Kerala State Electricity Board vs Kurien E. Kalathil on 9 March, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1351, 2018 (4) SCC 793, AIR 2018 SC (CIV) 1937, (2018) 4 SCALE 405, (2018) 4 ALL WC 3615, (2018) 1 CURCC 327

Author: R. Banumathi

Bench: R. Banumathi, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3164-3165 OF 2017

KERALA STATE ELECTRICITY BOARD AND ANR. …Appellants

Versus

KURIEN E. KALATHIL AND ANR. ...Respondents

JUDGMENT

R. BANUMATHI, J.

These appeals have been filed against the impugned judgment dated 28.01.2009 in W.P.(C) No.31108 of 2007 and order dated 23.06.2009 in R.P.No.542 of 2009, passed by the High Court of Kerala at Ernakulum in and by which the High Court directed the appellant- Kerala State Electricity Board (KSEB) to pay an amount of Rs.12,92,29,378/- with simple interest at the rate of 9% per annum in the dispute arising out of a contract between the appellant-Board and the respondent-Contractor.

2. The dispute between the appellant-Board and the respondent- contractor had a chequered history. Brief facts which led to filing of these appeals are as follows:- Appellant-Kerala State Electricity Board (KSEB) entered into an agreement on 16.09.1981 with respondent- contractor for construction of a composite dam across Karamanthodu at Padinjarethara in connection with Banasura Sagar Scheme (Kuttiyadi Augmentation Scheme). After commencement of work, Government of Kerala issued a notification dated 30.03.1983, by which minimum wages payable to certain categories of workers employed in works mentioned in notification was revised with effect from 01.04.1983. The respondent- contractor claimed labour escalation charges from 01.04.1983 to December, 1984. The Government of Kerala referred the matter to the industrial tribunal for adjudication of the dispute with regard to the claim of workmen employed for the construction of

dam for the wage rates and other benefits fixed in the Minimum Wages Notification issued by the State Government. The industrial tribunal passed the award dated 14.10.1993 holding that the notification of Government of Kerala was applicable to workmen employed by the respondent-contractor.

3. Respondent-contractor filed O.P.No.283 of 1995 claiming an amount of Rs.6,32,84,050/- towards labour escalation charges and an amount of Rs.7,66,35,927/- being interest at the rate of 18% per annum payable under Ex.P20 in respect of various bills issued by the respondent-contractor for the period 15.01.1985 to 31.10.1994. When the said writ was pending, the appellant-Board terminated the contract with respondent-contractor, which again came to be challenged before the High Court by filing O.P.No.10759 of 1997 against termination of contract and for the payment of works done (Ex.P59) by respondent- contractor. The High Court disposed of both the petitions by a common judgment dated 02.04.1998 holding that the termination of contract was arbitrary and directed the appellant-Board to pay the amount claimed by the respondent-contractor for payment of labour escalation as per Ex.P20 with interest at the rate of 18% per annum which the contractor claimed separately. The High Court also directed the appellant-Board to pay the amount claimed by the respondent-contractor under Ex.P59 towards additional work done by the respondent-contractor.

4. Being aggrieved, KSEB approached this Court by way of appeal in C.A.No.4092 of 2000 reported in Kerala State Electricity Board and Another v. Kurien E. Kalathil and Others, (2000) 6 SCC 293. In para (11) of the judgment, this Court observed that the contract between the parties is in the realm of private law and not a statutory contract and the matter could not have been agitated in the writ petition. However, having regard to the fact that the contract was of the year 1981 and that the notification for minimum wages was issued in 1983 and in the peculiar facts and circumstances, this Court did not interfere with the order of the High Court directing the payment of amount to the respondent-contractor as per Ex.P20; but reduced the rate of interest claimed under Ex.P20 from 18% per annum to 9% per annum. So far as Ex.P59 is concerned, there was no direction by this Court. Review petition filed by the appellant-Board came to be dismissed by this Court vide order dated 07.12.2000. Appellant-Board has so far paid an amount of Rs.12,82,96,320/- under Ex.P20 which was accepted by the respondent-contractor without any demur.

5. Three years after the payment under Ex.P20, respondent- contractor filed I.A.No.6 of 2006 seeking direction of the court to make payments due under judgment of this Court, with further interest to be paid forthwith. In I.A. No.6 of 2006, this Court has passed the following order:

> "By virtue of the impugned judgment of the High Court, the Kerala State Electricity Board is liable to pay certain amount to the Petitioner-Contractor. There is a dispute regarding the quantum of the amount payable. This Court, vide Judgment dated 19.7.2000, had confirmed the finding of the High Court. The Petitioner- Contractor would be at liberty to move the High Court of Kerala seeking further steps for the recovery of the amount and if there is any dispute between the petitioner-Contractor and the Electricity Board, the High Court would consider the same and issue appropriate directions within a reasonable time...."

6. Respondent-contractor filed W.P.(C) No.31108 of 2007 before the High Court seeking for a direction to the appellant-Board to release the amount as directed by the High Court and affirmed by this Court. By the impugned judgment dated 28.01.2009, the High Court allowed the writ petition directing the Board to pay: (i) Rs.4,12,58,224/- under Ex.P20 [Rs.2,29,34,559/-(principal) plus Rs.1,83,23,665/-(Interest)]; and (ii) Rs.8,79,71,154/- [Rs.5,81,53,892/- (principal) plus Rs.2,98,17,262/- (interest)] towards the amount payable for additional work done after adding labour escalation charges and material escalation charges as per Ex.P59. The High Court held that the total amount payable under Ex.P20 and Ex.P59 as on 31.12.2008 was Rs.12,92,29,378/- which is to be paid by the appellant-Board within three months with 9% simple interest from 01.01.2009 till date of payment. So far as the claim as to the additional work done, the High Court directed the parties to mutually discuss among themselves on disputed items in appeal. Further with the consent of the counsel for the parties, the High Court referred the matter to the sole arbitrator Justice K.A. Nayar, former Judge of the High Court of Kerala to resolve the dispute relating to items which they could not amicably resolve. The appellant-Board filed review bearing R.P. No.542 of 2009, which came to be dismissed on 23.06.2009. Being aggrieved, the appellant-Board is before us.

7. We have heard the learned counsel for the parties at length and perused the impugned judgment and also judgment of this Court in C.A.No.4092 of 2000 and I.A. No.6 of 2006 and other materials on record. In the facts and circumstances of the present case and since public money is involved, we deem it a fit case for reappreciating the facts and the materials on record or otherwise the findings of the High Court are likely to result in excessive hardship to the appellant-Board and consequently passed on to the consumers.

8. EX.P20-CLAIM FOR LABOUR ESCALATION AND INTEREST THEREON-WHETHER ANY AMOUNT IS PAYABLE TO THE RESPONDENT: Ex.P20 pertains to the bills from CC.14 to CC.78 towards the work done, labour escalation charges and the interest thereon. Under the impugned judgment, the High Court has directed the appellant-Board to pay Rs.4,12,58,224/- under Ex.P20 [Rs.2,29,34,559/- (principal) plus Rs.1,83,23,665/- (interest)]. The respondent-contractor claimed that even after payment of Rs.12,82,96,320/-, an amount of Rs.3,38,57,618/- is still due to be paid to him under Ex.P20 i.e. principal (Rs.2,29,34,559/-) and subsequent interest (Rs.1,09,23,059/-). According to KSEB by 10.02.2003, it has paid a total amount of Rs.12,82,96,320/- under Ex.P20 and actually made excess payment of Rs.1,74,75,247/-. Direction of the High Court to pay the amount of Rs.4,12,58,224/- under Ex.P20 has two components:- (i) claim of the respondent-contractor payable as principal under Ex.P20-Rs.2,29,34,559/-; and (ii) subsequent interest thereon. Dispute in the amount payable under Ex.P20 is twofold:- (i) Mode of appropriation of payments made by the Board; and (ii) claim for subsequent interest.

9. Ex.P20-MODE OF APPROPRIATION OF PAYMENT MADE: While claiming the charges for labour escalation, in column no.(3), the respondent-contractor has shown the value of work done under each bill and separately shown "Labour Escalation Due" on each bill by showing the method of calculation/appropriation. For proper appreciation, we may usefully refer to the claims made under the bills from CC.14 to CC.18 and then from CC.68 to CC.75 (Ex.P20), which read as under:-

CC Month Value of Minimum Present wage for the corresponding month Difference Formulae Labour Advance Remarks No. to which work wage Escalation due received relates done (R) for the Consu- Index D.A. at Basic Hill total base mer number 0.06 ps wage of allowance period price after per ordinary 15% in the Index deduct-ing point labourer Agt. number 100 points of as in Govt.

Meppa- Notifica-

di tion

CC.14 12/84 2651230.00 13.00 316 216 12.96 12.90

CC.15 1/85 3885356.00 13.00 316 216 12.96 12.00

CC.16 3/85 2520496.00 13.00 314 214 12.84 12.00

CC.17 4/85 1591848.00 13.00 316 216 12.96 12.00

CC.18 5/85 3782665.00 13.00 318 218 13.08 12.00

.....

CC.68 12/91 2039002.00 13.00 545 445 26.7 12.00

Ways and Means advance received on 15.1.92
CC.69 1/92 2221294.00 13.00 552 452 27.12 12.00

CC.70 2/92 2502304.00 13.00 553 453 27.18 12.00

Ways and Means Advance received on 13.3.92
CC.71 3/92 2248500.00 13.00 552 452 27.12 12.00

CC.72 4/92 1312431.00 13.00 553 453 27.18 12.00

CC.73 5/92 2608465.00 13.00 558 458 27.48 12.00

CC.74 6/92 3573468.00 13.00 562 462 27.72 12.00

Ways and means advance received on 30.10.92
Adhoc Advance received on 14.1.93
CC.75 1/93 2088949.00 13.00 593 493 29.58 12.00

In the same manner, for all the bills, the respondent-contractor has calculated the "Value of work done", "difference in wages" and "Labour Escalation Charges" on

monthly basis. After so calculating the claim under all the bills, the respondent-contractor had shown the dates on which advances received in column no.(14) and deducted the advance received towards the principal and finally shown Rs.6,32,84,050/- as total amount due towards labour escalation. As seen from the above tabular column, in computation of his claims in Ex.P20, the respondent-

contractor himself thus adjusted all payments received from the appellant-Board, only towards the principal and not towards interest.

10. The respondent-contractor has separately calculated the interest payable on "Labour Escalation Due" claimed under each bill at the rate of 18% i.e. Rs.7,66,35,927/-. For proper appreciation, we may usefully refer to bills from CC.14 to CC.18 and from CC.68 to CC.75 as to how the interest was calculated and claimed separately which read as under:

CC Labour Less advance Accumulated Date from Period No. of Rate of Interest Remarks No. Escalation received Balance which due days interest Due due From To CC.14 12,82,029.00 - 12,82,029.00 15.1.85 15.1.85 14.3.85 59 18% 37,302.00 CC.15 18,78,803.00 31,60,832.00 15.3.85 15.3.85 14.4.85 31 18% 48,322.00 CC.16 12,08,719.00 - 43,69,551.00 15.4.85 15.4.85 14.5.85 30 18% 64,645.00 CC.17 7,69,754.00 - 51,39,305.00 15.5.85 15.5.85 14.6.85 31 18% 78,568.00 CC.18 18,36,136.00 - - - - - - -

.....

CC.68 19,78,868.00		605,22,166.00	15.1.92	15.1.92	
Ways and Means Advance	30,00,000.00				
CC.69 21,88,623.00		597,10,789.00	15.2.92	15.2.92	
CC.70 24,70,895.00		621,81,684.00	15.3.92	15.3.92	
Ways and Means Advance	30,00,000.00				
CC.71 22,15,429.00	-	613,97,113.00	15.4.92	15.4.92	
CC.72 12,95,957.00	-	626,93,070.00	15.5.92	15.5.92	
CC.73 26,03,039.00	-	652,96,109.00	15.6.92	15.6.92	
CC.74 35,96,853.00	-	688,92,962.00	15.7.92	15.7.92	
Ways and Means Advance	30,00,000.00				
Adhoc Advance	25,00,000.00				
CC.75 22,40,306.00	-	656,33,268.00	15.2.93	15.2.93	
.....					
					Total inte

11. Parties are governed by the terms of the contract. Clause E1.079 of the agreement dated 16.09.1981 expressly provided that the appellant would pay no interest to the respondent-contractor for delayed payment. Clause E1.079 of the agreement reads as

under:-

> "E1.079 No claim for delayed payment due to dispute etc. No claim for interest or damages will be entertained by the Board with respect to any money or balance which may be lying with the Board owing to any dispute, difference or misunderstanding between the Engineer on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer- in-charge in making periodical or final payment or any respect whatsoever, and the Board shall not be liable for any interest or damages or loss to the contractor."

Even as per respondent's own letter No.D.W/94/090 dated 25.11.1994, the respondent-contractor has deducted the advances paid only towards the principal and claimed interest. The said letter reads as under:-

> "I am herewith submitting a comprehensive Statement (Claim bill), giving the details of labour escalation payable against each C.C Bill, deducting the advances paid to me which are adjustable against the dues. The net labour escalation amount payable as on 31.10.1994 works out to Rs.6,32,84,050.00, after thus deducting the advances received. The interest amount payable has also been worked out and included in the enclosed bill, separately, which comes to Rs.7,66,35,927.00. The total amount due as on 31.10.1994 is Rs.13,99,19,1977.00. This amount may be paid to me without further delay."

Thus by his own calculation and as per his own letter dated 25.11.1994, the respondent-contractor has adjusted all payments received from the Board firstly towards the principal.

12. But when the respondent filed I.A.No.6 of 2006, the entire method of calculation was changed by showing adjustment of payments firstly towards interest and then towards principal, only to claim that in spite of payment of Rs.12,82,96,320/- by the Board, amounts are still due and payable to him. In the calculation sheet filed alongwith I.A. No.6 of 2006 while making adjustments of payment of rupees four crores (payment made to the respondent-contractor during the pendency of the earlier round of writ petition), the same was adjusted firstly against the interest and then against the principal amount. The calculation sheet filed by the respondent-contractor in I.A.No.6 of 2006 is as under:-

> Principal (in Rupees) Interest @ 9% (in Rupees) Remarks Balance DR CR Date Particulars DR CR Balance 63284050 Principal amount of Labour Amount received from Kerala State Escalation upto CC 78 as per Electricity Board is firstly adjusted Ext. P20 against interest and then principal amount Interest upto CC 78 for the period 40218107 upto 20.6.95 20.06.95 Amount Received Rs. 1 crore 10000000 30218107 Interest from 21.6.95 to 13.2.96 3713820 33931927

13.02.96 Amount Received Rs.1crore 10000000 23931927 Interest from 14.2.96 to 23.2.96 156043 24087970 23.02.96 Amount Received Rs.2 crores 20000000 4087970 Interest 24.2.96 to 20.3.01

28867930 32955900 56239950 7044100 20.03.01 Amount received (4 crores) 32955900 0 Out of Rs.4 crores received the interest as on this date Rs.32955900/- is wiped off and balance Rs.7044100 adjusted against principal amount Interest 21.3.01 to 5.9.01 2343588 48583538 7656412 05.09.01 Amount received (1 crore) 2343588 0 Out of Rs.1 crore received, the interest as on this date Rs.2343588/- is wiped off and balance Rs.7656412 adjusted against principal amount Interest from 6.9.01 to 12.10.01 443242 29026780 19556758 12.10.01 Amount received (2 crores) 443242 0 Out of Rs.2 crore received the interest as on this date Rs.443242/- is wiped off and balance Rs.19556758 adjusted against principal amount Interest 13.2.01 to 1.6.02 1660491 23955276 5071504 01.06.02 Amount received (6731995) 1660491 0 Out of Rs.67,31,995/- received the interest as on this date Rs.1660491/- is wiped off and balance Rs.5071504/-

adjusted against principal amount Interest 2.6.02 to 17.8.02 454822 22734120 1221156 17.08.02 Amount received (1675978) 454822 0 Out of Rs.16,75,978/- received the interest as on this date Rs.454822/- is wiped off and balance Rs.1221156/-

adjusted against principal amount Interest 18.8.02 to 10.2.2003 992204 13837977 8896143 10.02.03 Amount received (9888347) 992204 0 Out of Rs.98,88,347/- received, the interest as on this date Rs.992204/- is wiped off and balance Rs.8896143/-

adjusted against principal amount Interest from 11.2.03 to 31.5.05 2866168 2866168 81716415

13. Pursuant to the directions of the High Court and after disposal of C.A.No.4092 of 2000, the appellant-Board made a total payment of Rs.12,82,96,320/-. Since the respondent-contractor changed the method of adjustment i.e. by adjusting the payment firstly towards interest and then towards principal, even after payment of Rs.12,82,96,320/-, according to him Rs.3,38,57,618/- was still due to him. The said calculation shown in I.A.No.6 of 2006, reads as under:-

> Ext.P20 (LABOUR ESCALATION) Labour escalation claimed in CC Bill 14 to (Ref.Ext.P20) ..... 63284050 Labour escalation claimed in CC Bill 79 to (Schedule 3) ..... 9096582 Total ..... 72380632 Total interest upto 31.05.2005 @ 9% (Schedule 2 & 3) (81716415 + 8056891) 89773306 Total Amount due as on 31.5.2005 ..... 162153938 Less: Amounts received from K.S.E. Board (Schedule 6) ..... 128296320 on various dates (adjusted firstly against interest and then principal amount) Balance amount due as on 31.5.2005 (Schedule 5) ..... 33857618 Principal amount ..... 22934559 Interest ..... 10923059 ..... 33857618 This manner of appropriation, firstly towards the interest is in clear violation of the directions given by this Court to make payment under Ex.P20 and the method of adjustment which the respondent-contractor himself adopted in Ex.P20. In the original Ex.P20, when respondent-
>
> contractor himself has expressly adjusted all payments made by the appellant towards principal and not towards interest, the respondent-

> contractor cannot turn round and change the method of calculation by showing the adjustment of payments made first against the interest and then towards the principal. This important aspect of change in the method of adjustment/appropriation was lost sight by the High Court and the direction of the High Court to make further payment of Rs.4,12,58,224/- under Ex.P20 is not sustainable.

14. IN THE FACTS OF THE PRESENT CASE WHETHER THE RESPONDENT-CONTRACTOR IS JUSTIFIED IN APPROPRIATION OF PAYMENT FIRSTLY TOWARDS INTEREST: Learned counsel for the respondent-contractor submitted that in the case of a debt due with interest, the normal rule is that any payment made by the debtor, in the first instance, to be adjusted towards satisfaction of interest and only thereafter to the principal. In support of his contention, learned counsel placed reliance upon Meghraj and Others v. Mst. Bayabai and Others (1969) 2 SCC 274 and Industrial Credit and Development Syndicate now called I.C.D.S. Ltd. v. Smithaben H. Patel (Smt.) and Others (1999) 3 SCC 80.

15. In I.C.D.S.'s case, while considering how the payments made by the judgment-debtor are to be adjusted, in para (14), it was held as under:

> 14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e., that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt." [Underlining added]

16. In Mathunni Mathai v. Hindustan Organic Chemicals Ltd. and Ors., (1995) 4 SCC 26, it has been held that Order XXI Rule 1 CPC as amended in 1976 is applicable in executing the award made under the Land Acquisition Act. In Mathunni Mathai's case, it was indicated that if the decretal amount is deposited by the judgment-debtor pursuant to the order of the Court and the judgment-debtor has not given notice of such deposit to the decree holder and also does not specify the manner in which the amount should be appropriated, then the decree holder will be entitled to appropriate the amount deposited by the judgment-debtor firstly towards interest and other expenses and the decree holder is not bound to adjust the same towards the principal. In Prem Nath Kapur and Anr. v. National Fertilizers Corporation of India Ltd. and Others , (1996) 2 SCC 71; the decision in Mathunni Mathai's case has been expressly overruled by a three Judges Bench of the Supreme Court on the finding that Order XXI Rule 1 CPC cannot be extended to the execution of an award made under the Land Acquisition Act on the score of its inconsistency with the provisions of

Land Acquisition Act.

17. The view taken in Prem Nath Kapur's case was approved as a correct view in Gurpreet Singh v. Union of India (2006) 8 SCC 457. Though the question posed for consideration before the Constitution Bench in Gurpreet Singh's case was whether the view taken in Prem Nath Kapur's case is correct and whether the rule of "different stages of appropriation" set out in Prem Nath Kapur's case was required to be restated on the scheme of the Land Acquisition Act, the Constitution Bench specifically dealt with Order XXI Rules 1, 2, 4 and 5 CPC and clarified the position. After referring to the relevant portion of the decision in Gurpreet Singh's case, in Bharat Heavy Electricals Ltd. v. R.S. Avtar Singh and Company (2013) 1 SCC 243, this Court summarized the principles emerging as under:

> "31. From what has been stated in the said decision, the following principles emerge:
>
> 31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties. 31.2. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1)(b).
>
> 31.3. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.
>
> 31.4. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter. 31.5. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation." [Underlining added]

18. As held in Constitution Bench judgment in Gurpreet Singh's case followed in BHEL's case, if there is a direction in the decree as to the mode of appropriation of payment, then appropriation of any payment made by the judgment-debtor has to be strictly in accordance with the direction contained in the decree. If there is no such direction in the decree, then the general principle is that where a judgment-debtor makes payment without making any indication as to how the payment is to be adjusted, it is the option of the creditor to make adjustment firstly towards the interest and

then towards the principal. But if the judgment- debtor has indicated the manner in which the appropriation is to be made, then the creditor has no choice to apply the payment in a different manner. The general principle of mode of appropriation firstly in payment of interest and thereafter in payment of principal amount is subject to the exception i.e. the parties may agree to the adjustment of the payment in any other manner despite the decree.

19. In C.A.No.4092 of 2000, this Court directed payment as per Ex.P20. As held in Gurpreet Singh's case, the payment is to be appropriated strictly in accordance with the directions contained in the decree. In C.A.No.4092 of 2000, since this Court directed the payment as per Ex.P20 and therefore, the appropriation/adjustment of payment has to be made strictly as stated in Ex.P20. When the direction of the court is to make payment as per Ex.P20, the respondent-contractor cannot turn round and say that the amount received by him will be adjusted towards the interest first and then towards the principal.

20. An 'Appropriation of money' is the indication of an intention that money should be applied in a particular way. In the present case, the statement of respondent-contractor himself and other circumstances clearly indicate that payment ought to be adjusted only towards the principal amount. As discussed earlier, in Ex.P20 the respondent- contractor himself has shown the labour escalation due as principal amount and interest thereon separately and has given the credit of the advances made by the Board firstly towards the principal and claimed the balanced amount of the principal. At this juncture, we may usefully recapitulate respondent's own letter to the appellant-Board dated 25.11.1994 extracted in para (11) above where the respondent- contractor himself has stated that he has deducted the advances from the principal amount claimed under "Labour Escalation Charges" and "interest" are shown separately.

21. By his own statement, the respondent-contractor has firstly appropriated the advances towards the labour escalation due i.e. the principal amount. The respondent-contractor is not justified in changing the method of calculation and claim appropriation of the payments firstly towards the interest and then towards the principal amount. The claim of the respondent-contractor for a further sum of Rs.2,29,34,559/- with interest under Ex.P20 cannot be sustained and the direction of the High Court to pay the same is liable to be set aside.

22. WHETHER RESPONDENT-CONTRACTOR IS ENTITLED TO SUBSEQUENT INTEREST ON THE AMOUNT CLAIMED IN EX.P20: Insofar as Ex.P20, in O.P. No.283 of 1995, the High Court granted the following relief:-

> "...We, therefore, grant prayer (b) as prayed for and issue a writ of mandamus directing the second respondent to pay the petitioner interest at 18% on the amount shown in the statement, Ext.P20...."

In O.P. No.283 of 1995, the respondent-contractor in prayer (b), prayed for issuance of writ of mandamus directing the appellant-Board to pay the amount shown in the statement Ex.P20 together with interest thereon within a time to be fixed by this Court. Ex.P20 relates to "Labour Escalation Charges" and "Interest" thereon claimed separately. As seen from prayer (b) in O.P.

No.283 of 1995, there was no prayer for future interest; also, there was no direction by the High Court for payment of subsequent interest.

23. In the appeal before this Court in C.A. No.4092 of 2000, this Court observed that disputes among such contractual or commercial activities of a statutory body should not have been agitated in the writ court. However, since the labour escalation notification for minimum wages was issued way back in 1983, this Court directed the amount as shown in Ex.P20 to be paid to the respondent-contractor with interest at the rate reduced from 18% to 9% p.a. This Court held as under:

> "15. The High Court has directed the Board to pay to the contractor the amounts shown in the statement Ext. P-20 along with interest @ 18% per annum. Having considered the totality of the circumstances, we feel that it would be just and proper to award interest @ 9% per annum instead of 18%. In the statement Ext. P-20, the contractor has calculated interest @ 18% per annum. The interest amount would now be calculated at 9% instead of 18% per annum. The impugned judgment of the High Court is modified accordingly."

The above order of this Court directs payment by the appellant Board only of the amount shown in Ex.P20 with reduced interest at 9% p.a. There is no direction by this Court to pay subsequent interest on Ex.P20.

24. Under sub-section (2) of Section 34 CPC, where a decree is silent as to payment of further interest on the principal sum, it shall be deemed to have been refused. Section 34(2) CPC reads as under:-

> 34. Interest.
>
> (1) .....
>
> (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

In the present case, since there is no direction for future interest, in view of sub-section (2) of Section 34 CPC, it must be deemed that the court has refused such interest. The respondent-contractor cannot claim further interest on the amount payable under Ex.P20 beyond the date of judgment of the High Court (02.04.1998) and in any event not beyond the date of judgment of this Court (19.07.2000).

25. The respondent-contractor himself has understood the order of this Court in CA No.4092 of 2000 that there was no direction for payment of further interest on the amount payable under Ex.P20. In I.A. No.6 of 2006, the respondent-contractor specifically prayed for payment of further

interest to the appellant forthwith [prayer (i) in I.A. No. 6 of 2006] which was not granted by this Court in its order dated 24.09.2000 while disposing of I.A. No.6 of 2006. The appellant-Board has paid a total amount of Rs.12,82,96,320/- and according to the Board, it has overpaid the respondent-contractor an excess amount of Rs.1,74,75,247/-. In the absence of any direction in the underlying order of the High Court and order of this Court in C.A. No.4092 of 2000 to pay subsequent interest, the respondent-contractor is not entitled to claim subsequent interest on the amount payable under Ex.P20. The direction of the High Court to pay subsequent interest of Rs.1,83,23,665/- under Ex.P20, is not sustainable.

26. The impugned judgment of the High Court directing the appellant- Board to pay Rs.4,12,58,224/- in Ex.P20 [Rs.2,29,34,559/- (principal) plus Rs.1,83,23,665/- (subsequent interest)] under Ex.P20, is set aside.

27. Claim under Ex.P59 for the additional work and subsequent interest: So far as Ex.P59 is concerned, it is towards additional work done - material escalation and labour escalation. So far as Ex.P59 is concerned, in the earlier round of litigation in O.P.No.283 of 1995, in para (26) of its judgment, the High Court held as under:

> "26. The Board shall also pay to the petitioner the bills raised by him for the work done till date including labour escalation payment etc. etc. as ordered in O.P. No.283 of 1995....."

28. Contention of the respondent-contractor is that in C.A. No.4092 of 2000, since this Court did not make any observation regarding respondent's claim made under Ex.P59, the order of the High Court directing payment under Ex.P59 has become final and the amount claimed thereon in Ex.P59 has to be paid to the respondent-contractor. While disposing of the appeal in C.A. No.4092 of 2000, this Court, of course, did not make any observation regarding Ex.P59. But respondent's claim under Ex.P59 for additional work done has to be examined in the context of this Court's observation that "....The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India..." and ".....Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition.....". Having said so, this Court proceeded to direct the appellant to pay the amount as claimed under Ex.P20.

29. Be that as it may, so far as Ex.P59 is concerned, the contractor has made a claim of Rs.5,55,62,597/- towards additional work including departmental materials and the Board has disputed the claim made by the respondent-contractor in I.A.No.6 of 2006 and pleaded that the total work done by the contractor was only for Rs.1,55,65,817/- including cost of departmental materials. The relevant portion of the counter affidavit filed by the Board in I.A.No.6 of 2006 reads as under:-

> "56. As per Ext.P59, the contractor had demanded an amount of Rs.5,55,62,597/- including departmental materials and excluding tender excess, material escalation and labour escalation. Out of this, 23 items were wrongly claimed in Ext.P59 by the

> contractor and the same was withdrawn by the contractor in his next bill. ie CC 86 bill submitted to the Board. The amount for the above 23 items wrongly claimed would come to Rs.49,40,251/-. So the net amount claimed by the contractor would come to Rs.5,06,22,346/-. Whereas, the total work done by the contractor was Rs.1,55,65,817/- including cost of departmental materials and excluding tender excess, Material escalation and labour escalation.
>
> A detailed statement on each items claimed by the contractor in Exhibit P59 and the claim admitted by the Board and their remarks is appended."

30. Taking us through the counter filed by the appellant in W.P.(C) No.31108 of 2007, learned senior counsel for the respondent-contractor submitted that the claim of the respondent-contractor in Ex.P59 on various items was not disputed by the appellant in its counter filed in WP(C) No.31108 of 2007. This contention does not merit acceptance. As pointed out above, the claim of the respondent-contractor on each one of the items in Ex.P59, the appellant-Board has filed a detailed reply in I.A.No.6 of 2006 disputing the claim on each of the items claimed by the respondent-contractor. It is in this context, this Court has disposed of I.A. No.6 of 2006 observing that there is dispute regarding the quantum of the amount payable and giving liberty to the respondent- contractor to move to the High Court. It is seen from the impugned judgment that the High Court has also taken note of the counter filed by the appellant-Board in I.A.No.6 of 2006 in which the appellant-Board disputed each one of the items in Ex.P59 and also referred to the same in its order and the same reads as under:

> "9. .....If we accept the statement of the Board in paragraph 56 of the counter filed before the Supreme Court, the net amount exclusive of the tender excess, material escalation and labour escalation can only be Rs.5,06,22,346/-. .....The contention of the Board that out of the above amount, only Rs.1,55,65,817/- is payable cannot prima facie be accepted, as the measurement was taken by the Board after ten years of the judgment (Ext.P1)...."

31. The High Court proceeded to observe that the contention of the appellant that only Rs.1,55,65,817/- is payable under Ex.P59 cannot prima facie be accepted as the measurement was taken by the Board after ten years of the judgment (Ex.P1); whereas the contractor's claims were made then and there by the contractor on actual measurement. After so referring to the dispute between the parties, the High Court observed that there is dispute with regard to the actual measurements of certain additional works as well as the contractual rates, the same has to be factually verified and calculations are to be made and that the matter has to be discussed with the parties. The High Court directed the appellant-Board to pay Rs.8,79,71,154/-[Rs.5,81,53,892/- (principal) plus Rs.2,98,17,262/- (interest)]. The split-up figure of principal amount of Rs.5,81,53,892/- is as under:-

> Claim in Ex.P59 admitted by the Board ..... 1,55,65,817 .
>
> Material Escalation 98% of Ex.P59 ..... 1,52,54,501 .

Labour Escalation at 173.60% of Ex.P59 ..... 2,70,22,258 .

Tender Excess at 2% of Ex.P59 ..... 3,11,316 .

..... 5,81,53,892 .

32. The High Court ordered single uniform rate for labour escalation at 173.60% and material escalation at 98% of Ex.P59. The contention of the appellant-Board is that the direction of the High Court to pay at uniform rate of 98% and 173.60%, is contradictory to the terms of the agreement and as per own calculation of the respondent-contractor. According to the Board, material escalation and labour escalation are to be calculated on a monthly basis as claimed by the respondent-contractor in other bills. In Ex.P20, the respondent-contractor himself calculated labour escalation on monthly basis and has not followed his own prior example. The High Court did not keep in view the respondent's own method of calculation of labour escalation on monthly basis and erred in allowing labour escalation and material escalation at single uniform rate of 173.60% and 98% respectively and the direction of the High Court to pay Rs.5,81,53,892/- is not sustainable. Since appellant has admitted the amount of Rs.1,55,65,817/- as payable under Ex.P59, the same is payable with labour escalation and material escalation calculated on monthly basis.

33. The High Court has directed the appellant to pay subsequent interest of Rs.2,98,17,262/- on the amount directed to be paid under Ex.P59. As discussed earlier, there was no direction either by the High Court or by this Court to pay future interest qua Ex.P20. In the earlier round of litigation, the High Court only directed the appellant to pay the amount as ordered in Ex.P20. In view of the express provision of sub- section (2) of Section 34 CPC, no future interest is payable under Ex.P59. The direction of the High Court to pay future interest of Rs.2,98,17,262/- on the claims made under Ex.P59 is not sustainable and is liable to be set aside.

34. REFERENCE TO ARBITRATION: After pointing out the disputed claims of additional work (Ex.P59) and on the oral consent of the counsel for the appellant, the High Court has referred the parties to arbitration appointing Justice K.A. Nayar as the arbitrator. Arbitrator/ Tribunal is a creature of the contract between the parties. There was no arbitration agreement between the parties. The question falling for consideration is whether the High Court was right in referring the parties to arbitration on the oral consent given by the counsel without written instruction from the party.

35. Jurisdictional pre-condition for reference to arbitration under Section 7 of the Arbitration and Conciliation Act is that the parties should seek a reference or submission to arbitration. So far as reference of a dispute to arbitration under Section 89 CPC, the same can be done only when parties agree for settlement of their dispute through arbitration in contradistinction to other methods of alternative dispute resolution mechanism stipulated in Section 89 CPC. Insofar reference of the parties to arbitration, oral consent given by the counsel without a written memo of instructions does not fulfill the requirement under Section 89 CPC. Since referring the parties to arbitration has serious consequences of taking them away from the stream of civil courts and subject them to the rigour of arbitration proceedings, in the absence of arbitration agreement, the court can refer them

to arbitration only with written consent of parties either by way of joint memo or joint application; more so, when government or statutory body like the appellant-Board is involved.

36. Emphasizing that under Section 89 CPC, referring the parties to arbitration could be made only when the parties agree for settlement of the dispute through arbitration by a joint application or a joint affidavit before the court, in Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. (P) Ltd. and Ors. (2010) 8 SCC 24, this Court held as under:-

> "33. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under Section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order-sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under Section 89 of the Code; and on such reference, the provisions of the AC Act will apply to the arbitration, and as noticed in Salem Bar Bar Association, T.N. v. Union of India (I) (2003) 1 SCC 49, the case will go outside the stream of the court permanently and will not come back to the court."

[Underlining added] The same view was reiterated in Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619 which is as under:-

> "28. It has been noticed by this Court in some earlier judgments † that Section 89 CPC is not very happily worded. Be that as it may, Section 89 provides for alternate methods of dispute resolution i.e. those methods which are alternate to the court and are outside the adjudicatory function of the court. One of them with which we are concerned is the settlement of dispute through arbitration. Insofar as reference of dispute to arbitration is concerned, it has been interpreted by this Court that resort to arbitration in a pending suit by the orders of the court would be only when parties agree for settlement of their dispute through arbitration, in contradistinction to the Alternate Dispute Resolution mechanism (for short "ADR") through the process of mediation where the Judge has the discretion to send the parties for mediation, without even obtaining the consent of the parties. Thus, reference to arbitration is by means of agreement between the parties. It is not in dispute that there was an agreement between the parties for reference of dispute to the arbitration and it was so referred."

[Underlining added]

37. The learned senior counsel for respondent-contractor placed reliance upon Byram Pestonji Gariwala v. Union Bank of India and Ors., (1992) 1 SCC 31 to contend that the counsel has the implied authority to consent for arbitration on behalf of a party. In Byram Pestonji Gariwala case, this Court made it clear that the counsel should not act on implied authority unless there is exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the

signature of the party cannot be obtained without undue delay. In para (37) of Byram Pestonji Gariwala case, it was held as under:-

> "37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession."

38. In a subsequent decision in the context of examining the compromise under Order XXIII Rule 3 CPC, in Banwari Lal v. Chando Devi (Smt) (Through LRs.) and Anr. (1993) 1 SCC 581, this Court has observed that the case of Byram Pestonji Gariwala had ignored the law laid down in Gurpreet Singh v. Chatur Bhuj Goel (1988) 1 SCC 270 and held that when parties enter into a compromise, the court must insist upon the parties that the compromise be reduced into writing. In para (10) in Banwari Lal case, it was held as under:-

> "10. ..... The order on face of it purported to dismiss the suit of the plaintiff on basis of the terms and conditions mentioned in the petition of compromise. As such, the validity of that order has to be judged treating it to be an order deemed to have been passed in purported exercise of the power conferred on the Court by Rule 3 of Order 23 of the Code. The learned Subordinate Judge should not have accepted the said petition of compromise even if he had no knowledge of the fraud alleged to have been practised on the appellant by his counsel, because admittedly the petition of compromise had not been signed either by the respondent or his counsel. This fact should have been discovered by the Court. In the case of Gurpreet Singh v. Chatur Bhuj Goel (1988) 1 SC 207 it has been said: (SCC p. 276, para 10) “Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing.”

39. Referring the parties to arbitration has serious civil consequences. Once the parties are referred to arbitration, the proceedings will be in accordance with the provisions of Arbitration and Conciliation Act and the matter will go outside the stream of the civil court. Under Section 19 of

Arbitration and Conciliation Act, the arbitral tribunal shall not be bound by the Code of Civil Procedure and the Indian Evidence Act. Once the award is passed, the award shall be set aside only under limited grounds. Hence, referring the parties to arbitration has serious civil consequences procedurally and substantively. When there was no arbitration agreement between the parties, without a joint memo or a joint application of the parties, the High Court ought not to have referred the parties to arbitration.

40. The impugned order referring the parties to arbitration, in any event, inter alia, cannot be sustained on other grounds also. While referring the parties to arbitration, the impugned judgment has, inter alia, made many observations affecting crucial areas of disputes namely:- (i) check measurements for the works done - "measurements taken by the Board after ten years of judgment; whereas the claims made by the contractor then and there on actual measurement"; (ii) percentage of labour escalation ordered by the High Court @ 173.60% is contradictory to the prior method of calculation adopted by the respondent-contractor in the labour escalation; and (iii) materials escalation @ 98%. These observations in the impugned judgment would seriously prejudice the rights of the appellant-Board in pursuing the matter before the Arbitral Tribunal.

41. Contention of the respondent-contractor is that the appellant- Board has not raised the issue of absence of arbitration agreement before the Tribunal and the jurisdiction of the Arbitral Tribunal. Since the appellant-Board has challenged the impugned order before this Court in the matter pending for consideration, the appellant-Board could not have raised the issue of lack of jurisdiction before the Arbitral Tribunal and the contention of the respondent-contractor does not merit acceptance.

42. The arbitrator has passed the award dated 30.09.2012 for Rs.19,98,05,805.72 with interest @ 9% p.a. which was subsequently corrected on 29.10.2012 as Rs.21,55,34,430.55 with interest @ 9% p.a. The appeal preferred by the appellant under Section 34 of the Act was dismissed by the District Judge, Thiruvananthapuram vide order dated 23.12.2015. The appeal preferred by the appellant under Section 37 of the Arbitration and Conciliation Act (Arbitration Appeal No.Z-47 of 2013) was transferred to this Court. While directing the appellant-Board to pay rupees five crores to the respondent-contractor on furnishing undertaking vide order dated 20.02.2017, this Court directed Arbitration Appeal No.Z-47 of 2013 to be sent back to the High Court. Since the impugned judgment of the High Court is set aside, the award passed by the Arbitrator is liable to be set aside and consequently the Arbitration Appeal No.Z-47 of 2013 pending before the Kerala High Court shall stand allowed.

43. IN EXERCISE OF JURISDICTION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA-WHETHER THIS COURT CAN INTERFERE:

> Learned senior counsel for the respondent-contractor urged that in exercise of jurisdiction under Article 136 of the Constitution of India, the Supreme Court normally does not reappreciate the evidence and findings of fact unless there is miscarriage of justice or manifest illegality. In support of his contention, learned senior counsel placed reliance upon Taherakhatoon (D) by LRs. v. Salambin

Mohammad (1999) 2 SCC 635.

44. In exercise of jurisdiction under Article 136 of the Constitution of India, this Court does not normally reappreciate the evidence and findings of fact; but where the findings of the High Court are perverse or the findings are likely to result in excessive hardship, the Supreme Court would not decline to interfere merely on the ground that findings in question are findings of fact. After referring to various judgments on the scope in exercise of power under Article 136 of the Constitution of India, in Mahesh Dattatray Thirthkar v. State of Maharashtra (2009) 11 SCC 141, this Court in para (35) summarized the principles as under:-

> "35. From a close examination of the principles laid down by this Court in the aforesaid series of decisions as referred to hereinabove on the question of exercising power to interfere with findings of fact by this Court under Article 136 of the Constitution, the following principles, therefore, emerge:
>
> • The powers of this Court under Article 136 of the Constitution of India are very wide.
>
> • It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.
>
> • When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it is highly unsafe and improper to act upon it.
>
> • The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. • The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality . • Where findings of subordinate courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.
>
> • When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions.
>
> • The judgment was not a proper judgment of reversal."

[Underlining added]

45. In the present case, for a contract of Rs.7.76 crores under original PAC amount and revised PAC amount of Rs.10.40 crores, the appellant- Board has so far paid Rs.56.58 crores and additionally

rupees five crores by order of this Court dated 20.02.2017. As discussed above, the findings of the High Court are perverse causing loss to the statutory body like the appellant-Board, this Court would not decline to interfere merely on the ground that the findings in question are findings of fact. If the judgment of the High Court is to be sustained, the Board would have to make a total payment of about Rs.100 crores, causing huge loss to the appellant which would ultimately be passed on to the consumers and the impugned judgment is liable to be set aside.

46. While we set aside the impugned judgment, what is the order/direction to be passed is the point falling for consideration. As discussed earlier, under Ex.P20, the appellant-Board has made excess payment of Rs.1,74,75,247/-. By order dated 20.02.2017, this Court directed the appellant to pay a sum of rupees five crores subject to furnishing of undertaking by respondent-contractor. As per Ex.P59, the respondent-contractor claimed Rs.5,55,62,597/- for the work done; material escalation and labour escalation charges claimed additionally. The admitted amount under Ex.P59 was only Rs.1,55,65,817/-. As discussed earlier, the amount claimed under Ex.P59 also will not carry subsequent interest. Material escalation and labour escalation charges additionally claimed are to be calculated only on monthly basis. Since an amount of Rs.6,74,75,247/- (Rs.1,74,75,247/- plus Rs.5,00,00,000/-) has been paid to the respondent-contractor, it is directed that the same be treated as full quit of all the claims under Ex.P59 including tender excess, material and labour escalation charges.

47. Conclusion:- In the result, the impugned judgment of the High Court is set aside and these appeals are allowed with the following observations and directions:-

> (i) As held in Gurpreet Singh's case, the payment is to be appropriated strictly in accordance with the directions contained in the decree. In C.A.No.4092 of 2000, this Court directed the payment as per Ex.P20. In Ex.P20, the respondent-contractor himself has shown the labour escalation due as the principal amount and interest thereon separately and has given the credit of the advances made by the appellant-Board firstly towards the principal and claimed the balance amount. The respondent-contractor is not right in changing the method of calculation by appropriation of the payments firstly towards the interest and then towards the principal amount. The direction of the High Court to pay a further sum of Rs.2,29,34,559/- under Ex.P20 is set aside;
>
> (ii) In the absence of direction in the underlying judgment of the High Court and judgment of this Court in C.A. No.4092 of 2000 to pay subsequent interest, in view of sub-section (2) of Section 34 CPC, the respondent-contractor is not entitled to claim subsequent interest on the amount payable under Ex.P20. The direction of the High Court to pay subsequent interest of Rs.1,83,23,665/- under Ex.P20 is set aside;
>
> (iii) The High Court's direction to pay labour escalation and material escalation at single uniform rate of 173.60% and 98% respectively for the bills towards additional work and to pay Rs.5,81,53,892/- under Ex.P59 to the respondent is set aside. In view of the express provision of sub-section (2) of Section 34 CPC, no future interest

is payable under Ex.P59.

The direction of the High Court to pay future interest of Rs.2,98,17,262/- on the claims made under Ex.P59 is set aside;

(iv) When there was no arbitration agreement between the parties, without a joint memo or a joint application of the parties, the High Court ought not to have referred the parties to arbitration. Hence, the award dated 29.10.2012 passed by the arbitrator Justice K.A. Nayar is set aside and the Arbitration Appeal No.Z-47 of 2013 filed by the appellant- Board pending before the High Court of Kerala is allowed;

(v) The amount of Rs.1,74,75,247/- paid under Ex.P20 which is in excess of the claim under Ex.P20 and the amount of rupees five crores paid to the respondent-contractor vide order of this Court dated 20.02.2017 be treated as payment under Ex.P59 for additional work including tender excess, material escalation and labour escalation charges and in full quit of all claims under Ex.P59;

(vi) Parties to bear their respective costs.

.....J. [RANJAN GOGOI] .....J. [R. BANUMATHI] New Delhi;

March 09, 2018