Wages payable to the labour, during the course of execution of the contract. The appellant had asserted that 30 days prior to submission of the Bid, the Minimum Wages of unskilled labour as notified by the State Government of Himachal Pradesh was Rs.22/- per day but was increased to Rs.24/- per day w.e.f. 14.11.1993 and thereafter, to Rs.26/- per day w.e.f. 01.10.1994. There was a substantial increase in Minimum Wages thereafter to Rs.45.75/- per day w.e.f. 01.03.1996.

3. The appellant filed a claim asserting that such increase in minimum wages could not have been foreseen and that an additional cost was occasioned thereupon, which was not taken into account while tendering. The same was also not contemplated in the indexing of any inputs to the *Price Adjustment Formula, as contained in Clause 70* of the General Conditions to the Contract (GCC). The financial impact of increase of Minimum Wages occasioned due to *Subsequent Legislation*, is payable to the appellant in terms of *Clause 70(v) of GCC*. The appellant, thus made the



following claims:-

- “(i) award an amount of Rs.66,03,82,096.00 (Rupees sixty six crores three lacs eighty two thousand ninety six only) to the Claimant as per Annexure-A;*
(ii) award an amount of Rs. 77,77,10,892.00 (Rupees seventy seven crores seventy seven lacs ten thousand eight hundred and ninety two only) towards interest up to 05.12.2005 as per Annexure- A;
(iii) award interest @16% per annum compounding on monthly basis on the sum of amounts, as mentioned in para (i) and (ii) above from 05.12.2005 up to the date of award;
(iv) award interest @18% per annum compounding on monthly basis on the sum of amounts as mentioned in para (i) (ii) and (iii) above for the period from the date of award to the date of payment;
(v) award Rs. 5.75 lacs (subject to modification to actuals) as the cost of arbitration as requested in para 6.7.5 herein above;
(vi) grant such other relief as considered fit and proper by the Arbitral Tribunal
.....”

4. The appellant sought an amount of Rs.66.03 Crores plus interest on the basis of the formula prescribed in the Contract, after it being tweaked/alterd so as to take note of the calculation of price escalation on account of increase Minimum Wages in respect of the CPI. The learned Arbitrator after considering the background, documents and the contentions of the parties, framed the **issues for consideration**, as under:-

- “i) Whether, under the facts and circumstances of the matter, the claim is barred by limitation as contended by the Respondents.*
ii) Whether the notifications issued by the Govt. of Himachal Pradesh fixing/revising the minimum wages under the Minimum Wages Act, 1948 amount to



subsequent legislation attracting the provisions of Clause 70(v) of the General Conditions of contract.

iii) Whether, under the facts and circumstances of the matter, the claim of the Claimants for expenses that the Claimants had to incur on account of revision of Minimum wages is tenable as per the Contract.

iv) If the answer to the issue no.iii supra is in the affirmative, as to what extent the claim is tenable.

v) Other reliefs. ”

5. Issue Nos. (i) and (ii) were decided in favour of the appellant and the claims were held to be within the limitation and the Notifications issued by the State Government of HP fixing/revising the Minimum Wages, were held to be subsequent Legislations, thereby attracting the provision of Clause 70 (v) of the General Conditions of Contract.

6. In regard to the *Issue Nos. (iii) and (iv)*, the Award was made in favour of the appellant in the sum of Rs. 27.42 crores with interest, by observing that the respondent had incurred a total expenditure of Rs.77.26 crores towards labour wages out of which Rs. 35.62 crores was inbuilt in the BOQ item as on base date and was duly paid to the respondent during the course of execution of Contract. Rs.14.21 crores was also realized as escalation in price (being 10% of the 30% of price escalation) payable under Clause 70 (iii) of the GCC. Thus, the total amount recovered by the appellant/claimant towards labour expenses and escalation was Rs. 49.83 crores (Rs. 35.62 crores + Rs.14.21 crores). The balance of Rs. 27.42 crores as the additional expenditure which was occasioned due to revision of Minimum Wages (***being the difference of aggregate expenditure amount of Rs.77.26 crores and the recovered amount of Rs. 49.83 crores***) was granted by the learned Arbitrator by way of the Award.



7. Aggrieved by the Award, the respondent herein preferred a petition under Section 34 of the Act, 1996, to challenge the arbitral award.
8. The learned Single Judge however, did not accept the method of calculation followed by the Ld. Arbitrator and referred to the terms of the GCC to observe as under:-

“50. While recording the contention of the respondent/claimant in para 11(c) of the award (as extracted above), the impugned award does not give any reasons for accepting the aforesaid plea of the respondent/claimant. Thus, the award on this count is not only at variance with the pleaded case of the Respondent (Claimant), it is also unreasoned and palpably absurd. There is simply no basis to conclude that although labour escalation is computed and paid on 30% of the contract price, however it must be assumed that out of this 30% percent, only 10% thereof is towards labour costs and 20% is in respect of other heads of cost. In this regard, it is notable that Annexure-XI of the contract (supra) specifically mentions 30% to be the local labour component on which labour escalation is paid as per GCC Clause 70(iii). Similarly, Annexure-XI assigns weightage to “steel”, “other materials” and “local fuel and lubricants” for the purpose of applying the price escalation formula. The notional scaling down of the labour escalation amount (from Rs. 43.18 crores to Rs. 14.39 crores) results in rewriting Annexure-XI of the contract.

51. It is also unfathomable that when an amount of Rs. 43.18 crores has been actually paid to the respondent/claimant towards labour escalation, why should 2/3rd thereof be ignored while assessing the extent to which the Respondent/ Claimant was required to be compensated on account of increase in minimum wages. It is also unfathomable as to how and on what basis it has been concluded that 2/3rd of Rs. 43.18 crores (i.e. Rs. 28.78 crores), although paid to the Respondent/ Claimant



under the head “labour escalation” was actually towards items “other than labour expenses” [as per the contention of the Respondent/ Claimant recorded in para 11 (c) of the award].

52. It is completely perverse to proceed (as the impugned award does) on the basis that respondent/claimant realised only an amount of Rs.14.21 crores (and not 43.18 crores) through escalation payable under Clause 70 (iii) of the GCC. In the face of such perversity which is writ large on the face of the impugned arbitral award, the same cannot be sustained.”

9. It was, thus concluded by the learned Single Judge that the learned Arbitrator entertained financial claims based on novel mathematical deviations, without proper foundation in the pleadings and without any cogent evidence in support thereof, thereby causing great prejudice to the opposite party. The present case was held to be an example of a case where substantial liability was sought to be fastened on one of the contracting parties, based on specious paper calculations. The Arbitral Award was, therefore, set-aside.

10. Aggrieved by the setting-aside of the Arbitral Award, the appellant/claimant, has preferred the present Appeal under Section 37 of the Act, 1996. The main grounds agitated are that the scope of interference in an Arbitral Award under Section 34 of the Act, 1996, is limited and entering into the merits of the decision based on some material, has been held to be beyond the scope of the provision. Reliance has been placed on Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49; K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539; Punjab State Civil Supplies Corporation Ltd. and Anr. v. Ramesh Kumar and Company and Others, 2021 SCC On Line SC 1056, in this regard.



11. It is further submitted that the re-appreciation of evidence to come to a contrary conclusion is the domain of the Appellate Court and cannot be done by the Courts while exercising the jurisdiction under Section 34 of the Act, 1996. While setting-aside the Arbitral Award, the learned Single Judge has fallen in error in re-appreciating the evidence and supplanting the view of the Arbitral Tribunal with his own, on the basis of sufficiency/weight attached to the evidence. For this reliance has been placed on Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 SCC 131; G. Ramachandra Reddy v. Union of India, (2009) 6 SCC 414; and Scholastic India (P) Ltd. v. Kanta Batra, 2022 SCC On Line Del 2351.

12. It is further stated that the Arbitral Tribunal had arrived at a figure of Rs.77.26 Crore as the total expenditure towards the labour by placing its conclusions on the evidence and by breaking down the unit rates, which admittedly formed a part of the Contract and which as per the Clause 1.35 of IFB was to be used as a recourse in case of dispute. The labour component in the breakdown of unit rates, was approximately 10%, as has also been considered by the learned Arbitral Tribunal. The position that labour component realised without factoring in the increase in Minimum Wages, was 10% of the total work done was confirmed by the appellant in its calculations submitted vide submissions dated 20.04.2007 and 01.05.2007. The proportionate increase in the Minimum Wages was also admitted and supported by the statutory Notifications. Based on these factors, the Arbitral Tribunal arrived at an amount of Rs.77.26 crore as the total expense incurred towards labour, after factoring in the increased Minimum Wages.

13. Further, there was direct evidence in the form of Muster Rolls amounting to approximately Rs.17.47 Crore for payment made to unskilled



labour deployed directly, which was produced before the learned Arbitral Tribunal. It was not possible to produce direct documentary evidence in support of the entire additional cost because in addition to direct payments, several works/jobs were also got done through Sub-Contractors, Workshops and other sundry workers. The appellant had to pay increased cost to them as well, after the statutory increase in Minimum Wages.

14. The appellant has further contended that there could not have been re-assessment of facts on merits, while dealing with the Petition under Section 34 of the Act, 1996, as there is no ground of perversity or patent illegality made out in the present case. Reliance has been placed on Kuldeep Singh. v. Commr. of Police, (1999) 2 SCC 10; Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (2010) 11 SCC 296; Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 SCC 131; Divya Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1; National Highways Authority of India Vs. DIC - NCC (JV), 2018 SCC Online Del 11931, as upheld by the Hon'ble Division Bench in National Highways Authority of India v. DIC – NCC (JV), FAO(OS) (COMM) 20/2019, dated 14.03.2019, 2019 SCC On Line Del 8113; Hindustan Construction Company Limited Vs. National Highways Authority of India 2023 SCC Online SC 1063; Larsen & Turbo Ltd. Vs. NTPC, 2021 SCC On Line Del 5691 as upheld by the Hon'ble Division Bench on 18.07.2023 in FAO(OS) (COMM) 46/2022.

15. The appellant has further contended that in the construction contracts, additional cost is based on formula contained in the Contract itself, which also refers to notional parameters. In the present case, though there was no direct formula available in the Contract for determination of the additional cost on account of Subsequent Legislation, the fact that the breakdown of



Unit Rates was available and was to be had recourse to in case of dispute, is itself a sufficient indication that the parties also intended to be governed by the Bid (notional) parameters for quantification of impacts of Subsequent Legislation. Thus, an Award based on references to the breakdown of Unit Rates, rendered by the experienced technical person associated with the Industries, was perfectly legal and justified. For this purpose, reference has been made to McDermott International Inc. V. Burn Standard Co. Ltd., (2006) 11 SCC 181; National Highways Authority of India Vs. DIC-NCC (JV), 2018 SCC Online Del 11931 as upheld by the Hon'ble Division Bench in National Highways Authority of India Vs. DIC – NCC (JV), 2019 SCC OnLine Del 8113.

16. It is further submitted on behalf of the appellant that the scaling down of labour component in Price Adjustment Formula from 30% to 10%, to arrive at the sums to be adjusted from the total labour expense, was not even a ground urged by the respondent in his petition under Section 34 of the Act, 1996. The re-assessment of quantum of adjustment has been done under Section 34 of the Act, 1996, by supplanting the view taken by the Arbitral Tribunal which was based on sufficient material. It is submitted that the realisation of enhanced Minimum Wages through the escalation formula @10%, was totally justified and even if the learned Single Judge had an alternative to the computation, he was forbidden by law to substitute his own view with that of the Arbitral Tribunal.

17. It is, therefore, submitted that the impugned judgment under Section 34 of the Act, dated 12.07.2023, is liable to be set-aside and the original Arbitral Award is to be restored.

18. **Submissions heard from learned counsels for the parties and**



documents perused.

19. At the outset, it may be observed that the scope of a challenge under Section 34 and Section 37 of the Arbitration & Conciliation Act, 1996 is limited to the grounds stipulated in Section 34 as held in MMTC Limited v. Vedanta Ltd. (2019) 4 SCC 163. Comprehensive judicial literature on the scope of interference on the ground of Public Policy under Section 34 was postulated in Associate Builders vs. DDA, (2015) 3 SCC 49. The Apex Court placed reliance on the judgment of ONGC v. Saw Pipes, 2003 (5) SCC 705 to determine the contours of Public Policy wherein an Award can be set aside if it is violative of ‘*The fundamental policy of Indian law*’, ‘*The interest of India*’, ‘*Justice or morality*’ or leads to a ‘*Patent Illegality*’. For an Award to be in line with the ‘*The fundamental policy of Indian law*’, the Tribunal should adopt a judicial approach which implies that the Award must be fair, reasonable and objective. This grounds requires an Arbitral Tribunal to deliver a reasoned Award which is substantiated on evidence.

20. It was further held in Associate Builders (supra) that, when a decision is made to set aside an award on the basis of *public policy*, the term “*justice*” simply refers to an Award that *shocks the conscience of the court*. A court cannot possibly include what it determines to be unfair given the circumstances of a case, by replacing the Arbitrator's decision with what it sees as *just*.

21. The ground of ‘*patent illegality*’ is applied when there is a contravention of the substantive law of India, the Arbitration Act or the Rules applicable to the substance of the dispute. In Hindustan Zinc Limited vs Friends Coal Carbonisation, (2006) 4 SCC 445, the Apex Court referred



to the principles laid down in Saw Pipes (supra) and clarified that it is open to the court to consider whether an Award is against the specific terms of contract, and if so, interfere with it on the ground that it is *patently illegal* and opposed to the *public policy of India*. Though the Supreme Court in State of Chhattisgarh & Anr. vs. SAL Udyog Pvt. Ltd. (2022) 2 SCC 275 as well, held that an Award in blatant disregard of the express terms of the agreement suffers from patent illegality, the court had also made a reference to Associate Builders (supra) wherein it was observed that the term "*patent illegality*" does not apply to every legal mistake made by the Arbitral Tribunal. A mere difference of opinion in interpreting the contract or the applicable law, could not be classified as patent illegality. Furthermore, the term "*patent illegality*" does not apply to legal violations that are unrelated to matters of public policy or interest.

22. The scope of challenge of an arbitral award under '*patent illegality*' as added in sub-Section 2A of Section 34 vide the Amendment in 2015 has been explained in Ssangyong Engineering and Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131. It was observed that for the Sub-Section 2A to be attracted, there must be '*patent illegality*' appearing on the face of Award which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within the Fundamental Policy of Indian law, namely, the contravention of a statute not linked to Public Policy or Public Interest cannot be brought in by the backdoor when it comes to setting aside an Award on the ground of patent illegality.

23. Thus, the scope of grounds of challenge of an Award under Section 34 of the Act, 1996 is limited and not equivalent to an Appeal. The question



which arises for the consideration of this court at this stage is whether the award of the learned Arbitrator warranted judicial interference by the learned Single Judge. The facts of the case are being analysed in this limited context.

I. Whether the Notifications enhancing Minimum Wages from time to time amounted to Subsequent Legislation under Clause 70(v) of the Contract:

24. **Admittedly**, the Himachal Pradesh Government from time to time enhanced the Minimum Wages of the unskilled worker as notified by the State Notifications accordingly. The *first aspect* which came up for consideration was whether these Notifications amounted to “*subsequent legislation*” and whether the costs were to be calculated in terms of Clause 70(v) of GCC, which specifically dealt with the subsequent legislation or under sub-clause (iii) of Clause 70, which gave the *Formula of Price Adjustment*.

25. Clause 70 (v) reads as under: -

(v) Subsequent Legislation

If, after the date 30 days prior to the latest date of submission of bids for the works, there occur in India changes to any National or State statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the Introduction of any such National or State Statue, Ordinance, Decree, Law, Regulation or bye-law which causes additional or reduced cost to the contractor, other than under sub-clauses (i), (ii) of this clause, in the execution of the works, such additional or reduced cost shall be certified by the Engineer-in-charge after examining the records provided by the contractor and shall be paid or credited to the NJPC and the Contract Price adjusted accordingly. Notwithstanding, the foregoing, such additional or reduced cost shall not be



separately paid or credited if the same shall already have been taken into accounting the indexing of any input to the price adjustment formulae in accordance with sub-clauses (i), (ii) and (iii) of this clause.”

26. The Arbitral Tribunal concluded that the Notifications issued by the State Government of Himchal Pradesh fixing/revising the Minimum Wages under the Minimum Wages Act, 1958 amounted to subsequent legislation to which Clause 70(v) was applicable. The learned Single Judge concurred with this conclusion and observed that the findings in this regard were not *ex facie* perverse and thus, held to “*brook no interference*”.

27. **The first aspect, therefore, stands established that the Notifications amounted to subsequent legislation and thus, it was Clause 70(v) which was applicable for increase or decrease of costs.**

II. Whether the appellant was rightly granted additional cost for labour charges on account of escalation in Minimum Wages:

28. **The second aspect** which became a bone of contention before the learned Single Judge was whether the subsequent legislation led to additional or reduced costs, which had already been taken into account while indexing the input to the Price Adjustment Formula in accordance with Clause 70(i)(ii)&(iii) of the GCC.

29. Clause 70(i)(ii)&(iii) of the GCC read as under: -

“Clause 70- Increase or Decrease of Costs –

(i) Price Adjustment Factor

The amount payable to the Contractor and valued at base rates and prices in the Interim payment certificates issued by the Engineer-in-charge pursuant to sub-clause-60 (i) hereof shall be adjusted in respect of the increase or decrease in the indexed costs of labour, materials and fuel and lubricants in accordance



with the following principles and procedures:

- a) The cost of electrical energy supplied by the NJPC at fixed prices shall be excluded from the scope of price adjustment;
- b) Price adjustment shall apply only for work carried out within the stipulated time or extensions granted by the NJPC and shall not apply to work carried out beyond the stipulated time for reasons attributable to the Contractor;
- c) Price adjustment shall be calculated for the local and foreign components of the payment for work done in the manner explained in the sub-clause (iii) hereof.
- d) The price adjustment shall be determined during each quarter from the formulae as detailed hereinafter under sub-clause (iii) of this Clause.

The following expressions and meanings are assigned to the value of the work done during each quarter:

R = Total value of work done during the quarter excluding cost of electrical energy supplied by the NJPC at fixed prices and any adjustment in payments resulting from legislative or statutory action as per sub clause (v) of this clause.

RI = Portion of „*R*“ as payable in local currency.

RF = Portion of „*R*“ as payable in foreign currency (at fixed exchange rates) expressed in the currency concerned.

$R = RI + RF$

(ii) Other Changes in Cost

To the extent that full compensation for an increase or decrease in costs to the Contractor is not covered by the provisions of this or other Clauses in the contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other increase or decrease in costs.

(iii) Formulae of Price Adjustment

a) Local Currency Component

(I) Price adjustment for increase or decrease in the cost due to local labour shall be paid in accordance with the following formula:

$$VL = 0.85Pi / 100 \times RI (i - i_0) / i_0$$

VL = increase or decrease in the cost of work during the quarter under consideration due to change in rates for local



labour.

i_0 = the average consumer price index number for industrial workers in H.P. (General Index) for the quarter preceding the latest date of submission of bids, as published by Labour Bureau,

Ministry of Labour.

i = the average consumer price index number for industrial workers in HP (General Index) for the quarter under consideration as published by Labour Bureau, Ministry of Labour.

P_i = percentage of local labour component as specified in Annexure-XI.

Increase or decrease in the cost of work during the quarter under consideration due to changes in rates for local labour. The average consumer price index number for industrial workers in HP (General Index) for the quarter preceding the latest date of submission of bids, as published by Labour Bureau, Ministry of Labour. The average number price index number for industrial workers in HP (General Index) for the quarter under consideration as published by Labour Bureau, Ministry of Labour.

Percentage of local labour component as specified in Annexure-XI.

30. **Annexure XI** which is referred to in the aforesaid formula reads as under:-

“.....

**PERCENTAGE OF LOCAL LABOUR COMPONENT AND
LOCAL FUEL AND LUBRICANTS COMPONENT FOR
PRIOR ADJUSTMENT**

(Refer Clause 70 of Chapter 111)

Sl. No.	Component	Percentage
1.	Local Labour	Thirty Percent
2.	Local Material	
2.1	Steel	Ten



		<i>Percent</i>
2.2	<i>Other Materials</i>	<i>Forty Five Percent</i>
3.	<i>Local Fuel and Lubricants</i>	<i>Fifteen Percent</i>

.....”

31. The claimant i.e., the appellant herein had calculated the price adjustment for labour cost by replacing the Average Consumer Price Index principle for industrial workers in HP by Minimum Wages Act as per CPWP norms and had submitted a Claim of Rs. 66,03,82,096.00/- as per its own formula which was not given in the Contract. The Arbitral Tribunal opined that the contention of the appellant herein for calculating the additional cost due to increase in Minimum Wages by a formula not given in the Contract, cannot be sustained. The additional cost for labour incurred by the appellant cannot be calculated on the basis of some formula not provided in the Contract.

32. Having so concluded that the price escalation had been projected on a formula of its own design which was not stipulated in the Contract, the Arbitral Tribunal observed that the appellant still had to be compensated for extra cost on account of enhancement of Minimum Wages and considered alternative hypothesis projected by the appellant for the purpose of justifying its Claim.

33. Ld. Arbitral Tribunal observed as under:-

“19. The Arbitral Tribunal now considers the issue no. iv) which is that if the answer to the issue no.(iii) supra is in the affirmative, as to what extent the claim is tenable.



a) As held in issue no.(iii), the contractor/Claimants is entitled to compensation on account of revision of minimum wages. He has made a claim of Rs.66.03 crore in this respect. **The formulae given by the contractor for calculating the increased cost due to additional payment for the amount of Rs.66.03 crore is not part of the agreement and cannot be used for the claim for payment of additional cost.** He had filed a claim of Rs.28.28 crore in this respect before the DRB as stated hereinabove.

b) The Claimants has put up calculations showing that he **had incurred an expenditure of Rs.77.26 crore towards the labour wages out of which Rs.35.62 crore has been realized through the BOQ items as on base date.** He has further been reimbursed **Rs.14.21 crore** through escalation as per clause 70(ii) on the labour component only. **Thus, the total labour expenses and escalation recovered amounts to Rs.49.83 crore. This leaves a balance of Rs.27.42 crore as the additional expenditure which has occasioned due to revision of minimum wages. There appears to be no reason to dispute this figures.**

c) The contractor had submitted in the sealed bid the bifurcation of his tender unit rates. In this sealed envelope, the Claimants had made clear that his indirect expenses shall be 150% of the direct expenses. The payment of indirect cost over the direct cost is thus consequential as per provisions of the contract. In the letter dt.01.05.2007, the Respondents have stated that the indirect expenses were exorbitantly high and were not admitted. When the minimum wages were enhanced/increased, the indirect expenses were not increased in the same proportions. Moreover, it was not a statutory requirement. Assuming but not admitting even if the indirect expenses had to be considered the same could be on the account of wages paid to the labour for working in the normal shift and not at all on the overtime payments. The agency has produced the records on



actuals for a figure 'x' and further has claimed 1.5 times of 'x' on notional basis without any documentary evidence. Therefore, the reasonable indirect expenses may be considered only on the initial labour rates and not on the enhanced/increased rates. The Arbitral Tribunal has considered the rival contentions. The sealed bid of unit rates is part of the contract which clearly stipulates that the indirect expenses incurred by the contractor shall be 150% of the direct expenses incurred by him. As such the Respondents contention in this regard cannot be sustained. The Minimum wages Act in its section 14 also provides for payment of overtime which specifies that the employer shall pay to the labour for every hours or for part of an hour so worked in excess at the over time rate. Thus, the contention of the Claimants that he had to incur additional expense on payment of overtime to the labour as a result of increased minimum wages is sustained. However, as per the submissions made before the Arbitral Tribunal, the amount of Rs.27.42 crore aforesaid has been arrived at after taking into account, the factor of direct and indirect expenses in payment made to the labour and escalation. Thus, although the contention of the Claimants regarding provision of 150% towards indirect expenses as per sealed envelope is sustained but this will not have any effect on the amount of Rs.27.42 crore as this factor is already included in this amount.

*d) The expenditure of Rs.27.23 crores incurred additionally shall now have to be considered for further calculations. This amount is for the period of March 1996 to Dec 2003. However, the work has admittedly been completed on 31.12.2002. The corresponding amount of such additional expenditure for this period from March, 1996 to Dec 2002 as calculated on the basis of statement on record comes to Rs.26.90 crore only. This additional expenditure is with regard to the base rate of Rs.22.00 per day (reference Ann-A on page 16 of the SOC). **In this***



way, the claim of the Claimants is sustained for Rs.26.90 crore only.”

34. The learned Arbitral Tribunal thus, concluded that the Clause70(iii) provided the Formula for Price Adjustment. This alternative formula applied by the Arbitral Tribunal neither formed the basis of Statement of Claim, nor did it find any mention in the Statement of Claim, but had its genesis in Communication dated 24.09.2007 along with which two Statements of Account, addressed by the respondent to the Arbitral Tribunal. According to this calculation, the claimant claimed to have incurred Rs. 77.26 crores on the labour component as against Rs. 35.62 crores for the works executed during the said period. The purport of this communication was to demonstrate to the Arbitral Tribunal that *“work for about 75% of the Contract Price was actually executed by the claimants after the quantum increase in minimum wages i.e., during 01.03.1996 to 31.03.2003 and the claimants had to incur Rs. 77.26 crores on the labour component as against Rs. 35.62 crores built in the Contract Price (Statement-2) for the works executed during the period”* [para 3.2.2.3 of the said communication dated 24.9.2007].

35. The claimant i.e., appellant had further sought to explain that the actual payment made by it to the unskilled labour was Rs. 17,47,42,445/- (approximately Rs 17.47 crores) and this amount did not include the amounts spent on skilled or semi-skilled labour as well as other indirect expenses on labour. Moreover, but for the enhancement of Minimum Wages, this amount would have been Rs. 7.75 crores approximately. The appellant had also enclosed Statement to establish the quantum of total



additional cost as a result of jump in Minimum Wages w.e.f. 01.03.1996. According to this statement, the total Contract value was of Rs. 35,62,13,249/- (approximately Rs. 35.62 crores). The labour expenses @ 10% were calculated at Rs. 35.62 crores not on the basis of actual expenditure, but on the computation done on a mathematical derivation.

36. The Arbitral Tribunal, thus arrived at a conclusion that the amount actually paid to the labour is in the tune of Rs. 77,26,82,952/- (approximately Rs. 77.26 crores).

37. The learned Single Judge found this mechanism of calculation as being based on the mathematical derivation and not on the basis of actual evidence. It was observed that the Muster Rolls available with the appellant/claimant established the actual expenditure on unskilled labour to the extent of Rs. 17.47 crores. *There was no actual evidence of the actual expenditure on labour being to the tune of Rs. 77.26 crores.*

38. The learned Single Judge further observed that admittedly, the BOQ rates quoted by the appellant factored in expenditure on account of labour wages. Assuming the labour component of the Contract to be to the extent of 10% of the Contract price, this amount already recovered out of BOQ rates was to the tune of Rs. 35.62 crores (10% of the total original contract price). In addition, the appellant had also being paid an amount towards price escalation as per the formula prescribed in Clause 70 (iii) of GCC and a sum of Rs. 43.18 crores was paid according to this formula.

39. *The total payment thus, made to the claimant was approximately Rs. 78.75 crores i.e. much more than the amount of total expenditure stated to have been incurred by the claimant towards labour charges.*

40. The learned Single Judge further observed that even though the actual



amount paid to the claimant towards labour escalation is Rs. 43.18 crores, it was notionally reduced to Rs. 14.39 crores ($\frac{1}{3}^{\text{rd}}$ of Rs. 43.18 crores). This was observed to be *ex facie* arbitrary and perverse amounting to re-writing of the Contract between the parties by the Arbitral Tribunal.

41. The learned Single Judge observed that there was no basis to conclude that although labour escalation is computed and paid on 30% of the Contract price, but only 10% thereof was assumed to be towards labour cost and 20% in respect of other head of costs. The notional scaling down of the labour escalation amount from Rs. 43.18 crores to Rs. 14.39 crores, was held to be perverse, amounting to re-writing of the Contract. It was concluded by the learned Single Judge that there was no principle fathomable to conclude that $\frac{2}{3}^{\text{rd}}$ of Rs. 43.18 crores though paid by the claimant/appellant under the head “labour escalation” was actually towards items “other than labour expenses”.

42. It was thus concluded that entertaining financial claims “*based on novel mathematical derivations, without proper foundation in the pleadings and/or without any cogent evidence in support thereof can cause great prejudice to the opposite party*”..... “*the present case is an example where substantial liability has sought to be fastened on one of the contacting parties based on such specious paper calculations*”. The Award given by the Arbitral Tribunal was consequently set aside.

43. We observe that the formula on the basis of which the Claimant/appellant had sought the escalated amount had been discarded by the Arbitral Tribunal but the learned Arbitrator got swayed by the Statements filed by the Claimant/ appellant during the proceedings, which made a claim towards labour escalation of additional indirect labour expenditure which



included semi-skilled, skilled technicians, operators, etc. However, the muster rolls were available only for unskilled labour; the claim of the appellant was based on speculation and estimates without any evidence.

44. We may also observe that the respondents had also explained before the Arbitral Tribunal that the bidding was not done for labour cost on minimum wages but at a higher rate as the claimant had quoted the rate of Rs.25 per hour or Rs.200 per shift of eight hours reflecting that the claimants intended to pay their workers much higher than the minimum wages.

45. We are in agreement with the detailed observations of the learned Single Judge that the calculation of labour component on the basis of Minimum Wages had always been factored in 30% as was provided in Clause 70 (iii) of price adjustment *but in complete derogation to the specific terms of Contract, the learned Arbitrator was persuaded to calculate the labour charges on a formula for which there was neither any pleadings nor any evidence in regard to the calculation of the escalation and disregarding the fact that it had already received Rs. 78.75 crores towards labour charges.*

46. It was explained in Ssangyong Engineering and Construction Co. Ltd. (supra), that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

47. Similarly in the case of PSA Sical Terminals Pvt. Ltd. v. The Board of Trustees of Chidambaran Port Trust Tuticorin and others, 2021 SCC OnLine SC 508, the Apex Court held that an award based on no evidence, or passed in ignorance of vital evidence, will be perverse. The bench referred to the case Associate Builders (supra), to explain the test of perversity and



observed that a finding based on “no evidence” and “ignorance of vital evidence” in arriving at its decision would come under the realm of perversity

48. Thus, the Arbitral Award has been rightly set aside by the learned Single Judge on well substantiated reason and logic, as being without any evidence and hence, perverse.

49. We find no ground to interfere with the impugned Judgment dated 12.07.2023.

50. We, however, observe that the parties are at liberty to initiate arbitration or take any other legal recourse that may be available to them under law.

51. The appeal is accordingly dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 20, 2024
RS/nk