THE STATE OF J & K AND ANR. A

v.

DEV DUTT PANDIT

AUGUST 27, 1999

[D.P. WADHWA AND M.B. SHAH. JJ.] B

Arbitration Act, 1940 :

Sections 30 and 33—Measurable item rate contract—Final Bill based on measurements of work by Local Commissioner—No objection to such measurements—Claim based on final bill allowed by the arbitrator—Whether award against the terms of the contract—Held, under the facts and circumstances, claim based on final bill not outside the terms of the contract. C

Arbitration—Object of—Held, it is an important Alternative Disputes Redressal process which should be encouraged—Situations which bring bad name to the arbitration process should be avoided. D

Interest Act, 1978—Sections 2(b) and 5—Arbitration Award—Interest at the rate of 10% awarded—Challenged—Commercial transaction—Held, under the facts and circumstances, interest at the higher rate than 6% can be awarded—Code of Civil Procedure, 1908—Section 34. E

Words and Phrases-'Idle labour'—Meaning of.

Appellant-State accepted tender and allotted work of Rs. 12,23,500 to respondent-contractor which was to be completed within a stipulated time. When contractor failed to complete the work within the stipulated time, contract was terminated by the State and by that time the contractor had executed less then 50% of the work and had been paid a sum of Rs. 5,71,900. The contractor filed petition under Section 20 of the Arbitration Act claiming a sum of Rs. 39,47,000 which was allowed and the dispute was referred to an arbitrator. In the proceedings under Section 20 the court appointed a Local Commissioner, to take measurements of the work done at the site by the contractor and on the basis of the report of the Local Commissioner, the contractor prepared a final bill for Rs. 14,32,436.62. The contractor filed a claim of Rs. 63,61,000 before the arbitrator which F G H

A included claims on account of final bill, idle labour, damage due to mansoon, deviation or alteration in work, interest, etc. The arbitrator gave a non-speaking award for a sum of Rs. 20,08,000 in favour of the contractor with interest at the rate of 10% per annum from the date of application for appointment of the arbitrator upto the date of payment.

B State filed objections to the award under Sections 30 and 33 of the Arbitration Act and alleged misconduct by the arbitrator on the grounds that the award was against the terms of the contract and that the arbitrator had travelled beyond the terms of reference in passing the impugned award and contended that as per the order of reference, new claims based on C measurements recorded by the Local Commissioner and not mentioned in the summary of claims filed with the Section 20 petition could not be advanced. Single Judge of the High Court dismissed the objections but reduced the rate of interest to 6% per annum from the date of award till payment. Aggrieved by the order of the Single Judge, the contractor and the State both filed appeals. Division Bench partly allowed the appeal of the State by deleting D the two claims under items 13 and 14 which amounted to Rs. 8,08,250 but dismissed the appeal of the contractor against reduction in the rate of interest. Against the order of the Division Bench, the contractor and the State have both appealed to this Court.

E The State reiterated the contentions advanced in the High Court. The contractor contended that it is a non-speaking award and court cannot go into the mental process of the arbitrator in making the award on various claims; and that "idle employees" as mentioned in clause 69 of the contract is not the same thing as "idle labour" and it would only mean regular employees on the roll of the contractor like engineers etc.

F Partly allowing the appeals, the Court

HELD : 1. Court has certain limitations while examining a non-speaking award but there is no complete bar in examining if the award is in terms of G the reference or the terms of the contract. [13-D]

2. Under the terms of the contract, the contractor could not claim any loss done to him on account of early onset of monsoon or otherwise; any claim towards idle labour; and claim for any work done on account of deviation or alteration without the previous permission in writing of the H Engineer. When there is no writing for any alteration or deviation the claim

could not have been allowed by the arbitrator on that ground. A
[12-G-H; 13-B-C]

3. A restricted construction cannot be put on the term "idle employees" as not to include idle labour as well. Read as a whole skilled and unskilled labour are all employees of the contractor under the contract. [13-A-B] B

4. Local Commissioner measured the work done by the contractor in presence of both the parties and thereafter he submitted his report. On the basis of measurement so recorded by the Local Commissioner the contractor prepared the final bill of claim and after taking out the money already paid to him, made claim for the balance. There is no objection of measurements recorded by the Local Commissioner and the final bill prepared on that basis. C It is difficult how the two claims made under items 13 and 14 could have been said to be either new claims or outside the terms of the contract. Under clause 5 of the contract, contractor is to be paid for the work executed by him under the contract at the rates specified therein. The balance after deducting from the final bill the amount paid to the contractor would be the D sum to which in all the contractor would be entitled to under the award which comes to Rs. 8,60,251. [12-E-F; 13-F-G]

5.1. Under the Interest Act, 1978, which came into force on August 19, 1981, court includes arbitrator. Under Section 5 of the Interest Act Section 34 of Code of Civil Procedure, would, therefore, apply to the arbitrator as E well. Arbitrator is thus entitled to award interest pendente lite and future interest at the rate not exceeding the current rate of interest which has also been defined in clause (b) of Section 2 of the Interest Act.[13-H; 14-A-B]

5.2. The arbitrator awarded interest at the rate of 10% per annum which was reduced by the courts below to 6% per annum. Under Section 34 F of Code of Civil Procedure interest at the higher rate than 6% can be awarded where the liability in relation to the sum so adjudged had arisen out of commercial transaction. There is nothing on the record to show that interest awarded by the arbitrator at the rate of 10% is in contravention of Section 34 of Code of Civil Procedure. That being so the courts below were G not correct in reducing the rate of interest as granted by the arbitrator. Therefore, the award of interest at the rate of 10% per annum as granted by the arbitrator from the date the arbitrator entered into reference till realisation of the amount under the award is restored. [14-B-D]

6. Arbitration is considered to be an important Alternative Disputes H

Redressal process which is to be encouraged because of high pendency of cases in the courts and cost of litigation. Arbitration has to be looked up to with all earnest so that litigant public has faith in the speedy process of resolving their disputes by this process. When claims are inflated out of all proportions, not only that heavy cost should be awarded to the other party but the party making such inflated claim should be deprived of the cost.

[14-F-G; 15-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3551 of 1990 Etc.

From the Judgment and Order dated 6.2.89 of the Jammu & Kashmir High Court in L.P.A. No. 13 of 1986.

L.D. Thakur, L.K. Gupta and D.K. Garg for the Appellants, in C.A. No. 3552/90.

D.D. Thakur, Ms. Purnima Bhat Kak, Mahesh Agrawal, Rishi Agrawal, Atul Sharma and E.C. Agrawala for the Respondent. In C.A. No. 3551/90.

B.A. Mahanti, Ms. Mamta Tripathy, G.M. Kawoosa and Ashok Mathur for the State.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Both the parties are aggrieved by judgment dated February 6, 1989 of the Division Bench of the High Court of Jammu and Kashmir passed in an appeal against judgment dated May 10, 1986 by the learned single Judge of that High Court. While the learned single Judge made the award given under the Arbitration Act, 1940 a rule of the court and also granted interest, the Division Bench in appeal deleted two claims from the award and also reduced the rate of interest. The award was in favour of Dev Dutt Pandit, the Contractor. He is aggrieved by deletion of two claims and also lowering the rate of interest and the State is aggrieved against the award itself. Thus two separate appeals.

Tender of the contractor for earth work, excavation, minor drainage crossing, overhead crossing, road bridges and cement concrete lining of Ravi Canal Project was accepted by the State Government and by order dated May 6, 1976 work was allotted to him. The work was to be completed within 18 months, time being the essence of the contract. On May 22, 1976 contractor commenced work. He could not complete the work within the stipulated time. The contract was partially terminated in the structural portion of the work on

January 12, 1980. On June 6, 1980 the whole of the contract was terminated because of default committed by the contractor. The contractor filed a petition under Section 20 of the Arbitration Act as the contract stipulated arbitration agreement between the parties. Some of the terms of the contract containing the arbitration agreement, we may reproduce as under :

"5. CONTRACT RATES :

The contractor shall be paid for the works executed by him under this agreement at the rates specified in Annexure I annexed hereto subject to other terms and conditions embodied in this agreement.

8. VARIATION IN QUANTITIES AND EXTRA ITEMS

The quantities shown in the Annexure III to this agreement shall not be taken as final. The Engineer in-charge shall be authorised to direct the contractor to execute extra items not shown in the aforesaid annexure III or increase/decrease the quantities beyond these described in the said annexures as may be required to be executed and for such increase/decrease quantities the contractor shall be paid at the rates specified in the annexure I.

The quantities shown in the Annexure III may be decreased in detailed drawings to be furnished to the contractor during execution and the contractor shall be paid only for the work done or executed and shall have no claim for any compensation on account of any profit or advantage that might have accrued or that may accrue to him otherwise.

14. FORCE MAJOURE

A. The completion schedule is subject to the operation of the force Majoure Clause which for the purpose of this contract is defined as acts of God, Civil, commotion, sabotage, fires, floods, earthquakes explosions or other catastrophes, epidemics, quarantines, restrictions, strikes and other labour troubles, embargoes, or other transportation delays beyond the control of the contractor for which only extension in time considered reasonable by the department shall be granted and the contractor shall have no claim for compensation or increase in rates etc. or charges for restoring damages to the works plant or material.

A *17. DAMAGE TO WORKS*

From the commencement to the taking over of the works by the Department the contractor shall be responsible for any damage or loss to the works or part thereof caused due to any reason whatsoever. The contractor shall at his own cost repair and make good the loss B or damage in every respect to the satisfaction of the Engineer whose certificate in this behalf shall be conclusive proof of the defects etc. having been removed.

19. SETTING OUT

C The contractor shall be responsible for the true and proper setting out of the works and for the correctness of the positions, levels, bench marks alignments and dimensions in works and for the provisions and maintenance of all necessary instruments, appliances, bench marks and reference marks and labour etc. in connection therewith including charges therefor shall be borne by him.

D

Reference line and bench marks will be set upon at the site of works by the site of works by the department at contractor's cost. The contractor shall at his own cost and responsibility locate and establish temporary bench marks and reference lines for all the structures as may be required for the execution of the works according to the E detailed drawings and specifications and as required by the Engineer. The contractor shall provide at his own cost all labour and materials that may be required for checking the works during execution by the staff of Engineer in-charge. Such checks shall not absolve the contractor of his responsibility from carrying out the works strictly according to F the detailed drawings and specifications and as per instructions issued to him by the Engineer during the execution of the works.

23. RESPONSIBILITY OF CONTRACTOR

Time being the essence of the contract, the responsibility for execution of works within eighteen (18) months in an efficient and workmen like G manner and in conformity with the department's drawings and specifications shall be of the contractor.

27. DEVIATIONS ALTERATIONS ETC. IN THE WORKS

The contractor shall not in any way alter the works or any part thereof H in respect of designs, quality, materials or specifications without the

previous permission in writing of the Engineer. The contractor shall not take advantage of any error or discrepancies occurring in the drawings, designs or specifications but shall report the same to the Engineer who shall make or approve the corrections if necessary.

69. CLAIMS NOT ENTERTAINABLE

From the date of allotment of works and taking over on completion by the department no claim shall be entertained in respect of the works under this agreement against the department for,

(a) Increase in the cost of POL Railway or road freight

(b) Taxes duties and octroi, etc.

(c) Increased wages of labour skilled or unskilled and cost of materials

(d) Rise in cost of living index

(e) Business or any other losses, and

(f) Idle employees on any account whatsoever.

74. ARBITRATION

If at any time any doubt, question dispute or difference whatsoever, shall arise between the contractor and the Government upon or in relation to or in connection with this contract, either of the parties may give to the other notice in writing of the existence of such doubt, question, dispute or difference and the same shall be referred to a person mutually agreed upon by the parties failing such agreement by any officer of the Government as the minister In-charge, P.W. Department Jammu and Kashmir Government may nominate for arbitration under the Jammu and Kashmir Arbitration Act and rules framed thereunder. The decision of the Arbitrator shall be final, conclusive and binding upon the parties.

(b) The contractor shall not delay the carrying out of works by reason of any reference to Arbitration and shall proceed with the works with all one due diligence and shall until the decision of the Arbitrator, abide by the decision of the engineer or his representative in-charge of the works duly conveyed by him."

Petition under Section 20 of the Arbitration Act by the contractor was

A filed on June 12, 1980. On the following day when the petition was taken up without any notice to the State the Court appointed Local Commissioner to take measurements of the work done at the site by the contractor. In the application for seeking interim relief the contractor prayed that "a commissioner may be appointed to go on spot and record the measurements of the work done by the petitioner in presence of the parties" and till then "the respondents B may be restrained from changing the status quo at site or disturbing the position of the work already done". Court passed the following order:-

> "An application has also been moved on behalf of the petitioner which is O.M.P. No. 136 of 1980 with the prayer that measurements C of the work done at site may be got recorded by appointing a Commissioner as the work done by him is (?) obliterated. The application is supported by an affidavit. Shri Bashir Ahmed Shah, Ex. Engineer, R & B C/o Chief Engineer, P.W.D. Jammu, is appointed as Commissioner to visit the spot and record the measurements and submit his report within a week. Till the measurements are recorded D the respondent will not execute any fresh work. The Commissioner's fee is fixed at Rs. 300 to be borne by the petitioner."

Subsequently Local Commissioner was changed. Local Commissioner submitted his report on December 9, 1980 which formed part of the record. In his petition under Section 20 of the Arbitration Act the contractor claimed E a sum of Rs. 39,47,000 under various heads. This petition was allowed by order dated April 9, 1982. We quote the operative portion of the order as under:

> "The disputes mentioned in the application u/s 20 of the Arbitration Act as well as the objections filed thereto by the other side are, F therefore, referred to the aforesaid Arbitrator with a direction that he shall enter upon the reference and make his award within four months thereafter in accordance with law. The parties shall be at liberty to raise any further disputes before him provided it is not against the term of the agreement. The parties, however, shall be in possession G of the original agreement, shall produce the same before the Arbitrator. Copy of the application, the objections filed thereto and a copy of this order shall be provided to the arbitrator. Arbitration petition No. 72 of 1980 stands finally disposed of."

Before arbitrator the contractor now claimed a sum of Rs. 63,61,000. On H the basis of the report of the Local Commissioner giving details of the

measurements of the work done by the contractor a final bill was prepared by the contractor which amounted to Rs. 14,32,436.62. He claimed this bill to be based on the terms of the contract.

The arbitrator gave his Award on February 2, 1983. It is a non-speaking Award. He awarded a sum of Rs. 20,08,000 to the contractor with interest at the rate of 10% per annum from the date of application for appointment of the arbitrator upto the date of payment. It was also provided that the "interest on the amount awarded against claim Nos. 16 and 18 shall start and will be computed from the date of the publication of the Award". Claims 16 and 18 respectively were claims of interest at the rate of 24% per annum by the contractor respectively on recoveries made and delay in release of illegally deducted amounts for excess consumption of cement. Awards on claims 16 and 18 were restricted to Rs. 20,400 and Rs. 9,524. Lastly, it was directed that if the amount awarded was not paid within three months from the date of the Award interest payable shall be 18% per annum on the amount so awarded upto the date of realisation.

As noted above, the contract was for a total sum of Rs. 12,23,500. The contractor allegedly committed breach of the contract. It was partially terminated on January 12, 1980 in respect of structural portion of the work and the contract was finally terminated on June 6, 1980. By this time the contractor had executed less than 50% of the work and had been paid a sum of Rs. 5,71,900.

The matter now again came to the court. This time for making the Award rule of the court. State filed objections to the Award under Sections 30 and 33 of the Arbitration Act and alleged misconduct by the arbitrator. It was on the grounds that the Award was against the terms of the contract and the arbitrator travelled beyond the order of reference. It was submitted that new claims were introduced before the arbitrator which were not made in the petition under Section 20 of the Arbitration Act and, therefore, could not be taken cognizance of by the arbitrator. What the contractor claimed in Section 20 petition was given in the annexure thereto and this is how the claims were advanced:-

> "Similarly numerous other items in which the petitioner either was not paid at all or was not paid have been comprehensively indicated in the Annexure to this petition which may kindly be treated as a part and parcel of the present petition. The petitioner has tentatively assessed the various claims on various accounts which he is entitled

A to from the said department which may be referred to for the purpose of convenience."

Annexure contained summary of claims which included claims on account of earth work cutting as the original alignment was later abandoned, idle labour, illegal recoveries, interest on illegal recoveries, etc.

B

It was submitted by the State that the order dated April 9, 1982 referring the disputes to arbitration did not allow the contractor to advance additional claims not mentioned in the summary of claims annexed to the petition. The objection was to the claim made by the contractor of Rs. 14,32,436 which was based on the measurements recorded by the Local Commissioner of the work C done by the contractor under the contract. This amount is reflected in claims 13 and 14 before the arbitrator.

Learned single Judge of the High Court by order dated May 10, 1986 dismissed the objections raised by the State and made the Award rule of the D Court. He, however, reduced the rate of interest and now the interest was payable at the rate of 6% per annum from the date of the Award till payment. Award of penal interest at the rate of 18% was deleted. Matter was then taken to the appellate Bench of the High Court in appeal. Same objections to the Award were repeated by the State. Contractor objected to that part of the order of learned single Judge by which interest awarded by the arbitrator was E reduced. The Division Bench upheld the order of the learned single Judge except that claims under items 13 and 14 were deleted which amounted to Rs. 8,08,250. The appeal of the State was thus allowed in part. Plea of the contractor against reducing the interest by the learned single Judge was rejected. While deleting the claims under items 13 and 14 the Division Bench observed as under:

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"The work done by the contractor was duly measured and the final bill prepared in accordance with paragraph 40 (measurements and terms of payment) of the Agreement enclosed by the contractor with his statement of facts and claim before the arbitrator amounting to Rs. G 14,32,436.62 paise out of which deducting the amount of Rs. 5,71,915.60 paise paid to the contractor leaves the balance of Rs. 8,60,521.02 paise only over and above this amount any measurement subsequently done by the commissioner cannot form part of the agreement and could not be allowed to be multiplied to an unlimited extent beyond the rates and work prescribed in the agreement. Even the summary of H claims submitted before the court for reference do not include the

amount claimed under this head. The other heads of claim overlap the claim No. 20 on which item 13 is awarded. In consideration of the foregoing circumstances we have no doubt in our mind to hold, that the arbitrator made these items of the award No. 13 granting Rs. 95,400.00 based on claim No. 20 (due to escalation Rs. 2,86,487 - claim rejected by arbitrator) of the subsequent statement of facts and claim, exceeded his jurisdiction which is against the terms of the agreement and thus invalid in view of the reference. The items No. 13 and 14 of the Award being independent of the entire award are separable, there can be no legal impediment in deleting the two items based on claim No. 20 from the Award. The appeal to this extent, in our opinion, deserves to be allowed to disallow the claims of Rs. 7,12,850.00 and Rs. 95,500.00 totalling to Rs. 8,08,250.00 (Eight lacs, eight thousand two hundred and fifty only) and the award to that extent is set aside."

State still felt aggrieved. Contractor became more aggrieved because of deletion of his two claims and rejection of his plea for enhancement of the interest as awarded by the Arbitrator.

We have noted the relevant terms of the contract. It is not necessary for us to set out the claims made by the contractor in detail except to note that out of 23 claims under different heads claims 2, 6, 19, 20, 21 and 22 were rejected by the arbitrator; claims 1 and 3 relate to the alteration of the work being excavation done at original site abandoned, refilling of the original excavation, fresh excavation on new alignment and shifting of centre line and consequent refilling compacting and lean concrete lining; claims 4, 5, 10 (in part) and 11 are for damage due to monsoon; claims 8, 9, 10 (in part) and 12 are on account of idle labour; claims 7, 13, 14 and 17 are by and large under the terms of the contract; claims 15, 16 and 18 are for interest which were not mentioned in the summary of claims annexed with Section 20 petition and claim 23 is for the cost of arbitration.

Before the learned single Judge four issues were framed arising out of the pleadings of the parties. These are:

"(1) Whether any fresh claims were entertained by the Arbitrator during the course of arbitration proceedings?

(2) In case issue no. 1 is proved in affirmative whether any such claim was beyond the scope of reference made to the arbitrator by the court, if so how?

A (3) Whether the award made by the Arbitrator was against the terms of the agreement? If so, whether the same amounts to misconduct?

(4) Whether the arbitrator committed misconduct legal or otherwise in making of the Award? If so, how?"

B The court allowed the parties to lead evidence on the issues so framed.

The contract has been entered into on the basis of measurable item rate contract and the rates of each items were quoted accordingly. According to the measurements, as quoted, the contract was for a total value of C Rs. 12,23,500.

Mr. Mahanti, senior advocate for the State of Jammu and Kashmir reaffirmed the arguments advanced in the High Court that the Award travelled beyond the terms of reference and was also against the terms of the contract. He said claims 13 and 14 could not have been advanced before the arbitrator D as these claims were not mentioned in the summary of claims filed with the Section 20 petition. He said High Court was right in deleting these two claims. The order referring the disputes to arbitration allows those claims to be raised before the arbitrator which fell within the terms of the contract.

The contractor has to be paid on the basis of measurement of the work E done by him. Local Commissioner measured the work done by the contractor in presence of both the parties and thereafter he submitted his report. On the basis of measurement so recorded by the Local Commissioner the contractor prepared the final bill of claim for Rs. 14,32,436 and after taking out the amount already paid to him, made claim for the balance. It is difficult to see how claims F made under items 13 and 14 could be said to be either new claims or outside the terms of the contract. Under clause 5 of the contract, contractor is to be paid for the work executed by him under the contract at the rates specified therein.

Under clause 17 of the contract it is the contractor, who is responsible G for any damage or loss to the works or part thereof caused due to any reason whatsoever and he at his own cost is required to repair and to make good of loss or damage. Contractor, therefore, could not claim any loss done to him on account of early onset of monsoon or otherwise. Similarly under the terms of the contract he cannot claim any amounts towards idle labour. As a matter of fact under clause 69 these claims are not entertainable at all. Mr. Thakur H for the contractor said that "idle employees" as mentioned in clause 69 of the

contract is not the same thing as "idle labour". According to him, the term "idle employees" would mean regular employees on the roll of the contractor like engineers etc. We do not think such a restricted construction can be put on the term "idle employees" as not include idle labour as well. Read as a whole skilled and unskilled labour are all employees of the contractor under the contract.

Any work done on account of deviation or alteration could not be undertaken without the previous permission in writing of the engineer. It is admitted case of the contractor himself that there is no writing though it was promised to him orally. In view of clause 27 of the contract claims 1 and 3 could not have been accepted. When the principal claims were wrongly awarded there is no question of any award of interest on the amounts claimed under those heads.

It was submitted before us that it is a non-speaking Award and this Court cannot go into the mental process of the arbitrator in making the award on various claims. Court has certain limitations while examining a non-speaking award but there is no complete bar in examining if the award is in terms of the reference or the terms of the contract. Regarding the claims made before the arbitrator in respect of items 1 and 3 evidence was also recorded by the learned single Judge. Admittedly when there is no writing for any alteration or deviation no claim could be allowed by the arbitrator. To accept the claim of the contractor on claims 1 and 3 without examining the pre-condition of there being any writing of any alteration or deviation would not be legal.

Now it does appear to us that the final bill amounting to Rs. 14,32,436.62 encompasses all the works done by the contractor which were measured by the Local Commissioner in presence of both the parties and which perhaps also includes the work for which contractor could not raise any claim under the contract. In the evidence which has been led there is no objection to measurements recorded by the Local Commissioner and the final bill prepared on that basis. That is all the amount contractor is entitled to. By raising other claims he is merely trying to create confusion with the hope that he may be able to get some payment outside the contract for which he unfortunately succeeded. Out of the final bill of Rs. 14,32,436.62 the contractor has been paid Rs. 5,71,915.60 thus leaving a balance of Rs. 8,60,521.02 to which in all the contractor would be entitled to under the Award.

Under the Interest Act, 1978, which came into force on August 19, 1981, court includes arbitrator. Under Section 5 of the Interest Act Section 34 of

A Code of Civil Procedure would, therefore, apply to the arbitrator as well. Arbitrator is thus entitled to award interest pendente lite and future interest at the rate not exceeding the current rate of interest which has also been defined in clause (b) of Section 2 of the Interest Act.

In the present case arbitrator awarded interest at the rate of 10% per
B annum which was reduced by the learned single Judge to 6% per annum and upheld by the Division Bench. Under Section 34 of Code of Civil Procedure interest at the higher rate than 6% can be awarded where the liability in relation to the sum so adjudged had arisen out of commercial transaction. There is nothing on the record to show that interest awarded by the arbitrator
C at the rate of 10% is in contravention of Section 34 of Code of Civil Procedure. That being so we do not think either the learned single Judge or Division Bench were correct in reducing the rate of interest as granted by the arbitrator. We would, therefore, restore the award of interest at the rate of 10% per annum as granted by the arbitrator from the date the arbitrator entered into reference till realisation of the amount under the award.

D

When the appeal filed by the State of Jammu and Kashmir came up for admission before this Court it was ordered on May 1, 1989 that the State Government shall "pay 1/2 of the decretal amount payable under the order of the High Court against bank guarantee to the respondent. The bank guarantee
E shall be given to the satisfaction of the Deputy Registrar of the High Court. Issue stay of further execution proceedings". If by the order dated May 1, 1989 excess amount has been paid by the State to the contractor the same shall be refunded to the State by the contractor with interest at the rate of 10% per annum from the date the contractor got the excess amount till it is refunded to the State Government.

F

Arbitration is considered to be an important Alternative Disputes Redressal process which is to be encouraged because of high pendency of cases in the courts and cost of litigation. Arbitration has to be looked up to with all earnest so that litigant public has faith in the speedy process of
G resolving their disputes by this process. What happened in the present case is certainly a paradoxical situation which should be avoided. Total contract is for Rs. 12,23,500. When the contractor has done less than 50% of the work the contract is terminated. He has been paid Rs. 5,71,900. In Section 20 petition he makes a claim of Rs. 39,47,000 and before the arbitrator the claim is inflated to Rs. 63,61,000. He gets away with Rs. 20,08,000 with interest at
H the rate of 10% per annum and penal interest at the rate of 18% per annum.

Such type of arbitration become subject of witticism and do not help the institution of arbitration. Rather it brings bad name to the arbitration process as a whole. When claims are inflated out of all proportions not only that heavy cost should be awarded to the other party but the party making such inflated claim should be deprived of the cost. We, therefore, set aside the award of cost of Rs. 7,500 given in favour of the contractor and against the State of Jammu and Kashmir.

Both the appeals are partly allowed. Judgment and decree passed by the learned single Judge making the Award dated February 9, 1983 Rule of the Court and as modified by the impugned judgment is further modified. Now Award is made Rule of the court to the extent of Rs. 8,60,521 with interest at the rate of 10% per annum from the date of reference till payment is made. There shall be no order as to costs in both the appeals. The exact amount payable/due to any of the parties shall be worked out while drawing up the decree keeping in view the order dated May 1, 1989 of this Court.

A.K.T. Appeals partly allowed.