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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25.09.2025
Pronouncing orders on : 06.10.2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

OP No. 494 of 2018

M/s.State Industries Promotion
Corporation Of Tamil Nadu Ltd.,
No.19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

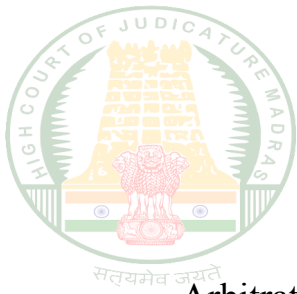
Petitioner(s)

Vs

M/s.RPP Infra Projects Limited
(Formerly Known As RPP Construction (P) Ltd.)
P & C Towers, 3rd Floor,
140, Perundurai Road,
Erode-638 011.

Respondent(s)

PRAYER: Petition filed under Section 34 of the Arbitration and
Conciliation Act, 1996, praying to set aside the Award passed by the learned



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Arbitrator on 12.07.17 and 11.08.17 and to allow the Counter Claims filed by the petitioner.

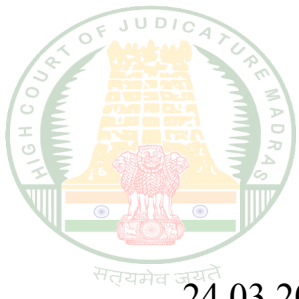
For Petitioner(s): Mr.Haja Nazirudeen
Additional Advocate General
assisted by
Mr.K.Palaniappan
Standing Counsel

For Respondent(s): Mr.P.J.Rishikesh

ORDER

The petitioner accepted a tender for the work of providing concrete retaining wall for the sides of the existing open drain at SIPCOT Information Technology Park at Siruseri, tendered by the respondent vide letter dated 20.01.2010. The Agreement was executed between the parties on 09.03.2010.

2.The date of commencement of the work as per Clause 4(a) of the conditions of Agreement will be the date on which the site or premises is handed over to the contractor or fifteen days from the date of work order whichever is earlier. The date of commencement of work was fixed as



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24.03.2010. As per the Agreement, the time for completion of the work is six months and it was fixed as 23.09.2010. The contract price as per the Agreement is Rs.7,78,35,171/- (Rupees Seven Crores Seventy Eight Lakhs Thirty Five Thousand and One Hundred and Seventy One Only). The rate of progress to be achieved was also fixed under the contract for every month up to the sixth month. Thus, time was considered as the essence of the contract.

3.The Agreement also provided for the consequences if the work is not able to be completed within the time fixed, in terms of forfeiture of the Earnest Money Deposit and Security Deposit.

4.The contract also provided for reasonable extension of time by the petitioner for unavoidable delays and contract also provided for imposing fine not exceeding 5% of the value of the contract on the contractor being slow in the progress of work. Clause 34 also provided for termination/determination of contract by the petitioner and the various contingencies in which it will arise.



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5.The respondent who is the claimant raised a dispute on the ground that even though they were diligent in executing the work as contemplated in the agreement, the respondent came across several hurdles in executing the project due to rains, due to stagnation of water in the site, due to delay since the site was used as a parking lot by third parties, delay in procuring raw materials which was in short supply, delay in releasing the payment, delay due to execution of certain works which was not even part of the Agreement, delay due to the soil condition in the site and delay due to site location.

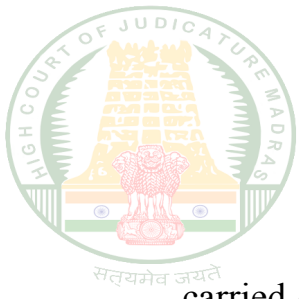
6.In view of the above, out of the total work of constructing the retaining wall for 13,600 metres, the respondent/claimant was able to complete approximately 2030.30 metres. An other extent of 5260 metres of wall was already constructed by various leased owners and 3418 metres of wall was proposed to be constructed by other private parties. For the Show Cause Notice that was issued by the petitioner, a detailed reply dated



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26.12.2012 was also sent by the claimant by explaining the reason as to why the work was stopped and abandoned due to failure on the part of the petitioner to support the respondent in resolving the genuine difficulties faced by them. After nearly four years, the petitioner instead of terminating the contract, sent a revised supplemental proposal which included de-scoping of the original work awarded under the contract and also addition of some additional items outside the scope. However, the petitioner refused to grant extension of time beyond 30.05.2011. The petitioner proceeded to terminate the contract.

7.The respondent invoked the Arbitration Clause under Clause 9(a) of the Agreement and made a claim for the payment towards the work done to the tune of Rs.18,79,795/-. For compensation towards wrongful termination. For refund of Earnest Money Deposit and Security Deposit. For refund of the amount that was withheld to the tune of Rs.5,22,445/-. To declare the termination as illegal and void and to declare that the balance work cannot be



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carried out at the risk and cost of the respondent and for payment of interest at the rate of 18% per annum for the total outstanding amount of Rs.97,74,739/-.

8.The petitioner filed a statement of defence and strongly repudiated the averments made by the respondent and reiterated that considering the difficulties faced by the respondent, extension of time was granted for the completion of the project. They also alleged that there was lackadaisical attitude on the part of the respondent in carrying out the work and it took more than two years for the respondent even to appoint a competent person to inspect the site. The petitioner alleged that the contract was terminated by Termination Notice dated 12.02.2015 by invoking Clause 7(a) of the Agreement. Thus, the petitioner refuted all the claims that were made by the respondent/claimant and also made a counter claim to the tune of Rs.403 Lakhs.



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9.The learned sole Arbitrator on considering the claim made by the respondent and the defence taken by the petitioner including the counter claim framed an issue as to whether the termination order issued by the petitioner dated 12.02.2015 is in order and the respondent will be entitled for the various claims made by them and the petitioner will be entitled for the counter claim made by them.

10.Heard Mr.Haja Nazirudeen, learned Additional Advocate General appearing on behalf of the petitioner and Mr.P.J.Rishikesh, learned counsel appearing on behalf of the respondent.

11.The learned Additional Advocate General appearing on behalf of the petitioner submitted that the respondent abandoned the work by constructing the retaining wall only to the length of 2044 RM and hence, a notice was sent on 30.04.2012 calling upon the respondent to explain as to why the contract cannot be terminated by forfeiting the Earnest Money Deposit and Security



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Deposit. A reply was sent by the respondent dated 24.05.2012, insisting that they will carry out the work only with additions requested with a new design. They also took a stand, by letter dated 03.07.2012, that since the agreement is not in subsistence beyond 30.05.2011, it has lost its value and sought for the payment of the final bill and refund of Earnest Money Deposit and Security Deposit. However, for the first time, while filing the claim petition, the respondent also sought for payment towards loss in profit. It was contended that the respondent after having committed breach of contract has no right to claim for loss of profit and the same being awarded in favour of the respondent by the learned Arbitrator suffers from patent illegality.

12.The learned Additional Advocate General further submitted that the learned Arbitrator ought to have awarded damages to the petitioner under Sections 73 and 74 of the Indian Contract Act, 1872, since the respondent had completed only 20% of the work and the balance 80% of the work was abandoned resulting in a heavy loss to the public exchequer. The evidence

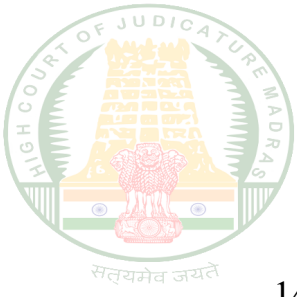


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that was let in on the side of the petitioner regarding the current estimate of the balance work was not even considered by the learned Arbitrator. Accordingly, the Award is liable to be set aside under Section 34(2)(b)(ii) of the Act. Apart from that, the entity which entered into an Agreement with the petitioner was different from the entity which entered into an Agreement with the petitioner was different from the entity which made the claim before the sole Arbitrator and the Award passed by the learned sole Arbitrator is also in violation of Section 34 (2)(a)(i) of the Act.

13.The learned Additional Advocate General in order to substantiate his submissions relied upon the following judgements:

- ***Hindustan Zinc Limited vs. Friends Coal Carbonisation*** reported in ***2006 4 SCC 445***.
- ***Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited*** reported in ***2022 1 SCC 131***.
- ***M/s.Unibros vs. All India Radio*** reported in ***2023 Live Law (SC) 918***.



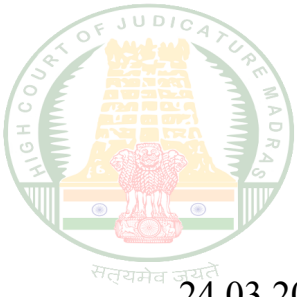
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14.Per contra, the learned counsel for the respondent submitted that the Award neither suffers from perversity nor from patent illegality and therefore, it cannot be interfered under Section 34 of the Act. The learned counsel further submitted that the learned Arbitrator has analyzed the facts and findings have been rendered on such analysis of fact and has expressed a possible/plausible view and the same cannot be interfered by this Court, unless the Award suffers from irrationality or perversity.

15.This Court has carefully considered the submissions made on either side and the materials available on record.

16.This Court has also carefully gone through the Award passed by the learned sole Arbitrator.

17.The Agreement was executed between the petitioner and the respondent on 09.03.2010. The date of commencement of work was on



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24.03.2010 and the schedule date of completion as per the Agreement was 23.09.2010. It was extended up to 30.05.2011. Ultimately, the petitioner terminated the contract on 12.02.2015.

18.The main ground that was raised by the respondent before the sole Arbitrator is that there were major impediments like unprecedented and unseasonal rains, water stagnation in the site after rain, site is being used as a parking lot by third parties, short supply of raw materials etc., and these impediments made the execution of the work impossible. Apart from that, there was a technical snag in the drawings and in the soil conditions and even though the time was extended, instead of furnishing the requisite clarifications as to the drawings and the approvals, the petitioner was issuing Show Cause Notice threatening to terminate the contract.

19.The learned sole Arbitrator upon analyzing the evidence available came to a conclusion that the original estimate put for tender for the



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execution of the work, was not even prepared as per the site requirement and therefore, the respondent/claimant was not able to carry out and complete the work. For this purpose, the learned Arbitrator relied upon Ex.R16 furnished by the petitioner vide Document No.RD-4. This document established the fact that on inspection of the site, the original estimate was not prepared as per the site requirements and an attempt was made on the side of the petitioner to carry out some new components of work that were not even forming part of the original Agreement. Those works which did not form part of the original Agreement has also been listed in Paragraph 9.6 of the Award as follows:

9.6 The Claimant has in para 6 (vi) of Counter Statement pleaded that they had to carry out some new components of work that were not part of the Agreement. The Claimant stated that the following works were outside the scope of the Agreement.

a) Jungle clearance costing huge expenditure



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b) To dig 1.5 metre depth in almost all areas of the site whereas 1.15m is mentioned in the contract which is costing more to the Claimant.

c) To use two pumps to pump out flood water to remove slurry /mud.

d) To providing weep holes and pipes

e) To provide Expansion joints.

20.The learned Arbitrator also took into consideration Exs.R26 and R27, wherein, the Senior Project Manager of the petitioner had submitted proposals for the additional items of work that were not included in the original estimate and there was enormous delay on the side of the petitioner in submitting the supplemental proposal to the competent authority for approval. In the absence of non approval of the additional items of work, the Show Cause Notice came to be issued.

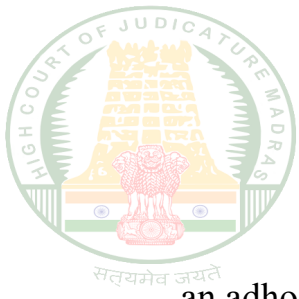


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21.The learned Arbitrator on appreciation of evidence, came to a clear conclusion that the respondent faced several hurdles in the completion of work and there was absolutely no justification on the side of the petitioner in delaying the project for nearly five years.

22.The finding that has been rendered by the learned Arbitrator is based on appreciation of evidence and it is a possible view taken by the learned Arbitrator and this Court cannot sit on appeal against such a finding, since the finding does not suffer from any perversity or manifest illegality.

23.One of the main grievance expressed on the side of the petitioner is with respect to the award of compensation under the head of loss of profit. It was submitted that even though no evidence was let in on the side of the respondent to substantiate this claim and the learned Arbitrator also after rendering a finding that the respondent has not let in any evidence, has fixed



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an adhoc amount of 10% of the balance value of the work by relying upon the judgement of the Apex Court in the case of *A.T. Brij Paul Singh and Others vs. State of Gujarat* reported in *1984 4 SCC 59*. Accordingly, a compensation of a sum of Rs.65,59,000/- was granted.

24.The above issue that was raised by the learned Additional Advocate General requires the consideration of this Court. It is important to understand the difference between loss of profit and loss of profitability. Insofar as loss of profit is concerned, the contractor will be entitled to recover his profits on the basis of reasonable expectation of profits which could be earned if not for the illegal termination of the contract. Insofar as loss of profitability is concerned, it involves claims for reduction in the estimated profit margin due to prolongation of the contract or claims for loss of opportunity to take up other projects during the extended period, where the contractor could have earned a profit. When it comes to loss of profitability, the same will not be allowed unless there is evidence to prove such loss.



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25. The march of law, in order to understand the difference between loss of profit and loss of profitability, is traced hereunder:

a) The first judgement is in ***Mohd. Salamatullah and Others vs. Government of Andra Pradesh*** reported in ***1977 3 SCC 590*** and the relevant portions are extracted hereunder:

3. In the grounds of appeal there is nothing seen to indicate why the 15 per cent awarded by the trial court should not have been granted. There is only a general ground (Ground 6) in the memorandum of appeal which does not make any specific point at all regarding the quantum of damages. It is true that Shri Parameswararao appearing for the State has attempted to draw our attention to certain facts lying dormant in the record warranting the reduction of the quantum of damages, but we are not inclined to investigate into the matter de novo when no ground has been raised in the memorandum of appeal to the High Court.



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4. However, the High Court, after setting out the facts bearing on the quantification of the damages, stated, without any convincing reasoning:

“We think that it will be just and reasonable to put this profit at 10 per cent of the contract price which works out to Rs 1,25,000.”

We are not able to discern any tangible material on the strength of which the High Court reduced the damages from 15 per cent of the contract price to 10 per cent of the contract price. If the first was a guess, it was at least a better guess than the second one. We see no justification for the appellate court to interfere with a finding of fact given by the trial court unless some reason, based on some fact, is traceable on the record. There being none we are constrained to set aside the judgment of the High Court in regard to the assessment of damages for breach of contract. We



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restore the award of Rs 1,87,500 made by the trial court on account of estimated profits (it transpires that when the trial court passed the decree the amount was recovered by the appellants with the result that there was nothing more to be paid by the State to the respondents herein). Of course, having regard, to all the circumstances of the case we direct the parties to bear the costs in this court. We may make it further clear that in regard to other items of claim we uphold what the High Court has awarded. In view of the fact that shortly after the decree was passed by the trial court the decree amount appears to have been recovered by the respondents, we do not award any interest under the decree.

b) *A.T. Brij Paul Singh and Others vs. State of Gujarat* reported in ***1984 4 SCC 59*** and the relevant portions are extracted hereunder:

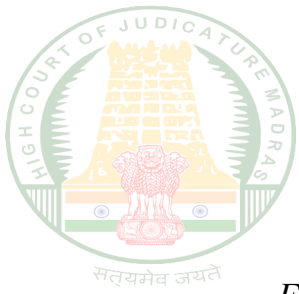
8. *Once it is held that the respondent was guilty of breach of works contract, part of which was already performed and for*



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performing which the appellant, a Poona based contractor had transported machinery and equipment from Poona to the work site near Rajkot in Saurashtra, certainly he would be entitled to damages. One of the heads of damages under which claim is made is “loss of expected profit in the work”. The claim under this head as canvassed before the High Court was in the amount of Rs 4,30,314.

9. It was not disputed before us that where in a works contract, the party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract. What must be the measure of profit and what proof should be tendered to sustain the claim are different matters. But the claim under this head is certainly admissible. Leaving aside the judgment of the trial court which rejected the claim for want of proof, the High Court after holding that the respondent was not justified in rescinding the contract proceeded to examine whether the plaintiff contractor was entitled to damages under the head “loss of profit”. In this connection, the High Court referred to Hudson's Building and



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Engineering Contracts (1970), tenth edition and observed that “in major contracts subject to competitive tender on a national basis, the evidence given in litigation on many occasions suggests that the head-office overheads and profit is between 3 to 7 per cent of the total price of cost” which is added to the tender. In other words, the High Court was of the view that the claim under this head was admissible. The High Court, however, addressed itself to the question whether adequate proof is tendered to sustain the claim. In this connection, it was observed that the loss of profit when it is sought to be recovered on the percentage basis has to be proved by proper evidence. Having settled the legal position in this manner, the High Court proceeded to reject the claim observing that the bare statement of the partner of the contractor's firm that they are entitled to damages in the nature of loss of profit at the rate of 20 per cent of the estimated cost is no evidence for the purpose of establishing the claim. The High Court further observed that the appellant has not proved by any primary documents the basis of its pricing for the purpose of quotation in reply to the tender and more so when it has quoted at 7½ per cent less than the original estimated cost and in this view of the matter the claim for loss of



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profit is unsustainable.

10. Mr Aneja, learned counsel for the appellant urged that the appellant was placed at a comparative disadvantage on account of his two appeals arising from two identical contracts inter partes being heard on two different occasions by two different Benches even though one learned Judge was common to both the Benches. Mr Aneja pointed out that in the appeal from which the cognate Civil Appeal No. 1998 of 1972 arises, the same High Court in terms held that the claim by way of damages for loss of profit on the remaining work at 15 per cent of the price of the work as awarded by the trial court was not unreasonable. The High Court had observed in the cognate appeal that “the basis adopted by the learned Civil Judge in computing the loss of profit at 15 per cent on the value of the remaining work contract cannot be said to be unreasonable”. In fact, the High Court had noticed that this computation was not seriously challenged by the State, yet in the judgment under appeal the High Court observed that actual loss of profit had to be proved and a mere percentage as deposed to by the partner of the appellant would not furnish adequate evidence to sustain the



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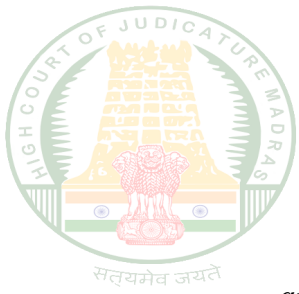
claim. In this connection the High Court referred to another judgment of the same High Court in First Appeal No. 89 of 1965 but did not refer to its own earlier judgment rendered by one of the Judges composing the Bench in First Appeal No. 384 of 1962 rendered on July 3/6, 1970 between the same parties. When this was pointed out to Mr Mehta, his only response was that the court cannot look into the record of the cognate appeal. We find the response too technical and does not merit acceptance. We are not disposed to accept the contention of Mr Mehta for two reasons : Firstly, that in an identical contract with regard to another portion of the same Rajkot-Jamnagar Road and for the same type of work, the High Court accepted that loss of profit at 15 per cent of the price of the balance of works contract would provide a reasonable measure of damages if the State is guilty of breach of contract. The present appeal is concerned with the same type of work for a nearby portion of the same road which would permit an inference that the work was entirely identical. And the second reason to reject the contention is that ordinarily a contractor while submitting his tender in response to an invitation to tender for a works contract reasonably expects to make profits. What would be the measure



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of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the contention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15 per cent of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit. We are therefore, of the opinion that the High Court was in error in wholly rejecting the claim under this head.

11. Now if it is well-established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties



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and for the same type of work at 15 per cent of the value of the remaining parts of the work contract, the damages for loss of profit can be measured.

c) ***Dwaraka Das vs. State of M.P. and Another*** reported in **1999 3**

SCC 500 and the relevant portion is extracted hereunder:

9. The claim of the petitioner for payment of Rs 20,000 as damages on account of breach of contract committed by the respondent-State was disallowed by the High Court as the appellant was found to have not placed the material on record to show that he had actually suffered any loss on account of the breach of contract. In this regard, the appellate court observed:

“It is not his case that for due compliance of the contract he had advanced money to the labourers or that he had purchased materials or that he had incurred any obligations and on account of breach of contract by the defendants he had to suffer loss on the above and other heads. Even in regard to the

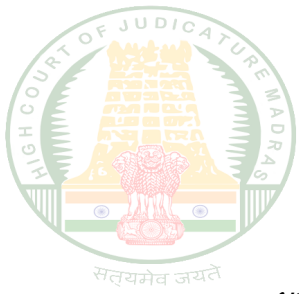


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percentage of profit he did not place any material on record but relied upon assessment of the profits by the Income Tax Officer while assessing the income of the contractors from building contracts.”

Such a finding of the appellate court appears to be based on wrong assumptions. The appellant had never claimed Rs 20,000 on account of alleged actual loss suffered by him. He had preferred his claim on the ground that had he carried out the contract, he would have earned profit of 10% on Rs 2 lakhs which was the value of the contract. This Court in A.T. Brij Paul Singh v. State of Gujarat [(1984) 4 SCC 59] while interpreting the provisions of Section 73 of the Contract Act, 1872 has held that damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, the court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by



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undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was observed: (SCC pp. 64-65, paras 10-11)

“What would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the contention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15 per cent of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit.



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Now if it is well established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff-contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15 per cent of the value of the remaining parts of the works contract, the damages for loss of profit can be measured.”

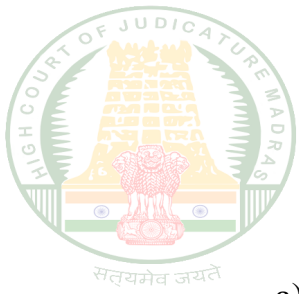
To the same effect is the judgment in Mohd. Salamatullah v. Govt. of A.P. [(1977) 3 SCC 590 : AIR 1977 SC 1481] After approving the grant of damages in case of breach of contract, the Court further held that the appellate court was not justified in interfering with the finding of fact given by the trial court regarding quantification of the damages even if it was based upon guesswork. In both the cases referred to hereinabove, 15% of the contract price was granted as damages



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to the contractor. In the instant case however, the trial court had granted only 10% of the contract price which we feel was reasonable and permissible, particularly when the High Court had concurred with the finding of the trial court regarding breach of contract by specifically holding that “we, therefore, see no reason to interfere with the finding recorded by the trial court that the defendants by rescinding the agreement committed breach of contract”. It follows, therefore, as and when the breach of contract is held to have been proved being contrary to law and terms of the agreement, the erring party is legally bound to compensate the other party to the agreement. The appellate court was, therefore, not justified in disallowing the claim of the appellant for Rs 20,000 on account of damages as expected profit out of the contract which was found to have been illegally rescinded.

26. Insofar loss of profitability which always is considered only based on the evidence, was discussed in the following judgements:



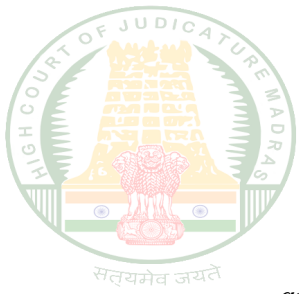
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a) The first judgement is ***Unibros vs All India Radio*** reported in **2023**

SCC Online SC 1366 and the relevant portions are extracted hereunder:

16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor received



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and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

18. Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.



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19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.

b) *Batliboi Environmental Engineers Limited vs. Hindustan*

Petroleum Corporation Limited and Another reported in **2024 2 SCC 375**

and the relevant portion is extracted hereunder:

23. Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered a loss arising from depletion of her/his income from the job and hence



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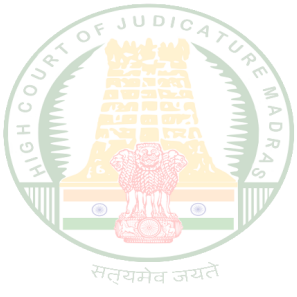
turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work. The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/contractor is only entitled to interest on the capital employed and not the profit, which should be paid.

27. The marked difference between the loss of profit and loss of profitability was discussed by the Calcutta High Court in ***State of West Bengal and Others vs. S.K.Maji*** reported in **2025 SCC Online Cal 3945** and the relevant portions are extracted hereunder:



*14. There lies a fundamental difference between claims raised by contractors against employers for loss of profit and loss of profitability. While loss of profit indicates claims for loss of expected profit due to unexecuted work resulting from an illegal or premature termination of the contract, loss of profitability of loss of business signifies claims for reduction in the estimated profit margin due to prolongation of the contract or claims for loss of opportunity to take up other projects during the extended period where the contractor could have earned a profit. Loss of profit and loss of profitability are often mistakenly used interchangeably which has been noted by the Delhi High Court in *Ajay Kalra v. DDA*⁶ as follows: (SCC OnLine Del para 137)*

“137. ‘Loss of Profits’ and ‘Loss of Profitability’ has often been interchangeably used in recovery cases. The former stands for the loss incurred due to the non-completion/prevention from completing of the contract on account of breach committed by the respondent. The latter refers to the loss incurred due to the delay in the project

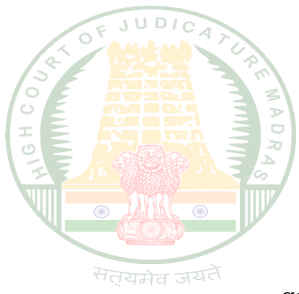


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attributable to the respondent, due to which the claimant has lost the opportunity to earn profits through other projects after the contractual period.”

15. It is now an established position of law that claims for loss of profitability are not generally allowed in the absence of evidence to prove such loss. The view of the courts on this issue is explicit through judgments like Unibros case¹; Bharat Coking Coal Ltd. case² and Batliboi Environmental Engg. Ltd. case³, as has also been relied upon by the appellants in this matter. However, reliance on such cases is not apposite in the present case since those conflate the concepts of loss of profit and loss of business. It is pertinent to note here that even though the Supreme Court used the expression “loss of profits” in essence the claim was that of “loss of profitability” and thus, the requirement to prove actual loss was mandated only for losses



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arising out of delay and should not be misunderstood to be applicable to loss of profits for unexecuted works.

16. In Unibros case¹ the Supreme Court was faced with a similar situation wherein the appellant's claim for loss of profit stemmed from the delay attributable to the respondent in completing the project. It had also been established that the loss of profit claimed was based on the ground that the appellant having been retained longer than the period stipulated in the contract and its resources being blocked for execution of the work relatable to the contract in question, it could have taken up any other work order and earned profit elsewhere.

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25. It is a general principle of law of contract that in case of breach of contract, the injured must be put back in the same position that he would have been if he had not sustained the wrong. Once the contractor has established an illegal and unjustified termination of contract and a breach thereof on the part of the employer, which was also a finding of fact by the sole



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arbitrator in the present case, the contractor cannot be further obligated to establish a loss suffered on account of such breach, because a reasonable expectation of profit is implicit in a works contract. [See MSK Projects India (JV) Ltd. case¹²]. Therefore, any loss occasioned due to illegal termination of works contract, has to be compensated byway of damages once the breach on part of the erring party is established. This is obviously subject to the caveat that the compensation must be reasonable and the parties should not be allowed to make a windfall profit, by a mere allegation of breach of contract. However, it is a settled position of law that for estimating damages, courts are not required to go into the minute details; a broad evaluation of the same would suffice.

26. In J.G. Engg. (P) Ltd. v. Union of India¹⁸ the Supreme Court upheld the award of loss of profits measured at 10 per cent of the value of the remaining part of the contract which could not be performed due to illegal termination of the contract. The measure of profit was assessed at 15 per cent of the value of the remaining part of the work in A.T. Brij Paul Singh case⁷. The Delhi High Court in R.K. Aneja v. DDA¹⁹ was

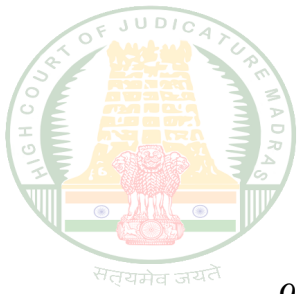


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of the view that the petitioner was entitled to 10 per cent loss of profit on the balance amount of work left undone without proof of loss of profit which he expected to earn by executing the balance work.

27. In the statement of claim, it has been stated that the respondent contractor had submitted the tender after considering the profit as 15 per cent over the entire value of the work and considering the period of the work as 18 months. Owing to failure and negligence on the part of the appellants herein in discharging their contractual obligation and further by illegal termination of the contract when time was no longer as of essence the appellants had restrained the contractor from executing the work valued at Rs 1,12,83,262.14 and thus, the claimant had suffered loss to the tune of Rs 16,92,489 being the 15 per cent profit over the unexecuted value of the work.

28. In the facts of the present case, the arbitrator has given his reasons for not accepting the said rate of 15 per cent as claimed by the respondent contractor and instead have awarded loss of profit at the rate of 10 per cent amounting to Rs

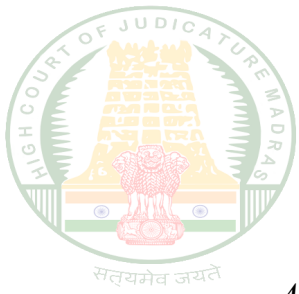


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9,66,711 based on the decisions cited by the claimant as well as the books of G.T. Gajaria. This seems to be a rational, plausible and possible approach that has been adopted by the learned arbitrator. The award is also in sync with the authorities and judicial pronouncements on similar issues.

28.It is also relevant to rely upon the judgement of the Delhi High Court in ***Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt Ltd. vs. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)*** reported in ***2024 SCC Online Del 2755*** and the relevant portion is extracted hereunder:

35.1 The underlying rationale appears to be that as long as there is material available with the arbitrator that damages have been suffered, but it does not give him an insight into the granular details, he is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying damages [See Mohd. Salamatullah v. Government of Andhra Pradesh, (1977) 3 SCC 590; Delhi Development



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Authority v. Anand and Associates, 2008 SCC OnLine Del 179; Good Value Engineers v. M.M.S. Nanda, Sole Arbitrator, 2009 : DHC : 5231; National Highway Authority of India v. ITD Cementation India Ltd., 2010 : DHC : 404; Mahanagar Gas Ltd. v. Babulal Uttamchand and Co., 2012 SCC OnLine Bom 1254; Bata India Ltd. v. Sagar Roy, 2014 SCC OnLine Cal 17998].

29. In the above judgement, the Delhi High Court was dealing with the compensation under the head of loss of profit and it was held that, while fixing the compensation, the Arbitrator is permitted the leeway to employ a honest guesswork and/or a rough and ready method for quantifying the damages.

30. This Court must also keep in mind the fact that the Arbitrator in this case is not a man possessed with a legally trained mind and the Arbitrator was an Engineer. While dealing with such awards passed by a layperson, this Court must keep in mind the caution given by the Apex Court in **Konkan**



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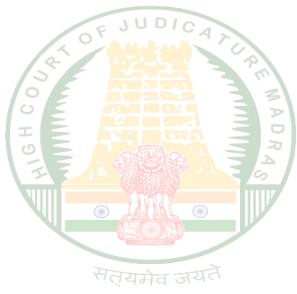
Railway Corporation Limited vs. Chenab Bridge Project Undertaking

reported in **2023 9 SCC 85** and Paragraph 28 is extracted hereunder:

28. The conclusion [Chenab Bridge Project v. Konkan Railway Corpn. Ltd., 2022 SCC OnLine Bom 3148] of the Division Bench of the High Court that the award is liable to be set aside on the ground of perversity is incorrect, as it overlooks the principle laid down in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] wherein this Court held : (Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC pp. 75-76, paras 32-33)

“32. A good working test of perversity is contained in two judgments. In STO v. Gopi Nath & Sons [STO v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

‘7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant



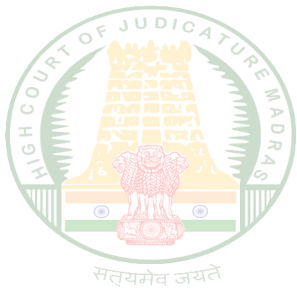
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material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.'

In Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

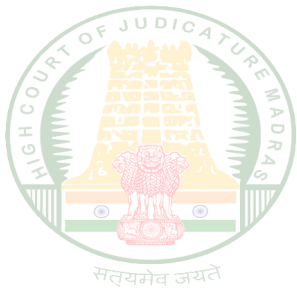
'10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.'



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33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: “General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides



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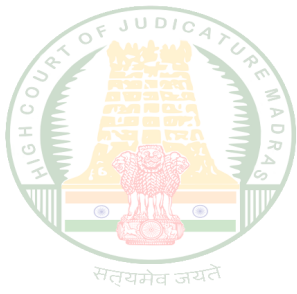


patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong”.It is very important to bear this in mind when awards of lay arbitrators are challenged.] .” (emphasis supplied)

31.In Paragraph 28, there is reference to Footnote No.21 and the said footnote is extracted hereunder:

21.Very often an arbitrator is a lay person not necessarily trained in law, Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:

“General, you have a sound head, and a good heart, take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with



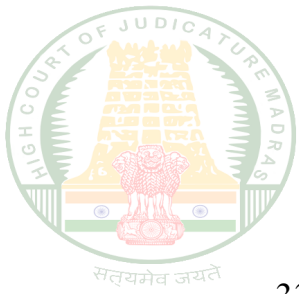
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firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong.”

It is very important to bear this in mind when awards of lay arbitrators are challenged.

32.It is clear from the above that when this Court is dealing with an Award passed by a lay person, the Court should not expect that the reasoning and the Award passed will measure up in quality to a trained legal mind. Such Awards can only be assessed by looking into the reasons assigned and to test as to whether it is a possible view based on the evidence relied upon by the Arbitrator and if such Award is found to be substantially right, although the reasons assigned may not measure up to what is expected from a legally trained mind, but however, satisfies the triple test employed in ***Dyna Technologies Private Limited vs. Crompton Greaves Limited*** reported in ***2019 20 SCC 1***.



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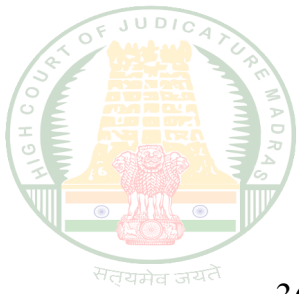
33. In the case in hand, the learned Arbitrator was only assessing the loss of profit and not loss of profitability. While determining the same, the learned Arbitrator has taken note of the Standard Data Book published by the Ministry of Shipping and Transport and also the judgement of the Apex Court in the case of *A.T. Brij Paul Singh and Others vs. State of Gujarat* reported in **1984 4 SCC 59** and fixed 10% of the balance value of the work towards loss of profit. The learned Arbitrator has also taken into consideration the fact that the original contract was for a period of six months and the project was prolonged for more than five years and the learned Arbitrator has also assigned sufficient reasons as to why such delay is attributable to the petitioner. Those reasonings do suffer from any perversity or manifest illegality.

34. The ultimate conclusions that have been arrived at Paragraph 9.22 reflects about the application of mind on the part of the learned Arbitrator. The learned Arbitrator, while ordering the claims, has only granted an Award



for payments not made for the work already done and awarded only a sum of Rs.9,49,171.87/- towards payments to be made for the work done and that too on basis of the admission made by the petitioner. As already stated, the Arbitrator has also awarded a sum of Rs.65,59,000/- towards loss of profit arising out of wrongful termination. Since the termination was found to be not in order, the Arbitrator has also ordered for the refund of Earnest Money Deposit and Security Deposit. The Arbitrator has also ordered for refund of the amount that was withheld by the petitioner once again on the ground that the termination was not in order. The Arbitrator has only granted interest at the rate of 10% up to the date of Award and 12% from the date of Award till the date of actual payment.

35.Insofar as the legality of the termination order is concerned, the learned Arbitrator has again assigned reasons as to why the prolongation of the contract is not attributable to the respondent/claimant and as a consequence held the termination order to be bad.



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36.Insofar as the counter claim is concerned, the learned Arbitrator has provided the reasoning at Paragraph No.9.19 of the Award and the conclusion is found at Paragraph No.10.6 of the Award. The rejection of the counterclaim made by the petitioner does not suffer from any perversity or manifest illegality warranting the interference of this Court.

37.In the result, this Court does not find any ground to interfere with the impugned Award passed by the sole Arbitrator, since it does not fall within any of the requirements under Section 34 of the Act. Accordingly, this petition stands dismissed with cost of a sum of Rs.2.50 Lakhs payable by the petitioner to the respondent.

06-10-2025

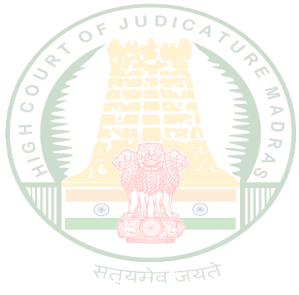
Index:Yes

Speaking order

Internet:Yes

Neutral Citation:Yes

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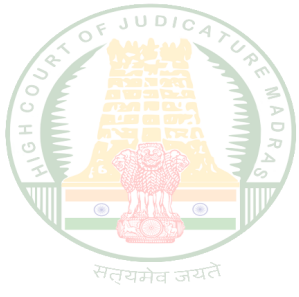
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OP No. 494 of 2018

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To

M/s.RPP Infra Projects Limited
(Formerly Known As RPP Construction (P) Ltd.)
P & C Towers, 3rd Floor,
140, Perundurai Road,
Erode-638 011.



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N.ANAND VENKATESH J.

SSR

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06-10-2025