

JUDGMENT

The NATIONAL HIGHWAY AUTHORITY through Director (Legal)----Appellant

Versus

LILLEY INTERNATIONAL (PRIVATE) LIMITED and another----Respondents

F.A.O. No.14 of 2015, decided on 12th January, 2018.

AAMER FAROOQ, J.- This appeal, under section 39 of the Arbitration Act, 1940 (hereinafter called the Act), is directed against order dated 03.01.2015, whereby the objections filed by the appellant to the Award, passed by respondent No.2, were dismissed.

2. The facts, in brief, are that the appellant awarded contract to Highway Rehabilitation Project (Hyderabad-Hala Section) to respondent No.1 on 07.07.2004. In this behalf formal contract was concluded between the parties on 13.08.2004. Dispute arose between the parties regarding construction and inclusion of work relating to 'Matiari By-pass'. Respondent No.1 alleged that since this was not part of original contract, therefore, it should be compensated for the same. In this behalf to resolve the dispute, as provided under the contract, the matter was forwarded to the Engineer on 02.09.2005. The Engineer provided clarification that award of Matiari Bypass was deleted from the contract. It was also provided under clause 53.1 of the Conditions of Contract. Respondent No.1 was required to issue notice of intention to claim additional demands within 28 days of the event giving rise to the claim. Respondent No.1 on 06.06.2006 invoked the Arbitration Clause. The appellant on 29.06.2006 advised respondent No.1 to act in accordance with contract. The claim submitted by respondent No.1 to the Engineer was rejected vide letter dated 24.11.2006. On 29.03.2007 the dispute was referred to Dispute Resolution Expert and was disallowed on 24.05.2007. On 26.05.2007 respondent No.1 expressed its intention to refer the matter to the arbitration and with the consent of parties respondent No.2 was appointed as Sole Arbitrator. The learned Arbitrator on 28.04.2010 passed the award for the sum of Rs.55959319/- in favour of respondent No.1. The award was filed in the Civil Court, Islamabad for making it rule of the Court wherein the appellant filed an application, under section 30 read with section 33 of the Act, objecting the award. The referred application was dismissed by the learned Trial Court vide impugned order dated 03.01.2015. The instant appeal was earlier decided by this Court vide judgment dated 12.08.2015 and was dismissed. Appellant filed Petition for Leave to Appeal against the referred decision (C.P. No. 3432/2015) which was allowed by the august apex Court and the judgment of this Court was set aside; the matter was remanded for decision afresh on the question whether the Arbitrator, while deciding the matter, has taken into account material evidence brought by the parties on record.

3. Learned counsel for the appellant, inter alia, submitted that the findings of the Arbitrator on the core question between the parties, whether the Matiari bypass was included in the contract awarded to respondent No.1 or not based on evidence adduced by it. It was further contended that the appellant had lead evidence oral and documentary on the referred issue but the same was not appreciated and taken into account by the Arbitrator/respondent No.2 while passing the award in favour of respondent No.1. It was further pointed out that the learned Arbitrator did not appreciate

the priority of documents as existed in the terms agreed between the parties; that the plans which mentioned that the Matiari bypass is deleted ranks lower in priority than other documents which do not mention that the referred work was part of the contract. The learned counsel for the appellant submitted that the award is in violation of section 26-A of the Act, and submitted that notice of award and its copy was provided to respondent No.1 only, therefore, there was misconduct on the part of the Arbitrator in that regard as well. In support of his contention learned counsel placed reliance on cases titled "A. Qutubuddin Khan v. CHEC Millwala Dredging Co. (Pvt.) Limited" (2014 SCMR 1268), "Premier Insurance Company v. Attock Textile Mills Limited" (PLD 2006 Lahore 534) and "Abdullah Contractors v. Water and Power Development Authority" (2006 YLR 589). The learned counsel also contended that the learned Arbitrator has failed to discuss or give findings on any of the ten (10) issues; the findings are against provisions of contract and are not based on evidence. On the question of the meaning of the word and the circumstances which constitute misconduct by the Arbitrator the learned Counsel placed reliance on cases reported as 'Pakistan through Secretary v. Messrs Asian Associated Agencies' (PLD 1974 Karachi 155), Punjab Province v. Messrs Chauhan & Company' (PLD 2000 Lah. 314), 'House Building Finance Corporation v. Shahanshah Hummayun Cooperative House Building Society' (1992 SCMR 19) and 'Fauji Foundation v. Chanan Din and Sons' (PLD 2014 Lahore 424).

4. The learned counsel for respondent No.1, inter alia, submitted that the sole question on which the matter has been remanded to this Court is to examine whether the Arbitrator has considered the evidence in reaching the conclusion that Matiari bypass was not part of the contract awarded to respondent No.1. In this behalf learned counsel pointed out that during the course of proceedings before the august Apex Court the appellant through C.M. No. 2694/2015 in C.P. No.3432/2015 contended that the four documents appended with the application viz, Letter dated 12.11.2004 by Team Leader to Lilley International, SP 1 i.e. Description of the Project, Schedule 1 i.e. Detailed description of the works and Schedule of prices and activity schedule which were tendered in evidence have not been taken into account by the Arbitrator. Learned Counsel took the Court through the Award to show that the aforementioned documents have been taken into regard by the Arbitrator in reaching conclusion. It was further contended that the question regarding the priority of documents was also considered in great detail by the Arbitrator. It was also submitted that the Arbitrator has considered all the issues and the evidence tendered by the parties, hence there is no misconduct. In this behalf reliance was placed on cases reported as PLD 2003 SC 301, 2002 CLC 353, AIR 1989 SC 1263 and PLD 2011 SC 506. The Learned counsel also emphasized that the Court while deciding objections cannot act as Court of Appeal or can reappraise evidence or examine the reasonableness of the findings by the learned Arbitrator. In this behalf reliance was placed on cases reported as PLD 1998 Lahore 132, PLD 1996 SC 108 and PLD 2006 SC 169. The learned counsel further contended that in order to set aside the award the error should be of law and not fact and that too should be floating on the face of award. In this behalf learned counsel placed reliance on cases reported as 2001 CLC 289 and PLD 1996 SC 108. It was further suggested that giving of notice to award to any one party does not constitute misconduct on part of the Arbitrator. In this behalf reliance was placed on case reported as PLD 2002 Karachi 427. The learned counsel in the last argued that Arbitrator is a forum chosen by the parties, therefore, they should adhere to the same and the decision rendered should not be questioned on technicalities.

5. The relevant facts leading to the filing of the instant appeal have been mentioned in detail hereinabove, therefore, need not be reproduced. The Honourable Supreme Court of Pakistan decided Civil Appeal No.1852/2016 out of CP No.3432/2015 in the following terms:

"Resultantly, by converting this petition into an appeal and allowing the same the matter is remanded to the learned High Court to decide the appeal of the petitioner while considering the objection as to whether Matiari Bypass was a part of the contract or it was deleted and in reaching his conclusion whether the arbitrator has taken into account the material evidence brought by the parties on the record. Obviously if the relevant evidence has been properly considered and read by the arbitrator the court would not substitute its own finding. The parties are directed to appear before the learned High Court in the 2nd week September, 2016"

The bare perusal of the above operative part of the order of the august Apex Court shows that the case was remanded to this Court to examine that in reaching conclusion that Matiari bypass was not part of the contract awarded to respondent No.1 the Arbitrator has taken into account the evidence adduced by the parties especially the appellant.

6. Under sections 30 and 33 of the Act, one of the grounds for setting aside award is whether the Arbitrator has misconducted himself. In this behalf in "Pakistan Steel Mills Corporation, Karachi v. M/s. Mustafa Sons (Pvt.) Limited, Karachi" (PLD 2003 SC 301) It was held that the word 'misconduct' with reference to arbitration proceedings is interpreted in the sense in which it is not akin to fraud but it means neglect of duties and responsibility of the Arbitrator. In "Food Corporation of India v. Joginderpal Mohinderpal" (AIR 1989 SC 1263) it was held that while it is difficult to give an exhaustive definition as to what may amount to a misconduct on part of the Arbitrator, it is not misconduct on part of the Arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence. Similar view was taken in "Superintending Engineer, Somasila Project v. R. Ramana Reddy" (AIR 1990 Andhra Pradesh 283). In "Federation of Pakistan through Secretary, M/O Food and others v. M/s. Joint Venture Kocks K.G./Rist" (PLD 2011 SC 506) the Hon'ble Supreme Court held as follows:

"While considering the objections under sections 30 and 33 of the Arbitration Act, 1940 the court is not supposed to sit as a court of appeal and fish for the latent errors in the arbitration proceedings or the award. The arbitration is a forum of the parties' own choice and is competent to resolve the issues of law and the fact between them, which opinion/decision should not be lightly interfered by the court while deciding the objection thereto, until a clear and definite case within the purview of the section noted above is made out, inasmuch as the error of law or fact in relation to the proceedings or the award is floating on the surface, which cannot be ignored and if left outstanding shall cause grave , injustice or violate any express provision of law or the law laid down by the superior courts, or that the arbitrator has mis-conducted thereof. Obviously if there is a blatant and grave error of fact such as misreading and non-reading or clear violation of law, the interference may be justified by the courts. But for the appraisal and appreciation of the evidence; the courts should not indulge into rowing probe to dig out an error and interfere in the award on the reasoning that a different conclusion of fact could possibly be drawn."

7. The upshot of the above decisions is that the Court while hearing objections does not act as a Court of appeal and cannot undertake reappraisal of evidence recorded by the Arbitrator. The error or infirmity in the award should float on the face of it. In the instant case all legal and factual issues were duly addressed by the learned Arbitrator while passing the award and there is no error

floating on the surface which shows that the award suffers from any apparent legal infirmity or that the proceedings were conducted by the Arbitrator in a manner which amount to misconduct. The proposition laid down in the case law relied upon by the appellant are valid, however, are not applicable to the facts of the instant case.

8. The learned Arbitrator, in light of the pleadings/claims/defence filed by the parties, framed ten issues and also recorded the evidence of the parties both oral and documentary. The bare perusal of the issues shows that controversy regarding whether construction of Matyari Bypass was part of contract awarded to the respondent is mentioned in Issues Nos.1, 6 and 9. For the ease of convenience, the issues are reproduced below:-

- (i) Whether the claimant is entitled to claim cost of construction of Additional Carriageway (SB) in Matiari Bypass, if so what amount?
- (ii) Whether the claimant is entitled for the ancillary reliefs prayed for in prayer clauses of statement of claim?
- (iii) Whether the claim, the subject matter of the arbitration proceedings, is not maintainable?
- (iv) Whether there is no privity of contracts exists between the parties, which governs, that the Matiari Bypass is not the part of the contract, contrary the BOQ clearly speaks, that the Matiari Bypass is the part of contract?
- (v) Whether for all intended and practical purposes the BOQ is the basic document, which governs the contract for rendering the work and subsequently the design, for the construction of the work, which is subject matter of the contract?
- (vi) Whether the construction activities commence on the basis of the design for the Matiari Bypass, which was prepared by the Contractor?
- (vii) Whether the malfeasance of the claimant is quite apparent that after a lapse of over 10 months the Contractor notified, that he reserved his rights to lodge a claim for the cause involved in the construction of Matiari Bypass?
- (viii) Whether no claim was submitted to the engineer for its determination which is the part of the contract and as such no dispute is referred to the DRE for its consideration, however subsequently submitted a formal submission of claim for costs coupled with in collusion of Matiari Bypass?
- (ix) Whether the constructions activities, which included the BOQ and the design, deems to be the part of contract and the Matiari Bypass is specifically mentioned in the design as such the claimant could not make a summersault and misinterpret the BOQ and the design of the construction activity?
- (x) What should the award be?

The controversy was highlighted in paragraph-8 of the Award specifically and there-after, the

matter was discussed in light of the evidence tendered by the parties. Paragraph-10 of the Award and onwards entails detailed discussion of the controversy and the evidence tendered. Various documents, referred to by the parties, have been mentioned in the Award including the preferences/privity of the same. The relevant paragraphs, where the entire controversy has been referred and have been duly considered is from paragraphs 10 to 17 of the Award which for the ease of convenience, are reproduced below:-

"10. The respondent and the Engineer have laid much emphasis on a sentence that 'the scope of work also includes construction of additional carriageway for Matiari Bypass', appearing in Section VI, Schedule 1: Detail Description of the Works and Special Provisions (SP-1): Description of the Project (The word 'scope' is defined and interpreted in The Concise Oxford English Dictionary as, 'the extent to which it is possible to range, outlook, range of action or observation, opportunity or possibility for doing something'. Merely the said sentence is not sufficient to cast a duty on the claimant to construct Additional Carriageway (ACW) for Matiari Bypass unless ACW was clearly mentioned in the like manner in the Contract Agreement and letter of Acceptance which are on the top at Sr. 1 and 2 in Section 5.2 of Section V (COPA), Priority of Contract Documents, and in the Schedule of Prices and Activity Schedule, to put the claimant on notice that construction of ACW is its obligation and to enable is to insert its bid price against the relevant Chainage in the Activity Schedule.

11. A perusal of minutes of initial site meeting dated 06.11.2004 shows that the issue of inclusion and exclusion of Additional Carriageway for Matiari Bypass first time had arisen when the Engineer noted that Section of New Carriageway construction for the Matiari Bypass was not included in the Design provided by the claimant. According to the claimant this was done on the basis of a note on the Tender Drawings that indicates the ACW for Matiari Bypass is not part of the works and further stated that the claimant was informed during an Environmental Training Session in Islamabad in June, 2004 that the Matiari Bypass was deleted in the said background it was decided that the Engineer will respondent formally regarding the Design Report in relation to the said omission advising the requirements for its inclusion. Therefore by the said minutes of initiate site meeting it is evident that claimant's said contention was neither an afterthought nor baseless that (ACW) for Matiari Bypass, according to the aforesaid representators, was excluded from the subject contract. Thereafter the engineer vide his letter dated 12.11.2004, with reference to initial site meeting dated 06.11.2004 informed the claimant that he reviewed the said issue and informed that the Section from Ch 16 + 625 to Ch 19 + 275 (Matiaris Bypass) is missing from the Contractor's Design Documents and must be included and further stated that the note on Drawing No.Z 2353/P/12 "Note: Matiari Bypass deleted from this Contract", is incorrect and is deleted. Outline Design Drawings for Matiari Bypass form part of the Drawings and the contract documents. The Engineer referred Section IV- Technical Specifications: Employers Requirements, Schedule 1, Detailed Description of the works (which is actually according to Contract Documents is Section VI and not Section IV), wherein it is stated that 'the Scope of Work includes construction of Additional Carriageway for Matiari Bypass" and pointed out that the Schedule of Prices and Activity Schedule-Road Works (Construction/Rehabilitation) included sub activities complete from Km178+000 to Km 183+000, which according to him covered the Matiari Bypass. It is noteworthy that the Engineer by his said letter dated 12.11.2004 introduced a new thing

which is not mentioned, either in the set of Drawings or in the Schedule of Price and Activity Schedule, that Section from Ch 16+625 to Ch 19 + 275 pertains to Matiari Bypass, which he found missing from Contract's Design Documents and wanted the same to be included. If the above mentioned Ch 16 + 625 to Ch 19 + 275 (Matiari Bypass) had been mentioned in the Drawings or in any other document such as Schedule of Prices and Activity Schedule or in the Chainage Km 178 + 000 to Km 183 + 000 of Schedule of Prices and Activity Schedule-Road Works (Construction/Rehabilitation), which according to him covers the ACW for Matiari Bypass, there would have been no room for the claimant to contend that ACW for Matiari Bypass was excluded from the contract. Respondent's witness Mr. Tahir Jamil, in his cross-examination at Serial 59 admitted as correct that Ch 16 + 625 to Ch 19 + 275 (Matiari Bypass) is not mentioned as such in Schedule of Prices and Activity Schedule. At Serial 40 of his cross-examination he was asked a specification question that 'can you point out that as to where the words 'Additional Carriageway for Matiari Bypass' are mentioned in Schedule of Prices and Activity of Scheme, he replied, Matiari Bypass is mentioned under the stretch Km 178+000 to Km 183+ 000 in the Activity Schedule and the same is quite clear from Section 2.1.1. former 2.1.4) and Section 2.1.5 of Preamble to Activity Schedule, as per Detailed Description of Work, Section IV in addition to Km 48 of Rehabilitation Work, and at Serial 41 of his cross-examination he denied that his aforesaid statement is incorrect, misconceived and based on presumption. I did not find that ACW for Matiari Bypass is mentioned under the stretch Km 178 + 000 to Km 183+000 in the Activity Schedule as wrongly stated by Mr. Tahir Jamil. So far as the reference to Section 2.1.1 and Section 2.1.5 of Preamble to Activity Schedule, I did not find any reference of ACW for Matiari Bypass in the said provision, which it had been mentioned therein, the claimant would have been estopped from taking plea regarding exclusion of Matiari Bypass from the contract. So far as reference to Section VI: Detailed Description of Works, by Mr. Tahir Jamil, suffice it to say that merely mentioning therein that "The Scope of the Work also includes construction of Additional Carriageway for Matiari Bypass", was not sufficient to create an obligation on the claimant to construct the same, unless the ACW for Matiari Bypass being special activity, was specifically indicated with its approximate length in the relevant Chainage of the Activity Schedule, which according to the Engineer as stated in his aforesaid letter dated 12-11-2004 was from Km 178 + 000 to Km 183 + 000, to alert the claimant to include and insert its bid price in front of the said Chainage in Activity Schedule. At Sr. 40 of his cross-examination Mr. Tahir Jamil has further stated that ACW of Matiari Bypass was in addition to 48 Km of Rehabilitation work, At Sr. 49 of his cross-examination Mr. Tahir Jamil after looking at 4th Row of Schedule of Prices and Activity Schedule at page 315 of Volume II, admitted as correct that the subject activities completed for Chainage from Km 178+000 to Km 183 + 000 shown therein is without any variation. His said answer appears to be correct because in the said Chainage there is no indication of any special activity like ACW for Matiari Bypass. At Sr. 47 of his cross-examination he admitted that the Activity Schedule is comprised of 5 Km Stretches.

12. At Sr. 50 of his cross-examination Mr. Tahir Jamil admitted as correct that rows 6 and 7 in the Activity Schedule of page 315 of Volume II show Km 5.4 and 4.6 stretches respectively, but the same do not show any special activity, voluntarily stated that in row No. 6 there is a typing error i.e. Km 193 + 400 should have been 193 + 000 and similarly in row No. 7 there is also a mistake i.e. Km 193 + 100 should have been Km 193 + 000.

The said explanation by Mr. Tahir Jamil has no force in as much as after receiving bid prices from the contractor such type of explanation weakens the position of the Employer as well his the Engineer that before awarding of contract to the claimant they were not vigilant in preparing the contract documents.

13. Mr. Tahir Jamil, respondent's witness/officer in support of respondent's defence to claimants claim for cost of ACW for Matiari Bypass, further stated in para 16 of his Suppl. Affidavit-in-Evidence that the claimant had failed to submit a BOQ including details of works and quantities, kilometer-wise and activity schedule as per Bid as requires by Section VI of Technical Specifications and Employer's Requirements, Schedule 3 and in para 18 he fully endorsed the Engineer's determination that in the absence of a BOQ or price breakdown for the full contract, or other appropriate supporting information provided, the Contractor's claim for additional payment for Matiari Bypass is unconvincing. Respondent's said defence to resist claimant's claim is misconceived and contrary to the provisions of the Contract. In Section V Part II: Conditions of Particular Application (COPA) clause 1.1 (b) (iv) of Definitions and Interpretations, has replaced the Word, "Bill of Quantities" with the words "Schedule of Prices and Activity Schedule". It is important to point out here that the subject Contract was a fixed price lump sum contract and the respondent itself had provided Schedule of Prices and Activity Schedule wherein the contractor had to insert its bid prices against each item. The aforesaid statement by Mr. Tahir Jamil in paras 16 & 18 of his Suppl. Affidavit-in-Evidence tantamount to an admission on the part of respondent that full details of items of works and quantities of ACW for Matiari Bypass were not mentioned in Schedule of Prices and Activity Schedule, which led the claimant to believe that ACW for Matiari Bypass was deleted from the subject contract, which was confirmed in the obovementioned three Drawings.

14. The record shows that the respondent vide its letter No.NHA/NHIP/DPC/C-01/205/119 dated 02-06-2005 handed over possession of the site on N 5 Additional Carriageway South Bound of Matiari Bypass for corridor width defined as "Construction limit exists within the land agreement as ROW 12 Ft. (36.9m) from center line of existing carriageway for Km 179+300 to 182 + 450 (Matiari Bypass). It is also an admitted position that on the instruction of the Engineer, the claimant has constructed Carriageway for Matiari Bypass on South Bound alignment from Chainage 179 + 600 to 182 + 275 (2.675 Km). it is also an admitted position as appearing in the relevant Drawings and Schedule I of Section VI, Detailed Description of Works that Existing Carriageway ECW was South Bound (SB), whereas Drawing No. Z 2353/GEN/07 and in other relevant Drawings the Additional Carriageway has been shown North Bound (NB). Therefore the ACW for Matiari Bypass was to be constructed North Bound whereas as admitted by Mr. Tahir Jamil at Sr. 60 of his cross-examination that respondent and the Engineer got constructed Carriageway for Matiari Bypass by the claimant South Bound.

15. The Engineer vide his letter dated 12-11-2004 (annex R-55 to Suppl. Affidavit-in-Evidence of Mr. Tahir Jamil) has stated that the note on Drawing No. Z - 2353/P/12: Note: "Matiari Bypass deleted. Mr. Tahir Jamil, at Sr. 55 to 58 of his cross-examination has admitted that the Engineer has made correction in one drawing (annex. C/1 to Statement of claim) and did not make any correction in other two drawings (annex. C/2 and C/3 to Statement of claim) and further stated that because the contractor did not point out the same

and further stated that he did not know whether the Engineer had handed over corrected Drawing No. Z -2353/P/12 to the claimant and admitted that other two drawings (annex C/2 and C/3 to Statement of Claim) are in the same position on the record. In cross-examination of Mr. Mohsin Saeed, claimant's witness, at Sr. 14 he admitted the suggestion of learned counsel for respondent that the requirement for ACW is mentioned in the scope of work but deleted in the drawings and at Sr. 16 he further admitted that there was no specific reference for Matiari Bypass in the Activity Schedule. The claimant's contention that the notes appearing in three drawings, deleting Matiari Bypass and ACW for Matiari Bypass from the contract, were not mistakes but the same were intentional acts on the part of the respondent, which is established by the Project Description in the Executive Summary (Final Report dated 30-05-2003) of Pakistan Highway Rehabilitation Project (at page 555 of Volume II, relevant page 573), in Exhibit II 13 Nos. of Section proposed for Improvement Under the PHRP are mentioned, at Sr. 2 the subject contract Hyderabad - Hala (ECW/SB) 48 Km has been shown, without including Additional Carriageway (ACW) whereas at Sr. Nos. 6 & 9 & 11, 12 & 13 pertaining to other Contracts/ Section ACW is mentioned with Existing Carriageway (ECW): and beneath the said Exhibit II/chart the location of ECW: Existing Carriageway (original) has been mentioned South Bound (SB).

16. In the GUIDELINES FOR THE CONTRACTOR FOR DETAILED DESIGN (annex. R- 6 to Suppl. Affidavit-in-Evidence by Mr. Tahir Jamil, respondent 's witness), it is stated that outline design drawings prepared by consultants are the guidelines for contractor in the preparation of bid documents. Therefore claimant is justified in taking pleas that deletion of Matiari Bypass and ACW for Matiari Bypass in three Drawings (annexures C/1 C/2 C/3 to statement of Claim as well as exclusion of ACW at the above mentioned Sr.2 of Exhibit II (Final Report dated 30-05-2003) at page 573 of Volume II and no indication of special activity of ACW being made in the Schedule of Prices and activity Schedule, which made it to believe that ACW for Matiar Bypass has not been included in the subject contract therefore it did not insert its bid price pertaining to ACW in Activity Schedule. According to the provisions of Section VI: Technical Specification and Employer's Requirements (at pages 157 of Volume II), it is provided with specific reference of Drawings (Section X), that Employer's requirements may be amended or amplified prior to the award of the Contract or after the award by the issue of variation under clause 51.2 of the Conditions of the Contract. Therefore the Engineer is bound to issue variation order under Clause 51.2 of the Conditions of Contract in respect of new construction of Carriageway (SB) for Matiari Bypass constructed by the claimant.

17. It is well settled that when a document or its any specific provision is not free from ambiguity, such ambiguity has to be construed against the maker of the document. A contract creates legal obligations between the parties. Every legal and Contractual Obligation under the Contract must fulfill the conditions of offer, acceptance and consideration. If any party to the contract issues instructions to the other party for doing certain act under the contract as correct but I have ascertained the authenticity of the quantities claimed, on the basis of As-built drawings provided by the Engineer on my request and the BOQ submitted by the claimant in compliance of my order dated 02-11-2009 with copy supplied in advance to the respondent and the Engineer, which I vetted with the assistance of a Technical Expert/ Quantity Surveyor. According to Taking Over

Certificate TOC C01-03 the road section Km 186 +025-176+300, which includes these varied works of Matiari Bypass, was completed in March 2006 therefore, rates of CSR-2006 of NHA being relevant to the period of execution are applied to evaluate these varied works. Rates for four items of work were not available in CSR therefore the rates for two items have been taken from the Contractor's claim and for the remaining two non-schedule rates are applied. Application of CSR 2006 rates also eliminates the payment of price adjustment as solicited in the prayer by the claimant.

9. In view of above position, it is clear that the evidence tendered by the parties was duly considered and on the basis thereof, the learned Arbitrator, reached to the conclusion that the respondent is entitled to the award. In this behalf, as noted above, entire evidence as well as the factual and legal aspects of the matter, were duly taken into account. Hence, in the facts and circumstances of the case, there is neither any legal error floating on the surface of Award nor the Arbitrator has failed to take into consideration material evidence adduced by the parties, therefore there is no misconduct on part of Arbitrator within the meaning of the words as provided in sections 30 & 33 of the Act and as explained in the above mentioned judgments of the Hon'ble Supreme Court of Pakistan.

10. In view of above, instant appeal is without merit and is accordingly dismissed.

Uploaded by IT department, IHC

Disclaimer: The content available in this document are just for Information. Users are advised not to depend on the information and use it for official purpose. Islamabad High Court, Islamabad is not responsible for any damages arising in contract from the use of the content of this document