HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

A. A. No. 9900001/2014

Reserved On: 7th of August, 2026.
Pronounced On: 29th of August, 2026.
Uploaded On: 29th of August, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

1. **J&K Lakes & Waterways Development Authority,**
   Brain Nishat, Srinagar

2. Executive Engineer, Lakes Division 2nd,
   J&K Lakes & Waterways Development Authority,
3. Hazratbal, Srinagar.

… Petitioner(s)

Through: -
Mr Ilyas Nazir Laway, Government Advocate.

V/s

Mohammad Amin Shah
S/O Late Shamus Din Shah
R/O Gupta Ganga, Nishat, Srinagar.

… Respondent(s)

Through: -
Mr Shakir Haqqani, Advocate with
Mr Aasif Ahmad Wani, Advocate.

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE.

(JUDGMENT)

01. This Petition under Section 34 of the J&K Arbitration and Conciliation Act, 1997 ["Arbitration Act"] seeks setting aside of the Award dated 14 June 2014 passed by the Sole Arbitrator, Shri Abdul Rashid Bhat-I (Retired District Judge). By the Award, a sum of ₹21,19,439/- was awarded in favour of the Respondent-Contractor, to be paid within two months from the date of the Award, failing which simple interest at the prevalent/ current rate was directed to be paid to the Contractor.

Brief Background:

02. Jammu & Kashmir Lakes and Waterways Development Authority (LAWDA) floated NIT No. 11 of 2007 dated 20 September 2007

for construction of a sewer line in Sub-Zones CO1 to CO4 of Zone 1 (C) along the Nigeen fringe, from RD 1 to RD 1011 metres. The tenders were opened on 11 October 2007. The work was allotted to Contractor-Mohammad Amin Shah (the Respondent herein), vide Order No. LDA-98/7864-67 dated 27 December 2007 for ₹90.05 lacs, against the advertised cost of ₹99.21 lacs. The allotment cost was inclusive of departmental materials, such as RCC Spun Pipes, Manhole Covers, C1 Steps, cement, iron and the like. A formal agreement incorporating the NIT conditions was executed on 22 May 2008. The Contractor was required to commence work within seven days of the allotment order and to complete it within six calendar months/ 180 days.

03. A dispute, thereafter, arose between the Contractor and the LAWDA on account of delayed supply of departmental materials, the resultant escalation of prices, stoppage of work and allied claims. That compelled the Contractor to move an application for appointment of an Arbitrator and reference of the disputes to the Arbitral Tribunal.

<u>Appointment of the Arbitrator and the rival stands:</u>

04. The Contractor's case, in substance, was that the allotment order was received by him only on 12 January 2008 by ordinary post; that the full indented quantity of departmental RCC Spun Pipes was not supplied in time, only 60 Pipes of 350 mm *dia* meter having been made available against an indent of 165, with some Pipes to be excavated from the debris at Habbak/ Nishat; that the work was executed only in two spells, namely, from 30 January 2008 to the end of March 2008 and from 16 October 2008 to the end of March 2009; that land-owners objected after March 2009; and that the Contractor suffered extra dewatering, idle labour and machinery, escalation, fire/ theft during the Amarnath agitation of August 2008, Watch and Ward, and blockage of deposits. The Contractor claimed completion of about 55% of the work, that is, 552 meters, and claimed a total of ₹34,66,500/, besides 15% compensation.

05. LAWDA, on the other hand, maintained that the Contractor delayed the start by about 28 days; that he worked for more than seven months against the allotted period of six months; that he completed only about 42% of the work, of which he had received 40.39% payment; that the Contractor abandoned the balance work midway; and that the terms of the contract and the NIT, together with the absence of any escalation Clause, barred extra compensation.

06. It was on this factual foundation that Arbitration Application No. 15/2011 came to be filed by the Contractor. This Court, vide Order dated 08 July 2012, appointed Shri Abdul Rashid Bhat-I as the Sole Arbitrator and directed conclusion of the proceedings within three months. The Award was passed on 14 June 2014, for ₹21,19,439/- payable within two months, failing which simple interest at the current rate was awarded.

<u>Issues framed by the Arbitrator:</u>

07. The Award rests on oral and documentary evidence led by both sides. On the basis of pleadings, claims and counter claims, the following issues were framed:

1. Whether the petitioner(contractor) has not executed the work as per the terms & conditions of contract and has left the work midway resulting in huge losses to LAWDA? (OPRs).

2. Whether the petitioner is entitled to claim compensation for the delay caused by the respondents in supplying agreed departmental stores like spun pipes, as also their excavation & the dispute raised by the land owners on spot regarding proper acquisition of their land identified for execution of work? (OPP).

3. Whether the petitioner has incurred additional expenditure on account of draining of water from trenches, demurrage/hire for machinery, storage rentals, watch and ward, idle wages and pilferage of constructional materials etc. and on this account also the petitioner is entitled to compensation? (OPP).

4. Whether the petitioner cannot claim compensation/ escalation (revision) of rates in the case in view of the terms and conditions of the contract? (OPRs).

5. Whether the water level remains lowest in the Dal and Nigeen lakes in the Dal and Nigeen lakes from September to March and if so, what is its effect on the case? (OPRs).

6. Whether the petitioner has completed work only to the extent of 42% for which he has received 40.39% and a minor payment upto 1.5% is only due to him from the respondents? (OPRs).

7. Relief?

Findings of the Arbitrator:

08. The burden of proving issues No. 2 and 3 was placed on the Contractor. The learned Arbitrator discussed the oral and documentary evidence in detail and first returned findings on those issues. For consistency, those findings may be noticed at the outset.

09. Issues No. 2 and 3 were held proved in favour of the Contractor. The Arbitrator found delay in continuation of the allotment, non-supply of the full quantity of pipes and the land dispute, all attributable to LAWDA. Additional expenditure incurred by the Contractor was, therefore, held proved in his favour and against the Department. The findings proceed on the premise that the Contractor established, by cogent evidence, that execution was delayed; first, due to non-communication of the allotment order promptly; secondly, due to non-supply of RCC Pipes in time; and thirdly, that after work started in January 2008, when 60 Pipes were excavated from debris by the Contractor, it stalled at the end of March, 2008 for about seven months for want of RCC Spun Pipes. The RCC Pipes were made available in October 2008; work re-started and continued till the end of March 2009, when the land owners stopped the work and demanded compensation for land coming under the alignment. A specific finding was returned that after opening of tenders on 11 October 2007 the allotment order was passed on 27 December 2007, and that LAWDA failed to prove how and when that order was communicated to the Contractor. The Contractor, on the other hand, testified that the allotment order was received by ordinary post after about 3 and ½ months of the opening of tenders.

10. Although the LAWDA has challenged the Award in these proceedings, but the cause of delay alleged by the Contractor due to non-supply of RCC Pipes initially, and later the objection of land-owners claiming compensation was, in substance, admitted before the Arbitrator. On the same set of evidence, the learned Arbitrator held that issue No. 1 was not proved by the Department. The stoppages were found to be due to LAWDA's default. There was, in the Arbitrator's view, no abandonment for the Contractor's benefit. It was specifically held that it was for the Department to provide RCC Spun Pipes (the principal component of the departmental store) and to make the site available. Without fulfilling those obligations, the Department could not successfully contend that the Contractor had failed to execute the work and left it incomplete midway, more so in absence of cogent evidence that he abandoned the work despite availability of Pipes and accessibility of site.

11. Issue No. 4 forms the fulcrum of the dispute. The Arbitral Tribunal held it not proved by the Department (LAWDA), principally on the reasoning that an exclusion clause cannot protect a defaulting party. The Department admitted that only such RCC Spun Pipes as were then available were provided, and that it had not anticipated that local land-owners would object after about half of the work had been completed. The Tribunal reasoned that the Contractor could not be penalised for acts of omission and commission of the Department; that execution was delayed and stopped on that count; and that to claim compensation in these circumstances would be unjust.

12. On the escalation, the Tribunal held that revision of rates with the passage of time, where delay is not attributable to the Contractor, is a normal and in the circumstances inevitable claim. Support was drawn from the subsequent re-tendering and allotment of the same work in the year 2013-14 at much higher cost of ₹1,13,92,361/- and from the communication dated 24 January 2009, whereby the then Assistant Executive Engineer (AEE) recommended consideration of escalation on account of delay in

supply of material, noting that comparison with All India Price Indices worked out to approximately 4%.

13. Issue No.5 was held not proved by the Department. Issue No.6 was left inter-connected with the relief.

14. Applying restrictions to the claims as pleaded, the Tribunal quantified and awarded in the following manner:

Claim	**Head**	**Amount Awarded (₹)**
A-1	Extra Dewatering	36,000/-
A-2	Idle Labour Claim for 198 days	5,14,800/-
A-3	Idle Machinery Charges	1,18,800/-
A-4	Escalation restricted to 4%	90,351/-
A-5 [i-vii]	Loss/ Carriages with regard to unused material allowed, subject to return of material, Damages: (76,000/-; 30,000/-; 12,000/-; 87,500/; 59,500/-;64,000/-; and 43,400/-)	3,72,400/-
A-5 [viii]	Watch and Ward after March 2009	2,34,600/-
A-5 [ix]	Fire Loss, restricted to the official revenue assessment	1,50,000/-
A-5 [x]	Outstanding amount for work done restricted in terms of Works Register	2,52,005/-
Claim B	Compensation on blocked money (call deposit, bill deposit and admitted work done balance), as restricted	78,663/-

15. The Award, as passed, is for a total of ₹21,19,439/-.

16. The Award confines the allowed claims to the period of proved delay from March/ April 2008 to October 2008 in supplying the RCC Spun Pipes, and, during the second spell, to non-availability of the site after March 2009 on account of the land dispute raised on the spot by the land-owners claiming compensation. Several heads were restricted. Compensation of 15% as claimed on all heads was declined as neither permissible nor proper; compensation was confined to blocked money under call deposit, bill deposit and the admitted work-done balance. Fire loss was restricted to the official assessment, with a rider that if the State later paid that compensation it would enure to the Department and not to the Contractor. The Tribunal also noticed the revenue assessment and the FIR registered in respect of the losses during the agitation of August 2008.

Submissions:

17. The Petitioners' dominant ground is that the learned Arbitrator exceeded the terms of the contract and the scope of the submission by awarding extra de-watering, idle charges and escalation contrary to Clauses 21, 23 and 34 of the contract/ NIT. It is urged that despite the absence of an escalation Clause, the Arbitrator awarded under that head and thereby travelled beyond jurisdiction. It is further urged that the award rests on the testimonies of the interested witnesses, ignores departmental records, was passed long after the three month direction of this Court without extension, and results in a windfall to Contractor who completed only about 42% of the work; and that the initial delay in commencement by the Contractor was not duly considered. These features, it is canvassed, constitute patent illegality and conflict with public policy under Section 34 (2) (a) (iv) and Section 34 (2) (b) (ii) of the Arbitration Act.

18. *Per Contra*, the Respondent (Contractor) submits that this Court, in exercise of power under Section 34, does not sit in appeal; that findings based on evidence, including the AEE's letters dated 24 January 2009, are final; that extra de-watering was not the ordinary de-watering

contemplated by Clause 23; that there was no formal order of suspension under Clause 21; and that Sections 53, 56 and 73 of the Contract Act, together with the principle that a party cannot take advantage of its own wrong, sustain the Award on facts and in law. It is emphasized that the Tribunal rendered findings on proved Departmental communications; that the Court cannot re-appreciate evidence or substitute its own view; and that several heads were restricted and the claims as prayed for not awarded in its entirety. The Award is, therefore, as per the submissions of the Respondent, an outcome of measured assessment and proper appreciation of the Arbitrator on evidence.

Analysis:

Scope of interference under Section 34:

19. Section 34 of the Arbitration Act permits setting aside of an award only on the enumerated grounds of incapacity; or invalid arbitration agreement; or lack of proper notice, award dealing with a dispute not contemplated by or not falling within the terms of the submission to arbitration or containing decisions of matters beyond the scope of submission to arbitration; or composition of Tribunal or procedure not in accordance with the agreement or the award being in conflict with the public policy of India.

20. It is trite that the Arbitrator is a creature of the contract and must decide in accordance with its terms. The Arbitrator cannot re-write the contract or award what the parties have expressly barred. An award that ignores a specific contractual bar may suffer from jurisdictional error and patent illegality. At the same time, construction of the contract, if it is possible view that a fair-minded person could take is within the Arbitrator's domain. The Court under Section 34 does not interpret the contract as a Court of first instance. Its function is supervisory.

21. In **"Associate Builders V. Delhi Development Authority, (2015) 3 SCC 49"**, the Hon'ble Supreme Court held that the Arbitrator is the sole judge of the quality and quantity of evidence; that a possible view

on facts is to be respected; and that interference on the ground of public policy is attracted where the award shocks the conscience, is based on no evidence, ignores vital evidence, or is otherwise perverse and not where two reasonable views exist.

The Contractual Clauses involved:

22. The Petitioner's challenge is mainly two-fold; first, that there was initial delay on the part of the Contractor in starting the work; and, secondly, that the Tribunal, in awarding the impugned amounts, contravened Clauses 21, 23 and 34 of the Contract/ NIT. Those Clauses read as under:

> "21. If on the directions of this authority, the work is suspended for some time or all together abandoned no compensation shall be payable to the contractor other than payment for work done quantities as per allotted rates.
>
> 23. Nothing extra shall be paid to the contractor on account of dewatering and diversion works involved during execution of work. The contractor should quote the rates of various items of work involved accordingly, keeping in view the above conditions and site conditions for disposal of surface or underground water.
>
> 34. Any damage, theft, misuse or pilferage of the departmental material shall be the responsibility of the contractor and cost thereof shall be recovered from the contractor at double the stock issue rates in addition to the legal action that may be taken against the defaulter."

23. In **"Consolidated Construction Consortium Limited V. Software Technology Parks of India, (2025) 7 SCC 757"**, Hon'ble Supreme Court reiterated that Section 34 is not an appellate provision; that proceedings thereunder are summary in nature; and that if two views are possible, there is no scope for the Court to re-appraise the evidence and take the other view.

24. In **"Steel Authority of India Limited V. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63"**, it was held that an error by the Arbitrator relatable to interpretation of the contract is an error within his jurisdiction and is not amenable to correction as an error on the face of the award.

25. The learned Arbitrator did not hold that Clauses 21, 23 and 34 did not exist. The Arbitrator had framed issue No.4 specifically on whether compensation/ escalation was barred by the terms of the contract. After considering the Department's defence, he construed those Clauses as not furnishing a complete answer once the Departmental default was found. That is an interpretation of the Contract, not a refusal to look at it.

26. The first question under Section 34 is not whether each sentence of each Clause was separately parsed, but whether the construction adopted is a possible view that a fair-minded person could take. If it is, the Court cannot substitute its own reading. If it is not, interference may be open on the ground of patent illegality or public policy and not by treating every misreading as a decision beyond the scope of the submission under Section 34 (2) (a) (iv).

27. The construction applied by the Tribunal, in substance, proceeds on three steps which correspond to the Contractor's claims:

(i) Clause 23 covers ordinary de-watering, which the Contractor was to price into his rates and not extra de-watering caused by delayed supply of RCC Pipes after trenches had already been dug and then silted or re-filled;

(ii) Clause 21 applies only when work is suspended or abandoned "on the directions of this Authority". There was no such direction. Stoppage was a consequence of the Department's omissions; and

(iii) Clause 34 concerns responsibility for Departmental material after it has been issued. It does not wipe out claims for the Contractor's own establishment, fire of his store, or Watch and Ward multiplied by Departmental delay.

<u>Clause 21:</u>

28. The words of limitation in Clause 21 are "on the directions of this Authority". A possible reading is that the bar is conditional. If there is no Departmental direction of suspension or abandonment, the Clause is not

attracted. The Tribunal's view is that Clause 21 did not shut out idle charges, once it found that there was no such direction and that stoppage was due to the Department's own omissions even without a formal order, is a reading the words will bear. Section 34 does not permit this Court to say that every stoppage must be treated as a Clause 21 suspension. That would be the Court interpreting the Clause afresh, which is impermissible. Reference in this behalf may again be made to the principle enunciated in **Associate Builders** (*supra*).

Clause 23:

29. Clause 23 is couched in stronger language that, "nothing extra shall be paid" for a named item, coupled with a direction to price surface and underground water into the rates. On a narrow but tenable reading, "nothing extra" means nothing extra for de-watering as an item of work in the ordinary course of execution. Extra pumping made necessary by the Department's delay after trenches were ready is not that item, it is damages for breach. That view is not absurd on its face. A fair-minded person could say that the Contractor priced ordinary lake fringe dewatering and did not price seven months of trenches standing open because pipes were not issued by the Department. Another fair-minded person could say the opposite; that the Clause is absolute for the whole period of execution. When two fair-minded views exist, the law laid down in **Associate Builders** (*supra*) assigns the choice to the Arbitrator. To interfere on Claim A-1, the Court would have to hold that the narrower view is not even possible. That is a finding this Court is not prepared to record. The plea that the Award is beyond the scope of the submission under Section 34 (2) (a) (iv) on this head, therefore, fails.

Clause 34:

30. Clause 34 makes damage, theft, misuse or pilferage of Departmental material the Contractor's responsibility, recoverable at double the stock issue rate, besides legal action. The Tribunal did not treat Clause 34 as a general immunity for the Department against fire, Watch and Ward or idle establishment. Clause 34 is about Departmental material after it is

issued for the work. It does not, by its language, make the Contractor the insurer of his own sheds, *bajri* (graval), sand and shuttering, nor does it bar Watch and Ward of his store. Using Clause 34 to strike the whole of Claim A-5 would itself be a strained reading. Section 34 cannot be used to enlarge Clause 34 into a general no damages Clause.

31. As a rule of law wiping out all three Clauses, the maxim that a party cannot take advantage of its own wrong would be too widely stated. As a tool of construction that exclusion is read against the party whose breach produces the very event the exclusion Clause contemplates, and of course is a possible approach, especially for Clause 21 which contains a conditional bar, and Clause 34, which has a limited subject matter. Once Departmental default is found, Clauses 21, 23 and 34 did not operate as a complete answer to claims which are, in substance, damages flowing from that default. The letter dated 24 January 2009 issued by the then Assistant Executive Engineer (AEE) was used as documentary evidence of default, and not as a formal amendment of the NIT conditions.

Price Escalation:

32. Absence of a Price Escalation Clause does not, on the Arbitrator's reasoning, bar revision where delay is attributable to the employer. The Tribunal refused the Contractor's 25% figure as assumptive and without a definite formula and adopted the Departmental AEE's 4% ALL INDIA PRICE INDEX recommendation as the governing measure. That is a conservative quantification, anchored in the Department's own contemporaneous recommendation.

33. The Judgement of the Hon'ble Supreme Court in **"Assam State Electricity Board & Ors. V. Buildworth Private Limited, (2017) 8 SCC 146",** is a complete answer on this aspect, as also on idling charges. The Apex Court upheld award components relating to idling of machinery and labour, escalation and interest. Once the Arbitrator has jurisdiction to determine whether delay in execution was due to the employer, the employer is liable for the consequences of that delay, including increase in price. On idle charges, it was observed that where contributory delay on the

part of the claimant was present to the mind of the Arbitrator and was taken into account in computing the claim, the Award does not call for interference.

34. On the jurisdiction to award on escalation even in the absence of a Clause, and to compensate the party for the extra cost incurred due to the default of the other party to the contract who is unable to fulfill its obligations, what is held by the Hon'ble Supreme Court in **"K. N. Sathyapalan (Dead) by LRs V. State of Kerala & Anr., (2007) 13 SCC 43",** at Paragraph 32, is apposite:

> "32. Ordinarily, the parties would be bound by the terms agreed upon in the contract, but in the event one of the parties to the contract is unable to fulfil its obligations under the contract which has a direct bearing on the work to be executed by the other party, the Arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of the first party to live up to its obligations. That is the distinguishing feature of cases of this nature and Alopi Parshad Case and also Patel Engg. case. As was pointed out by Mr Dave, the said principle was recognized by this Court in P. M. Paul where a reference was made to a retired Judge of this Court to fix responsibility for the delay in construction of the building and the repercussions of such delay. Based on the findings of the learned Judge, this Court gave its approval to the excess amount awarded by the arbitrator on account of increase in price of materials and costs of labour and transport during the extended period of the contract, even in the absence of any escalation clause. The said principle was reiterated by this Court in T. P. George case."

35. The Department's denial of escalation proceeded on the ground that there was no order of stoppage by the Department, and not on the ground that the 4% figure was unworkable. The Tribunal considered the delay attributable to the Department and held the Contractor entitled to recover escalation so restricted. That view is supported by the evidence and cannot be branded as perverse or as a view that no reasonable person could take.

36. On interest, the Constitution Bench of Hon'ble Supreme Court in **"Dhenkanal Minor Irrigation Division V. N. C. Budharaj, (2001) 2 SCC 721"**, held that the Arbitrator has power to award interest on sums found due for the pre-reference period in the absence of a specific stipulation or prohibition in the contract. The Award herein grants simple

interest at the current rate only upon default in payment within two months of the Award. That limited direction does not suffer from want of jurisdiction.

<u>Proof and Reasoning:</u>

37. The Tribunal treated as sufficient the affidavits that withstood cross-examination, un-rebutted expenditure particulars, the AEE's letter(s), and submissions of Departmental witnesses on delay in supply of materials and on availability of the site. Contrary assertions of the Department were rejected as unsubstantiated by contemporaneous record, especially as to dispatch of the allotment and daily measurement. Works Register Entries were given the presumption of correctness for amounts paid and outstanding, even though the Contractor disputed some entries. Those are findings on evidence. Re-appraisal of that evidence is outside the scope and ambit of Section 34 of the Arbitration Act.

38. The plea of initial delay by the Contractor was not ignored. The Award confines the claims to two proved defaults of the Department; first, non-supply of pipes and excavation of the pipes from the debris by the Contractor; second, stoppage of work by the land-owners. The plea that the Award was passed beyond the three months direction of this Court without extension does not, by itself, furnish a ground for interference under Section 34. Delay in making the Award, unaccompanied by prejudice of a kind recognized by the Statute, does not render the Award void as per the law occupied the field at particular point of time. The further plea of windfall for 42% completion overlooks that the Tribunal awarded restricted damages for proved Departmental default and an outstanding for work actually done and not the contract value of unexecuted work.

39. The Petitioner-Department even in these proceedings cannot escape the admissions recorded before the Tribunal as to delay in supply of principal departmental component and as to the site being rendered unavailable by the land-owners claiming for compensation. On those admissions, Clauses 21, 23 and 34 do not require a second round of interpretation at the instance of the defaulting party.

Conclusion:

40. The Award is supported by oral and documentary evidence. The construction placed on Clauses 21, 23 and 34 is a possible view. Price escalation has been restricted to the Department's own 4% Index recommendation. Several heads have been scaled down. The view taken is reasonable and plausible. Re-appraisal of evidence, and a fresh construction of a Contract and the NIT by this Court fall beyond the scope of Section 34 of the Arbitration Act. No ground of patent illegality appearing on the face of the Award, or of conflict with public policy of the State is made out.

41. For the foregoing reasons, no ground for interference under Section 34 of the Arbitration Act is made out. The Petition is, accordingly, **dismissed**. Interim direction(s), if any, subsisting as on date, shall stand vacated.

42. Pending application(s), if any, shall stand **disposed** of accordingly.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
August 29th, 2026
"TAHIR"

i. Whether the Judgment is approved for reporting? **Yes**.