
(2003) 06 BOM CK 0006
In the Bombay High Court
Case No : Arbitration Petition No. 528 of 2001

Union of India (UOI)	Vs	APPELLANT
Arora Associates and Another		RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 14

Citation : AIR 2003 Bom 477 : (2003) 4 ALLMR 901 : (2004) 2 ARBLR 18 :
(2004) 1 BomCR 871

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : R.V. Govilkar, instructed by Suresh Kumar, for the Appellant; S.U. Kamdar, instructed by ., V.L. Panjwani, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition filed u/s 34 of the Arbitration Act the petitioner challenges the award made by the learned Arbitrator dated 16th Oct. 2000. By that award the petitioner has been directed to pay an amount of Rs. 24,96,493.70 with interest thereon to be calculated at the rate of 18% p.a. as from 13th Dec. 1996 till payment or realisation.

2. The facts that are material and relevant for deciding this petition are that the petitioner invited tenders for carrying out work of resurfacing of Platform Nos. 4 and 5, at Pune Railway station. The respondent/ claimant had submitted their tender, which came to be accepted. Acceptance of the tender was communicated by letter dated 29th Nov. 1995. As per that letter the work was to commence from 29-11-1995. On 15-1-1996 a contract was entered into between the parties. The total value of the work which the respondent was to carry out was Rs. 5,04,374.87. According to the respondent after completion of the work allotted, as per the instructions of the officer of the petitioner, the respondent carried out further work, on Platform Nos. 4 and 5 beyond the work provided for in the tender. According to the Respondent, during the period the work was being carried out, running bills were submitted to the petitioner for payment and

payment of first and second running bills was made to the respondent. It appears that, according to the respondent, the work was completed on or before 2nd March, 1996. According to the respondent, on 21st March, 1996 he noticed that some of the work carried out by him was demolished by the petitioner without any intimation to the respondent. It appears that thereafter the respondent, though demanded the payment repeatedly payment was not being made, invoked the arbitration clause which was in the contract between the parties. After the arbitration clause was invoked the petitioner asked the respondent to sign a subsidiary agreement. This subsidiary agreement, according to the respondent, does not cover the entire work carried out by the respondent, but still that agreement was signed by the respondent under protest. Ultimately, as a result of invocation of the arbitration clause, this Court appointed the sole arbitrator. Before the sole arbitrator a statement of claim was filed by the Respondent. According to statement of claim filed by the Respondent before the learned Arbitrator, considering the payment made by the petitioner to the Respondent the real dispute between the parties related, to the payment claimed by the respondent on the basis of the document which is called by the Respondent as Second and Final Variation statement. According to the Respondent, the work to which this Second and Final Variation Statement relates, though admittedly beyond the scope of the original contract was carried out by the Respondent pursuant to the oral instruction from the officer or the Respondent. Thereafter, this Second and Final Variation Statement was prepared by the Respondent and it was submitted by the Respondent for obtaining concurrence from the competent authority, According to the respondent, the was entitled to claim payment in terms of the Second and Final Variation Statement, The petitioner in the written statement denied their liability to make the payment according to Second and Final Variation Statement, According to the petitioner such a document did not exist, According to the petitioner, the Second and Final Variation Statement relied on by the Respondent, of which Xerox copy was produced before the arbitrator was not signed by any officer of the petitioner. It was further claimed that the work to which the alleged Second and Final Variation Statement relates was carried on by the Respondent on his own and not on the order of the railway authority, This work, according to the petitioner, Was already allotted to another contractor and therefore the Respondent was not justified in carrying out that work and therefore, he is not entitled to claim any payment for the work done.

3. Before the arbitrator both the parties submitted documents. On behalf of the Respondent, one of the partners of the Respondent was examined as a witness. There was no oral evidence led on behalf of the petitioner. It appears that the learned Arbitrator also inspected the spot and thereafter after hearing the parties the learned Arbitrator made an award. The learned Arbitrator by the award has directed the petitioner to pay to the Respondent an amount of Rs. 24,96,493.70 with interest at the rate of 18% p.a. from 13th Dec. 1996 till realisation of the amount . Perusal of the award shows that before the learned Arbitrator the

question about the authority of the Respondent to carry out the work to which the Second and Final Variation Statement relates was questioned and authenticity and validity of that document was also questioned on behalf of the petitioner. The learned Arbitrator, however, relying on the document produced on record has held that the Second and Final Variation Statement was jointly prepared by the parties and was duly signed by the officers of the petitioner and therefore the petitioner is liable to make payment in accordance with therewith. The learned Arbitrator has also held that even if it is assumed that Second and Final Variation Statement is not proved by the Respondent, then also because the documents on record it is clear that the Respondent had actually carried out the work pursuant to the instructions issued by the officers of the petitioner, the petitioner is liable to make payment for the work which is actually carried out by the Respondent.

4. The learned Counsel appearing for the petitioner submits that the arbitrator was not at all justified in relying on the document styled as final and Second variation statement, The learned Counsel submits that what was produced before the arbitrator was a Xerox copy of the statement, which showed that it is signed by the Asst. Engineer of the petitioner. He submits that according to claim statement of the Respondent this document was prepared by the petitioner and it was signed by the Respondent. But the signature of the Respondent is not to be found on this document, He submits that though as per the claim statement this document is prepared by the petitioner but as per the affidavit filed in this petition on behalf of the Respondent, paragraph 13, it was prepared jointly by the petitioner, and the Respondent and it was in the handwriting of the Respondent and it was merely signed by the officer of the petitioner. According to the learned Counsel as per the written statement of the petitioner this was a non existent document. It is further submitted that the learned arbitrator in his award has relied on the letter dated 30th Sept. 1996 from the petitioner to the Respondent to hold that the petitioner admitted that the variation statement has received concurrence of the Sr. Deo and that it has been sent for obtaining sanction of the A.G.M. The learned Counsel points that perusal of the letter dated 30th Sept. 1996 further shows that first paragraph of that letter relates to the first variation statement which is not in dispute and second paragraph refers to the second variation statement and in relation to that it is stated in that letter that the claim made by the Respondent is false. It also records that it is signed only by the Respondent. The learned Counsel submits that the alleged second variation statement, admittedly did not relate to the contract as originally allotted and it also did not include the work which was included in the subsidiary contract which was signed in the year 1997. It related to the additional work executed by the Respondent alleged on oral instructions of the officers. The learned counsel relying on Clauses 41 and 42 of "the standard central general conditions of contract for use in connection with engineering works" submits that even assuming that the second variation statement was signed by the Asst. Engineer it cannot bind the petitioner because the Asst. Engineer is not the

competent authority for sanctioning any modification of the contract unless it is incorporated in the formal instrument and is signed by the railway is not binding on the railways. The learned Counsel submits that the learned arbitrator has wholly misdirected himself in considering the submission made on behalf of the Respondent on the basis of the provisions of Clauses 41 and 42 of the standard general conditions. The learned counsel submits that the finding recorded by the learned arbitrator that Second and Final Variation Statement was signed by the competent officer of the petitioner is not supported by any evidence on record, He further submits that the observations of the learned arbitrator that even if the Second and Final Variation Statement is not taken into consideration still because the respondent has carried out the work actually, he is entitled to the payment is contrary to the terms of the contract between the parties. He submits that if the work was carried out unauthorisedly by the Respondent, surely he is not entitled to receive any payment, for the work which he has carried out without any authorisation. The learned Counsel also submits that in view of the contradictory stand taken by the Respondent in relation to final and second variation statement, the very existence of such a document is in doubt, therefore the award which is solely based on the validity of that document is liable to be set aside. The learned Counsel relies on the judgment of the Supreme Court in the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., and states that award can be set aside by this Court in its jurisdiction u/s 34 of the Act.

5. The learned counsel appearing for the Respondents, on the other hand, submits that the learned Arbitrator has recorded his findings about the existence of second and final variation statement, on the basis of the evidence that was produced on record by the Respondents. The learned counsel submits that the Respondents had produced a xerox copy of that statement which was signed by the Assistant Engineer and had stated that the original of that statement Is in possession of the petitioners, The petitioners did not lead any oral evidence, The learned counsel submits that the findings about the existence of the document is recorded by the learned Arbitrator also by referring to the correspondence that has been exchanged between the parties, According to the learned counsel, therefore, the findings recorded by the learned Arbitrator about the existence of second and final variation statement are based on appreciation of evidence on record. The findings are within the Jurisdiction of the Arbitrator and, therefore,, this Court cannot disturb that findings in view of the limited Jurisdiction of this Court u/s 34 to interfere with the above Award made by the Arbitrator, The learned counsel in support of that submission has relied upon a judgment of the Division Bench of this Court in the case of BFIL Finance Ltd. v. G. Tech. Stone Ltd. reported in 2002 (4) M LJ 434. The learned counsel submits that as per Clause 41 of the standard general conditions of contract, work can be carried on by the contractor on the basis of the oral instructions of the competent, officer. The learned counsel relies upon the correspondence to show that the Assistant Engineer was in charge of supervision of the work to be carried out by the Respondents and, therefore, the Assistant Engineer was competent to sanction

that work. The learned counsel further submits that the finding recorded by the learned Arbitrator that the second and final variation statement, is signed by the competent officer is also a finding of fact which is within the jurisdiction of the Arbitrator and, therefore, it cannot be disturbed by this Court. The learned counsel also relies on Clauses 20 and 21 of the standard general conditions of the contract and submits that the contractor has acted in accordance with the contract in doing the work and, therefore, is entitled to claim the amount that was spent for carrying out the work. The learned counsel further, submits that it is clear from the material available on record that the work was actually carried on by the Respondents. The learned counsel submits that the fact that the petitioners demolished the work shows that the work was carried out by the Respondents and, therefore, in the submission of the learned counsel, as the work is actually carried out by the Respondents, he is entitled to be paid for that work. In the submission of the learned counsel, therefore, as the findings recorded by the learned Arbitrator are finding of fact which are recorded on the basis of material available on record, this Court would not be justified in disturbing that.

6-7. Now on perusal of the record, it is clear that the petitioners had invited tenders for allotting work of the value of about Rs. 5, lacs. While that work was being carried out, additional work was admittedly allotted to the Respondents of the value of about Rs. 10 lacs in relation to which a subsidiary contract was entered into. According to the Respondents, however, further additional work was allotted to him worth about Rs. 25 lacs and the present dispute relates to payment for this additional work worth about Rs. 25 lacs, which according to the Respondents, was allotted to him pursuant to the oral instructions by the officer of the petitioners and was carried out by him.

8. It is thus clear that the entire dispute between the parties relates to the second additional work which, according to the Respondents, was allotted to the Respondents by the officers of the petitioners orally. The petitioners have relied on Clauses 41 and 42 of the standard general conditions of contract. In my opinion, the provisions of Clauses 41 and 42 of the standard general conditions of contract are to be read and interpreted in the light of the provisions of Article 14 of the Constitution. The petitioners is the State and, therefore, is bound by the guarantee, of Article 14 of the Constitution. As a result, of series of judgments of the Supreme Court, it can now be taken as settled law that the State and its instrumentalities cannot enter into contracts without giving an opportunity to every person who may be eligible to compete for that contract. If the State or its instrumentalities enters into a contract without inviting the tenders, it amounts to violation of fundamental rights, guaranteed by Article 14 of the Constitution, to other persons who may be eligible to submit tenders for that work. The Supreme Court has in its judgment in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, considered the entire law on this point and has held that the State and its instrumentalities cannot enter into contract without following the procedure of

inviting the tenders or calling bids, in short, without giving an opportunity to other eligible persons to compete for the work. In the present case, the initial tender amount was only Rs. 5 lacs. Offers were invited only for doing the work valued at Rs. 5 lacs and the offer of the Respondents for doing the work worth Rs. 5 lacs was accepted. If on the basis of acceptance of that offer that contractor is allotted the work, which is about five times the value of the original work, it will definitely result in violation of fundamental rights of other persons who may be eligible to compete for that work and, if the authorities of the State are allowed to adopt such methods, they will be able to defeat the fundamental rights guaranteed by the Constitution by such back door methods. It is in this light that the provisions of Clauses 41 and 42 of the standard general conditions of contract have to be read. The heading of Chapter under which Clauses 41 and 42 appear is Variation in Extent of Contract". Clauses 41 and 42 read as follows :

"41. Modification to contract to be in writing :-- In the event of any of the provisions of the contract requiring to be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Railway and the Contractor and no work shall proceed under such modifications until this has been done. Any verbal or written arrangement abandoning, modifying, extending, reducing or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Railway unless and until the same is incorporated in a formal instrument and signed by the Railway and the Contractor, and till then the Railway shall have the right to repudiate such arrangements.

42.(1) Powers of modification to contract :-- The Engineer on behalf of the Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character position, site, quantities, dimensions or in the method of their execution or in the combination and use of materials for the execution thereof or to order any additional work to be done or any works not to be done and the contractor will not be entitled to any compensation for any increase/reduction in the quantities of work but will be paid only for the actual amount of work done and for approved materials supplied against a specific order.

(2)(1) Unless otherwise specified in the special conditions of the contract, the accepted variation in quantity of each individual item of the contract would be upto 25% of the quantity originally contracted, except in case of foundation work. The contractor shall be bound to carry out the work at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation in quantity of individual item of works.

(ii) In case of earth work, the variation limit of 25% shall apply to the gross quantity of earth work and variation in the quantities of individual classifications of soil shall not be subject to this limit.

(iii) In case of foundation work, no variation limit shall apply and the work shall

be carried out by the contractor on agreed rates irrespective of any variation.

(3) Valuation of variations :-- The enlargements, extensions, diminution, reduction, validity of the contract but shall be performed by the contractor as provided therein and be subject to the same conditions, stipulations and obligations as if they had been originally and expressively included and provided for in the specifications and drawings and the amounts to be paid therefore shall be calculated in accordance with the accepted schedule of rates. Any extra item/quantities of work falling outside the purview of the provisions of Sub-clause (2) above shall be paid for at the rates determined under Clause 39 of these conditions.

9. In my opinion in no case, the power of the authorities of the State contained in Clauses 41 and 42 can be so read as to permit them to allot work without Inviting tenders and without giving other eligible persons an opportunity to compete for that work. Necessarily, therefore, the power of the authorities in Clauses 41 and 42 is to be restricted to allotment of additional work which may be marginal or which may be of such an urgent nature that it is not possible for the authorities to Invite tenders for carrying out that work. To permit the authorities in exercise of power under Clauses 41 and 42 to allot work to the contractors without inviting tenders, in my opinion, would result in denial of fundamental rights guaranteed by the Constitution and, therefore, in my opinion howsoever one reads Clauses 41 and 42, it cannot include power to allot work worth about Rs. 25 lacs to a contractor who had come in, pursuant to a notice inviting tenders for a work worth Rs. 5 lacs, Adoption of such a course of action has to be held to be beyond the powers of the officers of the petitioners.

10. Even the works which can be given additionally to existing contractors in exercise of powers under Clauses 41 and 42 have to be given pursuant to a written contract. The provision in Clause 41 which permits allotment of work by verbal orders, which, no doubt, have to be reduced to writing in the form of a formal instrument, has to be restricted to such work which is of an urgent nature or is of marginal nature. Insofar as the present case is concerned, even if it is assumed that the work worth about Rs. 25 lacs could have been allotted by verbal orders nevertheless, those orders are required to be reduced to writing in the form of formal instrument by an officer who is competent to do so. Even if the requirement of a formal instrument is taken to be not mandatory, the requirement of sanction being given to such a work by an officer who is competent to do so, in my opinion has to be held to be mandatory. Perusal of Clauses 41 and 42 of the standard general conditions of contract together shows that the power vests in the Engineer. The term "Engineer" has been defined by Clause 1(e) of the standard general conditions of contract.

" 1 (e) "Engineer" shall mean the Divisional Engineer or the Executive Engineer, Divisional Signal and Telecommunication Engineer, Divisional Signal and Telecommunication Engineer (Construction), Divisional Electrical Engineer, Divisional Electrical Engineer (Construction), in executive charge of the works

and shall include the superior officers of the Engineering, Signal and Telecommunication and Electrical Department of Railway i.e. the Senior Divisional Engineer/Deputy Chief Engineer/Chief Engineer/Chief Engineer (Construction), Senior Divisional Signal and Telecommunication Engineer/Deputy Chief Signal and Telecommunication Engineer/Chief Signal and Telecommunication Engineer (Construction/ Senior Divisional Electrical Engineer/ Deputy Chief Electrical Engineer/Chief Electrical Engineer (Construction) and Chief Administrative Officer (Construction) and shall mean and include the Engineer of the Successor Railway.

11. Perusal of this definition shows that the Assistant Engineer who is supposed to have signed the second and final variation statement is not an Engineer within the meaning of this contract. Perusal of the definition of this terms "Engineer"s representative" appearing in Clause 1(f) shows that an Assistant Engineer is Engineer"s representative as distinguished from the Engineers and, therefore, even assuming that the second and final variation statement was signed by Assistant Engineer, it cannot be said that he was an officer competent to sign that statement or sanction that work so as to bind the petitioners. Perusal of the Award shows that the Arbitrator has recorded a finding in its order which reads as under.

"I further hold that the second and final variation statement prepared jointly by the claimants and the respondents and signed by the competent officers of the petitioners is binding on the petitioners.

Thus the Arbitrator has recorded a finding that the Assistant Engineer who is supposed to have signed the statement was a competent officer. But, perusal of the Award shows that there is no discussion in the Award as to the competency of the Assistant Engineer to sanction the work and to sign the contract. Thus, the finding that the Assistant Engineer was a competent officer is without consideration of the relevant materials on record. The material is relevant for recording that finding is available on record and it conclusively shows that the Assistant Engineer is not competent to sanction the work. He may be an Engineer"s representative to supervise the work but, he cannot allot the work so as to bind the petitioners.

12. The above quoted findings of the Arbitrator is also contrary is also contrary to the pleadings of the Respondents. In para 37 of the Statement of Claim, the Respondents state that--

However, as the said variation statement did not cover all the quantities of actual work done at site by the claimants, the second and final variation statement was also prepared by the respondents and duly signed by the claimants, which covered all quantities of actual work done at site.

This statement had also been submitted to the Respondents for obtaining concurrence from the competent authority.

13. It is clear from the above quoted statement appearing in the statement of

claim of the Respondents that the second and final variation statement was prepared by the Respondents viz. Railways and it was signed by the respondent-claimants and it was submitted for obtaining concurrence from the competent authority. It is thus clear that it was not even the case of the Respondents that the second and final variation statement was sanctioned by the competent authority. It also does not appear to be the case of the Respondents that the Assistant Engineer had signed the statement. The case appears to be that the statement was signed by the respondent-claimants. One more aspect that is to be noted here is that according to the above quoted statement, the second and final variation statement was prepared by the Railways and it was signed by the respondent-claimants but, the same respondent-claimants in his affidavit filed in this petition in para 13 stated as:

"I say that the second variation statement was jointly prepared by the petitioners and the 1st Respondents as recorded in the cross-examination of the 1st Respondents witness. I say that even though the variation statement was in the handwriting of the 1st Respondent, the said variation statement had been signed by the petitioners officers."

14. It is thus clear that at the stage of evidence, it appears that the original case that the statement was prepared by the Railways was even given up probably because, admittedly, the statement is in the handwriting of the 1st Respondent, and a new theory was put up that this statement was jointly prepared and now the case that the statement was signed by the respondent-claimants also appears to have been given a go-by and a new case is introduced that this statement is signed by an officer of the Railways. One more aspect, in my opinion, while considering the genuineness or otherwise of the second and final variation statement, is required to be noted. According to the Respondents, he noticed that the work carried out by him and to which the second and final variation statement relates has been demolished on 21-3-1996. According to the Respondents, the second and final variation statement was prepared before the demolition of the work i.e. before 21-3-1996. Admitted position is that joint measurement of the work or for that purpose, any measurement of the work was not done before that date. According to the learned counsel appearing for the Respondents, the second and final variation statement was prepared not on the basis of the entries in the Measurement Register but on the basis of the entries in the Technical Register. If the work was carried out by the Respondents as per the orders of the officer and, if the officer was even willing to sign the statement, no explanation is to be found why before preparing the statement, which according to the Respondents fastened liability on the Railways to make payment in accordance with that statement, measurements were not taken.

15. To my mind, it is clear that so far as the aspect of authenticity of the second and final variation statement is concerned, the Respondents itself is taking different and, at times, contrary stands.

16. Perusal of the award shows that the Arbitrator has relied on a letter dated

30-9-1996 at Ex. C-35 to the statement of claim, the relevant portion of which reads as follows:

"This is further supported by the Respondents letter dated 30-9-1996 (Ex-C-35 to the statement of claim and part of Ex-A (Colly.)) addressed by the Respondents to the claimants by which the Respondents admitted that the variation statement about the sanction schedule quantities has received senior DEO's concurrence and was sent for obtaining AGM sanction and payment would be made to the claimants on receipt of AGM's sanction."

17. Now perusal of the letter dated 30-9-1996 shows that this letter refers to two letters from the respondent-claimants. First letter is dated 14-8-1996 and the second letter is dated 23-8-1996.

18. Perusal of the letter dated 14-8-1996 shows that in that letter the respondent-claimants refers to "on account bill" which has been prepared by the Railways but payment has not been made. This letter definitely does not refer to the second and final variation statement because it is nobody's case that any "on account bill" was prepared by the Railways pursuant to the second and final variation statement. It is in reference to this letter dated 14-8-1996 that in para 1 of the letter dated 30-9-1996, it is stated "Reference to your letter dated 14-8-1996, this is to inform you that, 1st on account bill in connection with above work has already been passed in the month of January. Further, variation statement above sanctioned schedule for additional extra quantity to be operated was sent to senior DEO for obtaining accounts concurrence (Sr. DEO), which has been received and now it has been sent for obtaining AGM's sanction."

19. It is thus clear that para 1 of the letter dated 30-9-1996 refers to the 1st on account bill and the additional work which is covered by the subsidiary agreement. Paragraph 2 of the letter dated 30-9-1996 refers to letter dated 23-8-1996 from the claimants. Perusal of the letter dated 23-8-1996 shows that in that letter, the claimants are raising claims in addition to the claims mentioned in the letter dated 14-8-1996 and it is this letter dated 23-8-1996 which is relatable to the second and final variation statement. Insofar as the letter dated 30-9-1996 is concerned, in para 2, it is stated thus:

"Reference to your letter dated 23-8-1996, the claims made by you are false, as the quantities included in the variation statement for additional/extra items operated sent to competent authority for sanction has been accepted and signed by you."

20. Thus, insofar as the claims included in the letter dated 23-8-1996 Is concerned, a clear statement is made in the letter dated 30-9-1996 that the claims are false. It is further apparent that as per para 2 of this letter, the variation statement is signed only by the respondent-claimants. It is further clear that the observation in the award quoted above are absolutely wrong and they are contrary to the material available on record. The Arbitrator has, in fact, misquoted the contention of letter dated 30-9-1996. Really speaking, the

contents of the letter dated 30-9-1996 creates genuine doubt about the genuineness of the document viz. the second and final variation statement instead of supporting its existence.

21. The Arbitrator in the Award has observed that even if it is assumed that the second and final variation statement does not exist then also, the petitioners are liable to make payment to the Respondents for the work carried out. This observation, in my opinion, is clearly contrary to Clauses 41 and 42 of the standard general conditions of the contract because if existence of the second and final variation, statement is not establishment then there is no document on the basis of which liability can be fastened on the Railways. For making the petitioners liable for making payment for the work as per the terms of the contract a written document signed by competent authority is absolutely necessary. Taking over all view of the matter, therefore, in my opinion, the Award of the learned Arbitrator does not only properly appreciate the evidence on record but also clearly misreads that evidence and, findings contrary to the material available on record have been recorded. The learned Arbitrator has made an Award in favour of the claimants and against the petitioners for an amount of Rs. 25 lacs with interest at the rate of 18% per annum right from 13-12-1996. The findings that have been recorded by the learned Arbitrator are shocking. Sweeping observations are made in the Award for which there is no material available on record. On the contrary, the material available on record shows exactly the opposite position. In my opinion the Arbitrator was under a duty to properly appreciate the material on record specially because the claim was against a public authority and the amounts were claimed from public funds. As observed above, allowing the work to such a huge extent being allotted to contractors, without inviting tenders, is contrary to the fundamental policy of India which is enshrined in Article 14 of the Constitution. It appears that the learned Arbitrator has also visited the site to find out whether any evidence of dismantling of the additional work is available. There does not appear to be much dispute about the fact that a part of the work carried out by the Respondents was dismantled. When the witness for the Respondents was examined he stated that presently, no evidence of dismantling is present but surprisingly, the learned Arbitrator has found that there is evidence of dismantling available at the site. However, in my view, site inspection is not of much importance for considering the validity of the Award. In my view, taking an overall view of the matter, looking from any point of view, the Award made by the learned Arbitrator cannot be allowed to stand and has to be set aside and it is accordingly set aside. Insofar as the aspect of cost is concerned, in my opinion, the costs of this petition will have to be paid by the Respondents considering the conduct of the Respondents through out. Therefore, the Respondents are directed to pay the costs of this petition to the petitioners. They are quantified at Rs. 10,000/-.

Certified copy expedited.