ANDHRA PRADESH HIGH COURT

State of Andhra Pradesh

Vs

Associated Engineering

(Jeevan Reddy and N Rao, JJ.)

24.03.1989

ORDER

Jeevan Reddy, J.

1. The appeal and the Civil Revision Petition arise from a common judgment and order of the learned Subordinate Judge, Rajahmundry, making the award a rule of the Court and dismissing the petition filed by the appellant-State for setting aside the award.

2. An agreement was entered into between the State of Andhra Pradesh and the respondent-contractor for execution of the work of constructing approaches to the rail-cum-road bridge across Godavari, at Rajahmundry. The agreement is dated 17-6-1970, and the value of the work is Rs. 70,29,925/-. A period of 42 months was stipulated for completing the work, i.e. on or before 21-12-1973. the respondent actually completed the work by 10-12-1974 after the period of contract was extended twice. The first letter of the contractor requesting for extension was addressed on 17-12-1973. Extension was granted up to 31-5-1974. By another letter dated 22-7-1974 the contractor requested another extension till the end of August, 1974. It was granted subject to imposition of penalty of Rs. 50/- per day, after 1-9-1974.

3. After the work was completed, disputes arose between the parties with respect to the amount payable to the respondent. They were referred to the sole arbitration of the Superintending Engineer, R & B, Cuddapah Circle, in accordance with the agreement. The arbitrator made his award on 25-3-1981. Apart from interest and costs, the respondent had preferred eight claims. The arbitrator awarded some or other amount under each claim. Claim No. 9 related to interest. The arbitrator awarded interest at the rate of 15% per annum from the date of award till the date of payment. So far as costs are concerned (claim No. 10), he directed the parties to bear their own costs.

4. The award is a non-speaking one. It does not give reasons for the several amounts awarded under each of the claims. It reads as follows :--

> "Now, I, Sri P. Vishnu Rao, Superintending Engineer, (R&B) Cuddapah Circle, Cuddapah, having taken upon myself the burden of reference and having examined and considered the statements of parties and arguments produced before me and having heard

the parties, do here by make and publish this day my award in writing of and concerning the matter referred to me.

Claim No. 1:-- This includes ;

(a) Compensation for delay in handing over site on Kovvur side involving Rupees 1,61,790.93 towards escalation in price index and Rs. 1,65,150.00 towards establishment and overhead charges. Total Rs. 3,26,940.93, and (b) compensation by way of reimbursement for extra expenditure incurred to an extent of Rs. 14,330/- for removal and re-erection of the sheds, fencing etc. of railway Contractors, Rs. 2,000/- for removal of caving in earth and forming temporary roads, and Rs. 30,000.00 towards compensation paid to owners of buildings, huts, etc. in the area and dismantling the same on Rajahmundry side.

Award : I award the respondents shall pay to the claimants Rs. 2,81,800/- (Rupees Two Lakhs Eighty One Thousand Eight Hundred only) towards this claim, Claim No. 2 : This includes :

(a) Rs. 45,000.00 towards refund of re covery made, and.

(b) Rs. 38,000.00 towards reimbursement of expenditure incurred regarding toad testing Total Rs. 83,000.00.

Award : I award that the respondents shall pay to the claimants under (a) and (b), a total sum of Rs. 83,000.00 (rupees eighty three thousand only) towards this claim.

Claim No. 3: This comprises of Rupees 22,441.00 towards cost of excavation of excess depth in foundations' of Rajahmundry.

Award : I award that the respondents shall pay the claimants Rs. 22,441.00 towards the claim. (Rupees twenty two thousand four hundred forty-one only).

Claim No. 4 : This Comprises of Rupees 2,000.00 being the cost of expenditure incurred for the footpath slab extension and coaxial centring.

Award : I award that the respondents shall pay the claimants Rs. 2,000.00 (rupees two thousand only) towards this claim :

Claim No. 5 : This comprises of Rupees 32,050.00 being payment to be made for conveyance of excess earth to embankment.

Award : I award that the respondents shall pay the claimants Rs. 32,050.00 (rupees thirty two thousand and fifty only) towards this claim.

Claim No. 6 : This comprises of waival of refund of fines imposed to an extent of Rs. 13,500.00.

Award : I award that the respondents shall pay claimants Rs. 13,500.00 (rupees thirteen thousand five hundred only) towards this claim.

Claim No. 7 : This comprises of Rs. 2,000/-being the refund of fine imposed for absence of Site Engineer on Rajahmundry side.

Award: I award that the respondents shall pay the claimants Rs.2,000/- (rupees two thousand only) towards this claim.

Claim No. 8: This comprises of Rupees 72,645.42 towards refund of recovery made for excess steel consumed.

Award : I award that the respondents shall pay the claimants Rs. 72,645.42 (Rupees seventy two-thousand six hundred and forty five and paise forty two only) towards the claim.

Claim No. 9: This comprises of Rupees 1,32,359.00 towards interest on amounts claimed and disputed.

Award : This claim is rejected. However, after careful consideration of all the factors, the

claimants are awarded interest on the awarded amounts from the date of this award, i.e., 25th March, 1981 till the date of payment at 15% (fifteen per cent) per annum.
Claim No. 10 : This refers to costs of the claimants in these proceedings.
Award : Each party to the reference shall bear their costs. The claimants shall bear the costs of the stamp-paper for this award of Rs. 200/- (rupees two hundred only).
This award is made, signed and published by me on this, the twenty fifth day of March, one thousand nine hundred eighty one.....".

5. O.S. No. 119/1981 was filed by the respondent-contractor to make the award a rule of the Court. The State filed O.P. No. 51 / 1981 to set aside the award under Section 30 of the Arbitration Act. No evidence was adduced by either party before the learned Subordinate Judge. After hearing the parties, the learned Subordinate Judge, as stated above, made the award a rule of the Court, and dismissed the petition filed by the State for setting it aside. The result is that the award in favour of the respondent in a sum of Rs. 5,09,436.42 Ps. with interest thereon at 15% per annum from the date of award, i.e., 25-3-1981, till the date of payment of decree is affirmed. The present appeal and Civil Revision Petition are directed against the said judgment.

6. The learned Addl. Advocate-General, appearing for the State, disputed the validity and legality of the award in so far as claims Nos. 1, 8 and 9 are concerned. He did not dispute the amounts awarded under other claims.

7. The respondent claimed a total sum of Rs. 3,73,270.93 Ps., under claim No. 1, which was divided into two sub-heads. They are:--

(a) compensation for delay in handing over side on kovvur side involving Rs. 1,61,790. 93 Ps., towards escalation in price-index and Rs. 1,65,150/- towards establishment and overhead charges, making a total of Rs. 3,26,940.93 Ps;
(b) compensation by way of reimbursement for extra expenditure incurred to an extent of Rs. 14,330/- for removal and re-erection of sheds, fencing etc. of railway contractors;
Rs. 2,000/- for removal of caving in earth and forming temporary roads; and Rupees 30,000/- towards compensation paid to owners of buildings, huts, etc. in the area and dismantling the same on Rajahmundry side.
The arbitrator awarded a total sum of Rs. 2,81,800/- under this claim without specifying the amount under each of the sub-heads, or each of the items under each sub-head. Claim No. 8 is in a sum of Rs. 72,645.42 P. The respondent claimed refund of this amount which was recovered from him towards excess steel consumed by him. The arbitrator allowed the claim in full. Claim No. 9 pertains to grant of interest from the date of the award till the date of realisation.

8. For the sake of convenience we may take up claim No. 9 first. Following the principle of the decision of the Supreme Court in *Executive Engineer (Irrigation) Galimala v. Abnaduta Jena* it has been held by two Benches of this Court in (i) CM.A. No. 292/1988 disposed of on 15-11-1988 (consisting of Jeevan Reddy & Y. Bhaskar Rao, JJ.), and (iii) C.M.A. No. 993 /1984 and batch, disposed of on 17-3-1989 (consisting of Jeevan Reddy & V. Neeladri Rao, JJ.), that the arbitrator has no power in law to award interest even for the period subsequent to the date of award. In this case, the arbitrator has not awarded interest for the period prior to the date of reference, nor has he awarded interest for the period the dispute was pending before him. He has awarded interest only from the date of the award. Since the reference to arbitration in this case is

governed by Chapter II, i.e., without the intervention of the Court, the arbitrator was not competent to award the said interest. It must, accordingly, be held that the award of interest is incompetent and to that extent the award suffers from an error apparent on the face of the record. The award is liable to be set aside to the extent it allows claim No. 9.

9. We shall next take up claim No. 8. The respondent's claim in this behalf is to the following effect: According to the agreement, the steel required for the work was to be supplied by the department at a recovery rate of Rs. 877/- per Metric Tonne. The agreement provided a margin of 5% wastage over the requirements as per schedule. Any excess quantity of steel used over and above the said 5% wastage margin was to be charged at the market value plus 10%, or the supply rate, which ever is higher. By the time the work was completed, the respondent utilized 1550.251 Metric Tonnes of steel. The quantity actually used on the work was 1439.174 Metric Tonnes, accounting for an excess issue of 111.077 Metric Tonnes. The excess thus worked out to 6.93%. For the excees wastage the Government recovered an amount of Rs. 72,645.42 Ps. This recovery was protested by the respondent, who set out his case in his letter dated 26-2-1975. According to him, 110.235 Metric Tonnes of steel was used for bolts and frames of the centring erected for execution of RCC items, and that it cannot be treated as wastage. The wastage actually comes to 0.842 Metric Tonnes, which is negligible. However, the Government neither responded to this representation nor did it refund the amount recovered. The respondent, therefore, claimed refund of this amount.

10. In their counter the Government disputed the respondent's claim. They denied that the steel used for bolts and frames of the centring erected for RCC items is a bona fide use of the steel supplied by the Government. If any such material is required, the contractor has to procure his own steel therefor. The . matter was indeed considered by the Government, which refused to accept any wastage beyond 5%.

11. Condition 5.0.4 of the relevant Section of the agreement reads as follows:--

> "5.0.4: Cement and steel will be supplied in sufficient quantity as and when required as is concistent with the out-turn of the work. In case of non-availability of these materials, the contractors shall make their own arrangements at their own cost. The department shall not be held liable for any loss that is likely to be caused to the contractor on account of delay in supply. In case of delay, the contractor shall be eligible only for suitable extension of time. The scrap or cut pieces of steel left over shall not be taken back by the department. The loss, if any, on account of these scrap or cut pieces shall be borne by the contractor. The recovery of steel supplied by the Department shall be made for the quantities issued. The rates to be quoted by the contractor shall be for the supply and fabrication of steel including probable wastage up to 5% over the requirement as per schedule.
> Recovery for any excess quantity used over 5% wastage; shall be made at the market value plus 10% or supply rate whichever is higher. The contractor shall get binding wire required for use on the work at his own cost.....".

12. The preceding conditions in the same Section say that the cement, steel, and bitumen required for the work shall be supplied by the department at the specified rates, and that the cost thereof shall be recovered from the contractor's bills and other dues. The contractor was obligated to use the material exclusively for the purpose of the work, and to make good any loss, damage,

or wastage that may take place from whatever cause. Condition 5.0.4 states that "the recovery of steel supplied by the Department shall be made for the quantities issued". It says further that "the scrap or cut pieces of steel left over shall not be taken back by the Department", and that "the loss, if any, on account of these scrap or cut pieces shall be borne by the contractor". It also provides that recovery for any excess quantity used over and above 5% wastage shall be made at the rates specified. Now, in the case before us there was no dispute as to the quantity issued. The only dispute was whether the steel used for bolts and frames of the centring erected for execution of RCC items should be treated as wastage, or should be treated as having been utilized for the purpose of the work. In the absence of any specific provision in the agreement that steel used for bolts and frames shall not be treated as steel used for the purpose of the work, we are unable to say that the arbitrator was not competent to allow the said claim of the contractor. In the absence of any specific provision in that behalf, it was open to the arbitrator to decide the issue taking an overall view of the several terms and conditions of the agreement. We are, therefore, unable to say that the arbitrator acted contrary to, or outside the terms of contract in allowing the said claim.We shall now take up the main dispute between the parties. It centres round claim No. 1. The respondent contractor's claim under claim No. I, stated briefly, is this : Though the site for the approach on Rajah-mundry side was handed over well in time, there was abnormal delay in handing over the site on Kovvur side. The respondent addressed several letters to the appropriate authorities in this behalf, but to no effect. There was a delay ranging between two months to 26 months in handing over the piers. The particulars of delays and the compensation claimed by the respondent-contractor are the following :--COMPENSATION PARTICULARS Location :

Date on which site is to be handed over Date on which site is actually handedover:
Delay Difference in price index in points :
Difference in cost:

Rs.
(a) K23 to K12 22-6-1970 End of 12/1970 6 months 12 (7.7%) 11,057-80 K11 2 months 9(4.89%) 7,022-40 K10 4 months 14 (7.4%) 10,627-00 K9 6 months 13 (6.9%) 9,909-00 K8 10 months 19 (9.79%) 14,059-30 K1 to K3 to complete foundations and 5/73 to do substructure and superstructure 17 months 34 (15.31%) 21.987-00 K4 & K3 21 months 39 (17.18%) 24,672-00 K5 & K6 22 months 45 (19.3%) 27,716-00 K7 26 months 60 (24.19%) 34,739-00 Rs.
1,61,790-00

(b) ADD 5% for Establishment and Overheads on Rs. 33,03.000/-
Rs.
1,65,150-00
(c) ADD for removing and re-erecting ty. sheds, fencing etc. of Railway contractors as per ANNEXURE I.
Rs.
14,330-00
(d) Add for removing caves in earth and forming Temporary Road :
Rs.
2,000-00
(e) Add compensation paid to owners of buildings, huts, etc. in the area and dismantling the same on Rajahmundry side.

Rs.
30,000-00 Rs.
3,73,270-00 OR Rs.
3,73,271-00

14. The Government disputed the respondent's claim. It relied upon the letters of the respondent dated 23-1-1970 and 13-3-1970, and the letter of the Chief Engineer dated 8-3-1970 in this behalf. Under these letters the time for delivering the several sites/piers was postponed. It was also stated that because of the said delay, the period of contract will be extended by six months. The Government's contention, therefore, is that there is no basis for claiming any compensation on account of the delays in handing over the sites. It submitted that there were, several delays on the part of the contractor in carrying out the work, and that he did not keep up to the schedule of work. Since no compensation was contemplated either by the agreement or by the tetters aforesaid, it submitted, the contractor cannot claim any compensation. Reliance was placed upon Section 55 of the Contract Act, and the several terms and conditions of the agreement, including Clauses 58 and 59 of the Andhra Pradesh Detailed Standard Specifications (APDSS). It denied that the contractor paid any moneys to the owners of the structures, as claimed by him, and submitted that he is not, therefore, entitled to any compensation on that account also.

15. The agreement entered into between the parties contained, inter alia, clauses 4 and 5, which read:--

> "(4) Time shall be considered as of the essence of the agreement and the contractor hereby agrees to commence the work as soon, as this agreement is accepted by competent authority as defined by the Madras Public Works Department Code and the site (or premises) is handed over to him as provided for in the said conditions and agrees to complete the work within (42) Fortytwo months from the date of such handing over of the site (or premises) and to show progress as defined in the tabular statement, "Rate of progress" below, subject nevertheless to the provisions for extension of time contained in clause 59 of the Standard Preliminary Specification.
> (5) The said conditions shall be read and construed as forming part of this agreement and the parties hereto will respectively abide by and submit themselves to the conditions and stipulations and perform the agreements on their parts, respectively.....".

16. The 'Preliminary Specifications' mentioned in APDSS constitute the terms of agreement between the parties. Clause 58 of Preliminary Specifications says that on notification of possession of the site being given to the contractor, he shall begin the work forthwith and shall regularly and continuously proceed with the work and complete the same as provided in the agreement subject, nevertheless, to the provision of extension of time, mentioned in the next Clause. Clause 59, which is relevant for our purposes, read thus:--

> "59. Delays and extension of time : No claim for compensation on account of delays or hindrances to the work from any cause whatever shall lie, except, as hereinafter defined. Reasonable extension of time will be allowed by the Executive Engineer or by the officer competent to sanction the extension, for unavoidable delays, such as may result from causes, which, in the opinion of the Executive Engineer, are undoubtedly beyond the control of the contractor. The Executive Engineer shall assess the period of delay or hindrance caused by any written instructions issued by him, at twentyfive per cent in

excess of the actual working period so lost.

In the event of the Executive Engineer failing to issue necessary instructions and thereby causing delay and hindrance to the contractor, the latter shall have the right to claim an assessment of such delay by the Superintending Engineer of the Circle whose decision will be final and binding. The contractor shall lodge in writing with the Executive Engineer a statement of claim for any delay or hindrance referred to above, within, fourteen days from its commencement, otherwise no extension of time will be allowed.

Whenever authorized alterations or additions made during the progress of the work are of such a nature in the opinion of the Executive Engineer as to justify an extension of time in consequence thereof, such extension will be granted in writing by the Executive Engineer or other competent authority when ordering such alterations or additions".

Clause 60 says that time shall be considered the essence of the contract, and if the contractor is guilty of delay in commencing'or carrying on the work and fails to improve in spite of notice, it shall be lawful for the Executive Engineer to determine the contract, which shall entail forfeiture of security deposit and other amounts. It shall be open to the Government to have the balance of the work carried out by another contractor at the risk and cost of the contractor.

17. Before proceeding further, it would be Appropriate to refer to certain other relevant material. In his letter dated 23-1-1970 the respondent-contractor wrote to the Superintending Engineer, Eluru, stating inter alia : "12. We agree that compensation need not be paid if the delay in handing over thesite occupied by the Railway is not more than 3 months". It is clear that certain portions of the site which were to be handed over to the respondent were occupied by the Railway in connection with its own work; the agreement between the parties was that as soon as the Railway vacated its occupation, the site shall be handed over to the contractor within three months. The next letter is dated 8-3-1970 from the Chief Engineer, P.W.D., Hydera bad, to the respondent, in which it was stated, inter alia, "12.(a): In your letter reference (3) cited (reference is to the respondent's letter dated 23-1-1970 referred to above), you have agreed for not claiming any compensation for the delay in handing over site at piers 14 to 21 on Kovvur side beyond middle of '71 if the delay is not more than 3 months. You are informed that the last 6 spans can be handed over in the beginning of 1972.....". This letter is rather ambiguous. It speaks of delivery of peirs 14 to 21 "beyond middle of 71". Suffice it to note that as soon as the Railways delivered possession of the said sites, they were to be handed over to the contractor within three months.

18. The third letter is dated 13-3-1970 from the respondent to the Chief Engineer, In this letter it was stated, inter alia, "(12)(a) : We note that the site for piers 14 to 21 on Kovvur side will be handed over in the beginning of 1972. Since there is a delay of 6 months in handing over the site, the time of completion of the work on Kovvur side will have to be extended by 6 months.....". This letter shows that the site for piers 14 to 21 on Kovvur.side was to be delivered in the beginning of 1972, which meant a delay of six months over the time agreed earlier, and in lieu thereof it was agreed that the period of contract shall be extended by six months.

19. Now, the contention of Sri P. Ramachandra Reddy, learned counsel for the respondent-contractor, is that inasmuch as, admittedly, there was delay in handing over the sites on Kovvur side, the cost of work went up and the contractor is entitled to be compensated therefor. According to him, the consumer price-index went up by 24.19% between June 1971 and

February J974. It is on this basis that he claimed Rs. 1,61,790/- by way of compensation. To this he added establishment and overhead charges calculated at the rate of 5% of the total cost of Viaduct On Kovvur side. Some of other minor claims Were also made. Mr. Ramachandra Reddy says, because of the delay in handing over the "site, the period of contract had to be extended, which meant extra cost to the respondent, and it must be paid for by the Government which is responsible for the delay. The con-tention of the learned Addl. Advocate-General, on the other hand, is that no such compensation is contemplated, or provided for, either by the contract, or by the correspondence between the parties. Indeed, the letter of the respondent dated 13-3-1970 clearly speaks of extension/of the period of contract by six months in lieu of the delay in handing over the site for piers 14 to 21. Even if there is any delay in handing over the site, no Claim for compensation can be made since any such claim is barred by clause 59 of the APDSS. It is also submitted that the contract does not provide for any such compensation, and hence the arbitrator, who had to operate within the four-corners of the contract, had no power to award any compensation on this account.

20. The first aspect to be noticed in this behalf is that the contrator did not choose to terminate the contract on account of the Government's delay in handing over the sites. He requested for, and agreed to extension of the period of contract, and completed the work. It is not the respondent's case that while agreeing to extension of the period of contract he put the Government on notice of his intention to claim compensation on that account. Section 55 of the Contract Act reads thus:--

> "55. Effect of failure to perform at fixed time, in contract in which time is essential :
> When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any Joss occasioned to him by such failure.If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so".

21. According to this Section, it was open' to the respondent to avoid the contract on account of the Government's breach of pro-mise to deliver the sites at a particular time; but, he did not choose to do so, and accepted the delivery of sites at a time other than what was agreed upon between them earlier. If so, he is precluded from claiming compensation for any loss occasioned by such delay, unless, of course, at the time of such delayed acceptance of the sites, he had given notice to the Government of his intention to claim compensation on that account. It must be remembered that this provision of law was specifically referred to, and relied upon in the counter filed by the Government to the respondent's claim before the arbitrator. But, it is not brought to our notice that the contractor had given such a notice (contemplated by the last sentence in Section 55). We must make it clear that we are not entering into the merits of the decision of the

arbitrator. What we are saying is that such a claim for compensation is barred by law, except in a particular specified situation -- and inasmuch as such a particular specified situation is not present in this case, the claim for compensation is barred. It is well settled that an arbitrator, while making his award, has to act in accordance with law of the land, except in a case where a specific question of taw is referred for his decision.

22. Even apart from Section 55, we are of the opinion that the arbitrator had no power to award compensation as claimed by the respondent. Clause 59 of the APDSS specifically bars such a claim. We have set out the clause in full hereinbefore. The meaning of the said clause was considered by a Bench of this Court of which one of us (Jeevan Reddy, J.) was a member in A.A.O. No. 677/81 and C.R.P. No. 385 of 1982 disposed of on 19-4-1982. It was held :

> "Coming to clause 59 of the preliminary specifications of "APDSS", it provides that neither party to the contract shall claim compensation "on account of delays or hindrances to work from any cause whatever". That the delays and hindrances contemplated by clause 59 include the stoppage, hindrances and delays on the part of the department as well is clear from the following sentence in the first part of the said clause, viz., "the Executive Engineer shall assess the period of delay or hindrances caused by any written instructions issued by him, at 25% in excess of the actual work period so lost". Indeed, the second para of the clause also contemplates delays and hindrances being caused on account of the failure of the Executive Engineer to issue necessary instructions. In such a case, the contractor has a right to claim the assessment of such delay by the Superintending Engineer of the Circle, whose decision is declared to the final and binding on the parties. But, any such claim has to be lodged in writing to the Executive Engineer within fourteen days of the commencement of such delay, or hindrance, as the case may be. We find it difficult, therefore, to say that clause 59 has no application to the present case. The words "from any cause whatever", occurring in clause 59, are wide enough to take in delays and hindrances of all types, caused by the department, or arising from other reasons, as the case may be. Thus, by virtue of clause 59, the contractor is precluded from claiming any compensation on account of delays or hindrances arising from any cause whatever, including those arising on account of the acts or omissions of the departmental authorities.....".

23. In this context, we must refer to two conflicting decisions of this Court, though they are not strictly relevant in the facts of this case. Since they are relied upon by the parties before us, it would be appropriate to refer to them briefly. In these cases the question arose whether a contractor is entitled to claim escalation charges on account of delay on the part of the Government in handing over the site. The first decision is in Chief Engineer, Panchayat Raj Department v. B. Balaiah (1985) 1 APLJ 224. The Bench held that inasmuch as the contract between the parties does not provide for payment of escalation charges, awarding an amount on account of escalation charges is in excess of the arbitrator's jurisdiction, and is void. In the later decision of another Bench in State of A.P. v. S. Shivraj Reddy (1988) 2 APLJ 465 a different view was taken. The claim in this case pertained to the work done beyond the contract period. The Court held that the contractor must be paid as per the standard specification rates, for the reason that the Government had defaulted in handing over the site at the time agreed. It was held that such a claim is not barred by clause 59 of APDSS. When the decision of this Court in C.M.A. No: 677/81 and C.R.P. No. 385/82 dated 19-4-1982 was brought to the notice of this

Bench, it distinguished the same holding that that was a case where the claim was for compenstion, whereas in the case before them the claim was not for compensation, but for payment as per the standard specification rates for the reason that the site was not handed over to the contractor at the agreed time. This is what the Bench said:

> "In our view Section 59 has no application. It pertains to compensation. In the present case, we are concerned with the rates for the work done. The contractor is not claiming any compensation for loss or damage or loss of profit which he would have made but for the delay committed by the department: What is asked for here is that beyond the contractual date he must be paid as per the standard specification rates as the site was not handed over in time due to the fault of the department itself. We do not think Section 59 has any application at all. The decision of the Division Bench referred to by the learned Government Pleader has no re-levance in ,lhe present context. In this Division Bench cases the contractor having agreed for reduction of rates and executing the final agreement, demanded escalation of rates complaining that the department committed delays and defaults. The Government relied upon clause 59 and Foot Note 7 of Schedule 'A' which prohibited payment of rates at the enhanced rates even during the extended period. The Division Bench negatived the claim of the contractor on the ground that the Foot Note 7 is clear to the effect that the agreed rate should prevail even during the extended period of the agreement. The Judgment of the Division Bench was more based on the specific prohibition contained in Foot Note 7 of Schedule 'A' of the agreement therein. There is no such clause in the present agreement. It is not a case of escalation of rates. Here the major portion of the site was handed over beyond the period of agreement during which period the cost of labour and other materials have gone up. Without the site it was impossible for the contractor to complete the work and what the arbitrators have done is only to permit the contractor to claim the rates prevalent as per the S.S.Rs. in force. In our view, it is not prohibited either under the APDSS Rules or by any clause in the agreement.....".

24. We must clarify that, so far as the case before us is concerned, the claim of the respondent-contractor is not for escalation of rates, nor is it a claim for payment of rates as per the standard specification rates in force for the period beyond the originally agreed contract period. If so, the decision in State of A.P. v. S. Shivraj Reddy, 1988 (2) APLJ 465 has no application herein. In the case before us, the claim is a pure and simple claim for compensation. The amount claimed has been worked out on the basis of the rise in con-sumer price-index, and also on account of establishment and overhead charges. It would, therefore, be a case squarely governed by the principle of the decision in A.A.O. No. 677/81 and C.R.P. No. 385/82, dated 19-4-1982 (Andh Pra).

25. The learned Addl. Advocate-General also relied upon the decision of the Supreme Court in Continental Construction Co. Ltd. v. State of M. P., . In that case, the contract was entered into between the State of Madhya Pradesh and the appellant before the Supreme Court, for construction of a bund. The work could not be completed within the stipulated time because of the delays or the part of the State in allotment of work and discharge of its obligations under the contract. On account of this, the appellant incurred unforeseen extra expenditure, which claim was referred to arbitration. The State denied that there was any delay on its part. Apart from that, it submitted that the appellant's claim was barred by clause 3.3.15 of the contract, which read :

"3.3.15 :Clause 15. Time limit for unforeseen claim: Under no circumstances whatever shall the contractor be entitled to any compensation from government on any account unless the contrator shall have submitted claim in writing to the Engineer-in-charge within" one month of the cause of such claim occurring....". The contractor did not avoid the contract on the ground of delays or defaults on the part of the State. He completed the work. On these facts, the Supreme Court held:

> "The arbitrator misconducted himself in allowing the claim without deciding the objection of the State. In view of the specific clauses, the appellant was not legally entitled to claim for extra cost. The decision of this Court in Thawardas v. Union of India, is of no avail on this point. If no specific question of law is referred, the decision of the arbitrator on that question is not final however much it may be within his jurisdiction, and indeed essential for him to decide the question, incidentally. The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator is a tribunal selected by the parties to decide their disputes according -to law and so is bound to follow and apply the law, and if he does not, he can be set right by the court provided his error appears on the face of the award. In this case, the contractor having contracted he cannot go back to the agreement simply because it does not suit him to abide by it. The decision of this Court in M/s. Alopi Parshad v. Union of India, may be examined. There it was observed that a contract is not frustrated merely becaue the circumstances in which the contract was made altered. The Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract merely because on account of an uncomtemplated turn of events, the performance of the contract may become onerous.....".

When it was argued by the appellant that since the award was a non-speaking award and no mistake of law was apparent on the face of the record, the Supreme Court repelled the same holding that "this being a general question, in our opinion, the District Judge rightly examined the question and found that the appellant was not entitled to claim for extra cost in view of the terms of the contract and the arbitrator misdirected himself by not considering this objection of the State before giving the award.....". Reference was also made to the decision of the Privy Council in *Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co., Ltd*[1]. where it was held that the award of an arbitrator can be set aside on the ground of an error apparent on the face of the record only where the error is apparent either on the face of the award, or from any document incorporated in it. After referring to several authorities, the Supreme Court held that "the District Judge was entitled to examine the contract in order to find out the legality of the claim of the appellant regarding extra cost towards rise in price of material and labour", and observed further, "as was pointed out by the learned District Judge, clauses 2.16 and 2.4 stipulated that the contractor had to compiete the work in spite of rise in prices of materials and also rise in labour charges at the rates stiplated in the contract. There was a clear finding of the arbitrator that the contract was not rendered ineffective in terms of Section 56 of the Contract Act due to abnormal rise in prices of material and labour. This being so and the contractor having

completed the work, it was not open to him to claim extra cost towards rise in prices of material and labour. The arbitrator misconducted himself in not deciding this specific objection raised by the State regarding the legality of extra claim of the appellant....".

26. Applying the principle of the above decision to the facts of the case before us, it must be held that clause 59 bars a claim for compensation on account of any delays or hindrances caused by the department. In such a case, the contractor is entitled only to extension of the period of contract. Indeed, such an extension was asked for, and granted on more than one occasion. (The penalty levied for completing the work beyond the extended period of contract has been waived in this case). The contract was not avoided by the contractor, but he chose to complete the work within the extended time. In such a case, the claim for compensation is clearly barred by clause 59 -of the APDSS which is admittedly, a term of the agreement between the parlies.

27. Mr. P. Ramachandra Reddy, learned Counsel for the respondent-contractor, however, relied upon certain decisions as laying down a contrary proposition, to which we should now refer. The first decision relied upon is in P. M. Paul v. Union of India . In this case, the appellant-contractor urged that there was delay on the part of the respondent-Government in handing over the site, and that, on that account, he has incurred extra cost which he must be reimbursed. His claim was rejected, as also his request to refer the same to arbitration. Thereupon, it is said, the appellant-contractor abandoned the work. The dispute was thereafter referred to the arbitrator. One of the claims put forward by the appellant-contractor and allowed by the arbitrator -- related to the loss caused to the contractor due to increase in prices of material, cost of labour and transport during the extended period of contract. The respondent-State submitted that no such claim is contemplated, or provided for. by the agreement between the parties, and hence the arbitrator was not competent to allow the said claim. The Supreme Court observed that the dispute referred to the arbitrator, inter alia, was as to who is responsible for the delay and what are the repercussions of the delay in completion of the work, and how to apportion the consequences of such responsibility. It was observed :" After discussing the evidence and the submissions the arbitrator found that it was evident that there was escalation and. therefore, he came to the conclusion that it was reasonable to allow 20% of the compensation under claim I; he has accordingly allowed the same. This was a matter which was within the jurisdiction of the arbitrator and hence, the arbitrator had not misconducted himself in awarding the amount as he has done.... Once it was found that the arbitrator had jurisdiction to find that there was delay in execution of the contract due to the conduct of the respondent, the respondent was liable for the consequences of the delay, namely, increase in prices. Therefore, the arbitrator had jurisdiction to go into this question. He has gone into that question and has awarded as he did. Claim I is not outside the purview of the contract. It arises as an incident of the contract and the arbitrator had jurisdiction....". It must, however, be noticed that in this case the contract did not contain a clause like the one contained in Clause 59 of the APDSS. Where a similar clause was found as in the caseContinental Construction Co. Ltd. v. State of Madhya Pradesh , the Supreme Court held clearly that the arbitrator had no jurisdiction. It must be noted that the award in this case was a speaking reasoned award.

28. Mr. Ramachandra Reddy placed strong reliance upon the decision of the Supreme Court in M s. Sudarsan Trading Co. v. The Govt. of Kerala . Three questions were considered in this case, namely, (i) when is an award a speaking award; (ii) in the case of a non-speaking award, how and to what extent can the Court go to determine whether there is an error apparent on the face of the

award; and (iii) to what extent can the Court examine the contract between the parties which is not incorporated or referred to in the award? We are not concerned with the first question iff this case. The second and third questions are, however, relevant. On the second question arising before it, the Supreme Court referred to the decision of the Privy Council in Champsey Bhara & Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd.. AIR 1923 PC 66(Supra) and held that an award can be set aside on the ground of an error apparent on the face of the award only where the award, or any document incorporated therein contains some legal proposition which constitutes the basis of the award, and which is erroneous. It was observed that in the case of a non-speaking award it is not open to the Court to probe the menta! process of the arbitrator and speculate as to what impelled the arbitrator to arrive at the conclusion which he did. In this connection, the Court referred to its earlier decision in M/s. Alopi Parshad v. Union of India, , wherein it was held that an award can be set aside on the ground of an error apparent on the face of it, when the reasons given for the decision, either in the award or in any document incorporated in it, are based upon a legal proposition which is erroneous. The other principle enunciated in the said decision to the effect that "an award which ignores express terms of the contract, is bad" was also affirmed. It was pointed out that the ground of "error apparent on the face of the award" is distinct from the ground that the arbitrator exceeded his jurisdiction. It was pointed out that while in the latter case the Court can look into the arbitration agreement to determine whether the arbitrator exceeded his jurisdiction, in the former case the Court must confine its attention only to the award and to any other document or material incorporated therein. It was held that for determining whether there is an error apparent on the face of the award, the Court has no jurisdiction to look beyond the award and the documents, if any, incorporated therein. Now, in the case before us, the question is not whether the award suffers from an error apparent on its face, but whether the arbitrator has exceeded his jurisdiction in awarding compensation when the agreement specifically prohibit the same. In such a case, it is open to the Court to look to the terms of the agreement between the parties.

29. Mr. P. Ramachandra Reddy also relied upon the decisions of the Supreme Court in State of Orissa v. M/s. Lall Brothers, and Neelkantan and Brothers Construction v. Superintending Engineer, National Highways, Salem, but which, in our opinion, are not quite relevant to the issue before us. In the first case it was held that a non-reasoned award, which awards a lump sum without specifying the amount awarded under each claim/ count is still good between the parties. It is not open to the Court, it was held, to set it aside by speculating as to the reasons which must have impelled the arbitrator to come to the conclusion which he did, nor is it permissible for the purpose to establish by a process of inference and argument that the arbitrator has committed some mistake in arriving at his conclusion. In the second case, it was held that a non-reasoned award which contains no legal proposition which can be said to constitute the basis of the award cannot be interfered with by the Court.

30. We are, therefore, of the opinion that the decisions relied upon by Mr. Ramachandra Reddy do not lay down the proposition that where an award is questioned on the ground that the arbitrator had no jurisdiction to entertain a claim by virtue of the terms of the contract, the Court is precluded from looking to the terms of the contract. On the contrary, such a power is expressly recognized in one of the decisions cited, viz. Sudarsan Trading Co. v. The Govt. of Kerala . Further, as held by the Supreme Court in Continental Construction Co. Ltd. v. State of Madhya Pradesh, , where the agreement bars a particular claim, the arbitrator has no jurisdiction to award any amount towards such a claim, and that any such award would be incompetent and void.

31. There is yet another objection to the competency of the arbitrator to award any amount under claim No. 1 in this case. As would be evident from the claim of the respondent-contractor (extracted hereinbefore), the claim for compensation pertains (except in the case of one pier K7) to the period of contract. The period of contract stipulated in the agreement expired on 21-12-1973. Out of 9 items, mentioned in the Table (containing particulars of compensation claimed), 8 items pertain to the original period of contract itself. Moreover, in this case, it was agreed between the parties even before the formal agreement was executed that the period of contrat shall be extended by six months, which is evident from the respondent's letter dated 13-3-1970 referred to above. (The formal contract was executed in this case on 17-6-1970). It must, therefore, be assumed that in this case the period of contract expired on 21-6-1974. In any event, even if we take the original period of contract, the claim for compensation to a very major extent pertains to the original period of contract. The question is whether any claim for compensation is permissible for the original period of contract? It was held by a Bench of this Court of which one of us (Jeevan Reddy, J.) was a member -- in A.A.O. No. 786 of 1986 dated 1-12-1988, that such a claim is not permissible by virtue of clause 59 of the APDSS. We may also mention that in this decision the Bench distinguished another decision the Bench distingished another decision of this Court in *State of Andhra Pradesh v. R. V. Rajaram*[2] *where* the contractor's claim on account of statutory increase in the minimum wages and other categories of labour was allowed by the arbitrator, and upheld by the Court. We need not, however, refer to the facts and principles of the said decision since in the case before us the claim is not similar to the one in the said case. As already stated, in the case before us the claim is squarely one for compensation which is worked out on two bases, viz., (i) rise in consumer's price-index, and (ii) establishment and overhead charges and a large portion of the claim pertains to the original period of contract itself.

32. We may also state that it is not possible for us to apportion the amount awarded for the original period of contract and the amount awarded for the extended period, even assuming that the arbitrator was competent to make such an award for the extended period of contract.

33. For the above reasons, we are of the opinion that the arbitrator exceeded his jurisdiction in awarding the amount of Rupees 2,81,800/- under claim No. 1. The award of the said amount is liable to be deleted from the award.

34. Accordingly, the Civil Miscellaneous Appeal and the Civil Revision Petition are allowed in part. The amount awarded by the arbitrator under claim No. 1 shall be deleted. It is also held that the arbitrator had no power in law to award interest for the period commencing from the date of award till the date of decree of the Civil Court. However, the respondent-contractor shall be entitled to interest from the date of the decree (i.e., from 19-2-1985) at the rate of 15% per annum, till realisation. We are awarding interest at the rate of 15% per annum since that happens to be the rate which was adopted by the arbitrator in the award. There shall be no order as to costs.

35. Order accordingly.

Cases Referred.

1AIR 1923 PC 66
2(1988) 1 APLJ (HC) 536