

83, CLAIMS AND DISPUTES

Any claims or disputes out of the contract should be submitted in writing to the Superintending Engineer within 15 (fifteen) days from the date of cause of action, so that the points at issue should be immediately verified at site by the field officers, facts ascertained and a prompt decision given. Claims raised subsequently at such a distance of time as to make it impossible to verify the facts are liable to be rejected. The tenderer shall carefully note this stipulation.

The appellants had made representations to the Government for reimbursement of losses suffered on account of the cyclone of 1977 and abnormally heavy rains and floods in June 1978 and the Government had in September 1979 agreed to advance a loan of Rs. 4.67 lakhs which was subsequently recovered from the running bills payments. The only two claims that survive for our decision are Claim No. I(A) and Claim No. II(A). Claim No. I(A) is towards reimbursement of losses sustained by way of advances to labour on account severe cyclone in November 1977 and Claim No. II(A) is regarding towards reimbursement of losses sustained due to abnormal rains and unprecedented floods in 1978. In order to make a claim and raise a dispute there should have been compliance with clause 83 of the agreement and on this aspect there is no dispute. The claim should have been submitted in writing to the Superintending Engineer within 15 days from the date of cause of action so that this aspect would be verified. On the interpretation of clause 83, the High Court held that condition No. 83 is a condition meant for convenience of both the parties and does not lay down a rule of limitation, much less a condition for the arbitrator to entertain a claim. It is not necessary for us to examine whether any new claim had been raised by the appellants or not. All that we need to notice is whether, in fact, any claim had been made in terms of condition No. 83 at all or not. It is clear from the materials placed before us that there had been floods and, therefore, the appellants had put to loss but a claim or a dispute in terms of condition No. 83 does not seem to have been addressed at all either in claim No. I(A) or claim No. II(A). All that the appellants stated in their letter dated 26.11.1977 is that there had been severe cyclone and heavy rains as a result of which communications dislocated and the appellants sent their labour recruitment personnel to Bilaspur, Orissa, Mahboobnagar and other labour recruitment areas and some of the labour gathered were on their way to site when they were held up due to the cyclone and were forced to return back due to complete break down of communications after the cyclone, but there are no details as regards how many labourers have been engaged from different areas, as to who they were and what arrangements had been made in regard to them and the extent of loss suffered by them. That is the dispute that is contemplated under clause 83 and such a dispute had not been raised at all.

The appellants made a claim No. II(A) in the following terms :-

CLAIM NO. II. TOWARDS REIMBURSEMENT OF LOSSES SUSTAINED DUE TO ABNORMAL RAINS AND UNPRECEDENDED FLOODS IN 1978.

The claimants submit that while the work was in good progress, in June, 1978, there were heavy unprecedented rains in the catchment of Pedavagu. These were found to be the heaviest recorded in the preceding about 20 years, for the month of June as could be verified subsequently from the I.M.D. data (enclosed). This resulted in many floods one following the other breaching all protective works in the river bed and resulting in heavy siltation of the excavated foundations, heavy erosion of the banking already formed, and damage to machinery and loss of stacked materials, in addition to idling of labour and transport vehicles. These heavy rains had also an adverse effect on the cart track used for conveyance of materials from the quarry to the work-site. The cart track became slushy and loaded lorries could negotiate the cart track only with reduced loads; it also took extra time for each trip. This increased enormously the cost of transportation.

The rainfall being unusually heavy for the month of June, exceeded all expectations of the claimants based on@@ JJJ which the protection arrangements had been formed. The@@ JJJJJJJJJJ total losses caused by the extraordinary heavy rains and floods amount to Rs. 12,80,262/- . As the claimants incurred these losses due to no fault of theirs, they are entitled to be reimbursed.

Again it is not clear whether the appellants had raised any dispute or a claim. Moreover, clause 42 of the agreement reads as under :-

42. FL00DS :

In case of flash and untimely floods during the working season i.e. resulting in over topping of protective work and flooding of the work area, the contractor shall make his own arrangement at his cost to shift the machinery equipment, material and labour to a safe place. The work shall have to be resumed after receding of floods and necessary strengthening of protective work and dewatering done by the contractor at his cost. Suitable extension of time shall however be granted on such occasions for the loss of working at the request of the contractor. The Department is not liable for any loss or damage to the men, machinery, work or materials on account of these floods and no compensation whatsoever in this regard shall be paid to the contractor.

1. The silt, debris, sand and other materials accumulated in the working area during flash floods or regular floods in the monsoon shall be removed by the contractor as required for continuing the work at his cost, by any chance, if any, excavated portion that could not be filled with concrete and masonry by the contractor, get a filled up during the monsoon period with earth and silt, its removal will not be paid for again. The contractor will have to re-excavate at his own cost.

2. It shall be distinctly understood that it is entirely the responsibility of the contractor to make such arrangements as may be required from time to time to project the men, machinery, materials and the work under progress and the work for which the measurements were recorded and payment made, against damage either during working season or

during the flood season and department accepts no liability, whatsoever for any damage or loss of men, materials, machinery and work or hindrance caused to the progress of work except as provided in clause under contractors risk and Insurance as mentioned herein.

In the event of such situation, as is pointed out, as to what arrangement the appellants had made and what are the claims in regard to the same and they had not made such a claim before the department. These two findings are sufficient for rejecting the claim made by the appellants and the view taken by the High Court, therefore, is correct and calls for no interference.

The appeals, therefore, stand dismissed. However, there shall be no order as to costs.@@

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