

P. Hanumanthiah and Company Vs Union of India (UOI)

Court: Supreme Court of India

Date of Decision: Sept. 15, 1969

Acts Referred: Contract Act, 1872 & Section 70

Citation: (1969) 1 UJ 642

Hon'ble Judges: V. Ramaswami, J; M. B. Shah, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Shah, J.

P. H. Hanumantbiah & Company, hereinafter called "the plaintiffs" executed on June 24, 1946 four contracts Nos. 23, 24, 26 & 27

of 1946 in favour of C. R. I. E., Kirkee for demolition of existing barracks in the Kirkee cantonment and for contraction of a number of "Nissen

prefabricated huts," The following table sets out the relevant details about the contracts, including the dates on which they were either completed or

terminated :

Contract Date of completion Value of contracts & Date of

Number & No. of days of No. of huts completion

completion or

termination

26.7.1946 (33 Rs. 1,95,370 (33-

23 8.9 1946

days) huts)

24.7.1946 (31 Rs. 1,55,122 (152-

24 8.9.1946

days) huts)

24.7.1946 (31 Rs. 1,87,976 (149-

26 10.11.1946

days) huts)

24.7.1946 (31 Rs. 1,40,163 (133-

27 28.11.1946

days) huts)

Time for completion was extended from time to time till September 5, 1946. Thereafter on September 8, 1946 contracts Nos/23 & 24 were

terminated by the C. R. I. E. and the work unfinished was done departmentally or through other contracts. Contracts Nos. 26 & 27 were completed

on November 10, 1946 and November 28, 1946. The Union of India withheld payment out of the amounts claimed by the plaintiffs of Rs. 4,920/-

being penalty recoverable under Clause 22 of the terms of the contracts, and Rs. 67,237/- for failure to provide ""brick ends"" as stipulated to be

supplied under the terms of the contracts.

2. The plaintiffs commenced an action in the court of the Civil Judge, Senior Division, Poona against the Union of India for a decree for Rs.

1,21,878/- being the principal and Rs. 22,622/- as interest: the break-up of the principal amount claimed by the plaintiff is as follows: .

(1) Rs. 4,920/- being the penalty imposed for delay in completion of the contracts.

(2) Rs. 12,966/- being the cost of extra cost of paint.

(3) Rs. 35,000/- for wrongful demolition of 40 huts constructed by the plaintiff.

(4) Rs. 1,955/- being the excess recovered by the Union for completing the work left unfinished by the plaintiff.

(5) Rs. 67,237/- being the amount of deduction in respect of supply of wooden ends in place of brick ends.

The trial court rejected the claim in respect of item 1 & 4, and awarded Rs. 18,760/- for item 3, the full amount claimed for item 5 and the amount

claimed for item 2 with a slight variation. Accordingly the Trial court awarded Rs. 98,637/- as principal and Rs. 7,950/- as interest to the plaintiffs. In

appeal to the High Court of Bombay the Union claimed that the suit filed by the plaintiffs should have been dismissed in its entirety.

3. The plaintiffs filed cross-objections to the decree appealed from and made a claim for the amounts disallowed. The High Court Rs. 12,644/15/-

for item 2 and rejected the remaining claims. The plaintiffs have appealed to this Court with certificate granted by the High Court. Counsel for the has

not challenged the dismissal of the plaintiff's claim in respect of items 1 and 4 and there is no appeal before us by the Union in respect of item No 2.

The claim in appeal is therefore restricted to two items- Items 3 and 5. Item 3 relates to a claim made by the plaintiffs for demolition of 40 huts

constructed by them under Contract No. 24. The plaintiffs pleaded that dismantling of the huts by the C.R.I.E.. Kirkee was ""altogether illegal"", and

even if the construction work was defective, the action of the C.R.I.E., was ""indiscriminate and unjustified"" since it was in direct contravention of the

terms and conditions of the contract prescribing the treatment of defective work. The plaintiffs submitted that non-compliance with the mandatory

provision of the conditions rendered the conduct of the C.R.I.E , illegal and actionable at law and the plaintiffs were therefore entitled to recover Rs.

35,000/- being ""the expenses for erection and other incidental charges which were the direct consequence of the illegal acts of the C.R.I. E."" . In

respect of item (5) the plaintiffs claimed that three contracts Nos. 24, 26 & 27 were carried out by them according to their terms, that there was

continuous inspection"" at all material times during the progress of the contract but no objection was ever raised about the details of the work and

finally at the time of settlement of the bills an objection was raised the in respect of some of the huts ""wooden ends"" instead of ""brick ends,"" were

built, and large amounts were unlawfully deducted. The plaintiffs averred that they had complied with every requirement of the contracts and the

performance answered in all respects the ""exact work required to be done under the contracts"", and the basis of deduction according to the plaintiffs

was not justified by the language of the instruments. According to the plaintiffs the term "ends" had a ""Specific significance"" in the erection of a Nissen

hut which represented a component structural unit, with its components clearly described in the brochure referred to in the contract. It was submitted

that the contracts read with the brochure, bill of quantities at Schedule B and Schedule C and particular specifications and drawings did not require

brickends"" to be built in the erection of ""Nissen huts, and that it was expressly agreed that ""wooden ends"" supplied by the C.R.I.E. were to be used

by the plaintiffs and they accordingly constructed the huts with wooden ends, and that the lumpsum quotation for the contracts was ""principally guided

and determined by the requirements of work need in regard to the ends, which formed the crucial part and core of the contract, and as such the

deductions therefore were unjustified.

4. The Union of India by their written statement submitted that 40 huts when inspected in the presence of the senior partner of the plaintiffs were

found to"" be badly constructed, and the work of dismantling was done with the plaintiffs" consent and the plaintiffs were not entitled to claim any

damages dismantling the huts. With regard to item (5) it was submitted that the deduction made were ""legal and proper"" and the plaintiffs" claim for

those amounts was not warranted by the terms of the contract.

5. The plaintiffs failed to complete the construction within the time stipulated. Time was extended from time to time till September 5, 1946. Between

September 4, 1946 and September 12, 1946, 38 huts were wholly or partially dismantled on the ground that the work was defective. The plaintiffs

claimed Rs. 35,000/- on the plea that the huts were dismantled contrary to the terms of the contract The Trial Court held that dismantling of the huts

was not justified and allowed Rs. 18,760/- as compensation. The High Court on a review of the evidence held that the Construction by the plaintiffs

of 38 huts was ""very unsatisfactory"" and the plaintiffs had been informed on diverse occasions about the unsatisfactory nature of the work done by

them and they had been called upon to rectify the defects, but the plaintiffs failed to do so and the Commander of the Garrison was compelled to

dismantle the structures and the plaintiffs were not entitled to claim anything in respect of those huts.

6. Counsel for the plaintiffs urged that the High Court has made out a new case which was never pleaded by the Union and had erred in disallowing

the claim. He invited our attention to the written statement in which it was pleaded that the huts were dismantled in the presence of the senior partner

of the plaintiffs and with the plaintiffs' consent: it was not pleaded that the huts were dismantled after following the procedure prescribed in Clause 17

of the terms of the contracts and since no such plea was raised it was not open to the High Court to go into the question whether the work of

dismantling was justified by or was carried out in accordance with the terms of the contract. Counsel also invited our attention to the form of issues

raised by the trial court and submitted that there was no plea that the Commander of the Garrison in dismantling the structures acted in exercise of

authority reserved to the Union under Clause 17 of the terms of the contract.

7. The trial Judge held that the consent of the plaintiffs to the dismantling of the huts constructed by them was not proved, He observed that no

intimation about the proposed, dismantling was given to the plaintiffs and that even before the time of the completion which was extended till

September 5, 1946 the work of dismantling had commenced, that even the inspection notes did not show that all the huts were ordered to be

dismantled, that ""there was no point in calling upon the plaintiffs to rectify the defects when demolition on such a large scale was done"", and that the

terms of Clause 17 of the contract were not complied with.

8. The only point in issue on the pleadings between the parties was whether the plaintiffs assented to the dismantling of the huts erected by them. But

it appears that even though there was no clear pleading and no issue raised, the parties were conscious of the requirements of Clause 17 of the

contract in question and the case was fought in the Trial Court on the basis that the C. R, I E. had not acted in conformity with the requirements of

Clause 17 of the contract: We will therefore, not be justified in rejecting the defence of the Union on a technical ground that no precise plea of

compliance with the requirement of Clause 17 was raised and no issue framed on the right of the Union to dismantle the huts for unsatisfactory

construction.

9. Clause 17 provides a detailed procedure for dealing with unsatisfactory construction work by the contractor. If the work is found to be unsound,

imperfect or executed with unskilled workmanship or the materials used are not according to the contract or are of inferior description, the Engineer-

in-charge has to make a demand in writing specifying the work, materials or articles complained of and to call upon the contractor to forthwith rectify

or remove and re-construct the work so specified in whole or in part and to remove the materials or articles so specified and provide other proper

and suitable materials. If the contractor fails to do so within a period to be specified by the Engineer-in-Charge in his demand, the contractor shall be

liable to pay compensation at the prescribed rate. The Engineer-in-Charge may also rectify or remove and re-execute the work or remove and

replace the materials or articles complained of at the risk and expense in all respects of the contractor. The contract, therefore, contemplates that a

notice specifying the work not done according to the contract or use of materials which are inferior or otherwise not in accordance with the contract,

shall be issued to the contractor. The Engineer-in-Charge has to specify in the notice the period within which the defects have got to be rectified and if

the contractor fails to rectify or remove the defects and to re-execute the work or to remove[^] and replace with other materials or articles complained

of, then and then only the Engineer-in-Charge may rectify or remove and re-execute the work or remove and replace the materials complained of at

the risk and expense of the contractor.

10. The time for completion was at the request of the plaintiff extended to September 5, 1946. On September 3, 1946, a letter was written by the

Garrison Engineer to the plaintiffs directing one of their partners to attend his office to meet the C.R.E., Poona on September 4, 1946. No reasons

for ordering the presence of the plaintiffs partner were set out in the letter. As soon as the C.R.E. arrived on September 4, 1946, the plaintiffs partner

Venkat Rao was taken to the site, and in his presence the C. R. E. inspected 47 huts, got them photographed and forthwith directed that the

structures be dismantled. The inspection notes recorded a description about the infirmities" in the construction. But no time was given to the plaintiffs

to rectify the defects and immediately an order was issued by the C. R. E. that ""in view of the fact that the contractor had failed to carry out the work

of rectification when ordered to do so in writing, in terms of Clause 23 of I. A. E. W. 1. 2159, the faulty work should be demolished by D. E. L. and

the cost thereof debited to the contractor's accounts"". Before the letter reached the plaintiffs the work of dismantling had started and 23 huts were

wholly dismantled and of 15 huts superstructure was removed, the plinth was made level, and the holding down belts exposed in certain places were

ordered to be covered. In the view of the High Court though from time to time the plaintiffs were intimated about the unsatisfactory nature of the work

done and the plaintiffs did not care to comply with the requisition and on that account Clause 17 of the contract was complied with. The High Court

in support of that conclusion referred to certain documents. The S. D. O. made a representation to the Garrison Engineer about the indifferences of

the plaintiffs to the directions given in the work orders. A similar complaint was also recorded in the extract of works order Book dated July 20,

1946. On August 15, 1946 C. R. E., Poona addressed a letter to the plaintiffs pointing out all the defects. This letter was the result of an inspection of

the three sites by the Commander, Royal Engineers after discussions with the Garrison Engineer in the presence of the plaintiffs representative. The

Commander, Royal Engineers complained that there was no attempt on the part of the plaintiffs to co-operate with the M. E. S. or to carry out the

instructions given by the Engineer-in-Charge of the works. As many as 14 defects were itemised in this report. On August 17, 1946 the Engineer-in

Charge pointed out that the brick courses were not in level, the wooden ends for gables were not in plumb, that at many places there were gaps

between the bottom of the frame and the "dwarf wall", and "that the bottom of the frame was not in level. In another letter posted on August 18,

1946, it was stated that the plaintiffs had not taken any action to rectify the defects to which the attention of the plaintiffs' representative was

drawn with a request to complete all the work in hand and to get the defects attended to first. Of Nissen huts Type 6 the plaintiffs were asked to

dismantle the gable ends masonry and to rectify the curvature of the shell before doing any masonry at gables. It was further ordered that doors be

fixed on hinges properly and wooden ends to be fixed in proper plumbs and line. It was also pointed out that the plaintiffs had fixed in some huts wooden

ends in such a manner that "the top was going in and bottom was outside", that the manner of fitting was very bad, and that no bearer was fixed at the

bottom of the brick wall to support the panels. On August 21, 1946 other complaints were also pointed out in respect of the work of construction.

The defects pointed out appear to have disclosed "a very sorry state of affairs and that very unsatisfactory work done" by the plaintiffs.

11. But the terms of Clause 17 of the agreement were not complied with. No notice fixing the time within which the defects may be rectified was

given. The letters to which our attention was invited were informal protests. The last notice was issued on September 3, 1946 and it was served on

September 5, 1946. In the meanwhile dismantling of the structures had commenced. The learned Trial Judge held that the requirements of Clause 17

of the agreement were not complied with. The High Court was of the view that Clause 17 did not require the plaintiffs' consent and under Clause 17,

unsatisfactory nature of the work and proper opportunity to the plaintiffs to remedy that work if it could be remedied without dismantling" were the only

conditions. The High Court observed that the officers concerned thought that the only way to have the work done according to the contract was to

dismantle those structures and that the officers were justified in taking that view. We are unable to agree with that view of the High Court, for more

reasons than one. The contract provided for the procedure to be followed before ordering demolition of the work constructed and the Union had to

act strictly according to the terms of the agreement. The intimations given were not in the form of notices under Clause 17 and thereby no time was

fixed during which the plaintiffs were required to rectify the defects.

12. The trial court awarded Rs. 18,760/- as damages out of the claim for Rs. 35,000/- made by the plaintiffs under this head. The plaintiffs have not

set out in their plaint the basis on which the amount of Rs. 35,000/- claimed by them was calculated. In paragraph 36 of the judgment of the Trial

Court observed that: "... 23 huts were completely demolished and superstructure in the case of 15 was removed. Taking that those 38 huts were

demolished, plaintiffs can get damages only for these huts after allowing certain deductions for incomplete work. Plaintiffs were bound to effect

rectification of work that were not demolished. I would allow 10 per cent deduction for incomplete work. There is no reason why plaintiffs should

demand more than 63.5 per cent above the M. E. S. rate which was the tendered rate (vide Schedule B of Ext. 220). Certain materials supplied by

the authorities were also used for the reconstructed huts. 10 per cent for incomplete work and about 15 per cent of such materials would leave only

about 138 per cent of the M. E. S. rate. At Rs. 359.5 for each of the 38 huts it comes to Rs. 18,760/-.

13. Counsel for the plaintiffs did not attempt to support this part of the judgment of the Trial Court. The basis of computation adopted by the learned

Trial Judge is obscure. On what basis 63.5% of the M.E.S. rate may be awarded to the plaintiffs is not disclosed, and why 10% deduction for

incomplete work and 15% for materials should be allowed is also not clear. Counsel are unable to show that these estimates were supported by

evidence on the record. It is also difficult to understand on what basis after deducting 10% for incomplete work and 15% for the materials, "about

138 per cent of the M.E.S. rate would be left"" Again if compensation is to be paid at the rate of Rs. 358.5 for each of the 38 huts it could obviously

not be an amount of Rs. 18,760/-. The conclusion is not supported by good reasons or good arithmetic.

14. Our attention was invited by the learned Solicitor-General to the admissions made by the plaintiffs in paragraph 44 of the evidence of Venkatrao

who was examined on behalf of the plaintiffs. Venkatrao admitted that no details were given in the plaint as to how the plaintiffs had suffered loss of

Rs. 35,000/- by reason of the dismantling of huts. Venkatrao stated :

The inspection note shows that 23 huts were to be demolished. It also shows various defects in other huts to be rectified. I do not admit that 6

photographs on page 11 of the Ext. 208 show that the construction was bad. In these ends the construction was incomplete. The bottom photograph

shows that the door was not fixed and nor that it was not properly fixed. x x x x I have got no record to show what the workmen of the G.E. did to

the huts between 4.8.46. and 12.9.46. When I went there on the 12th all 47 sheds were demolished. All superstructures were removed. The Dwarf

walls were also dismantled. The floor of the huts was also disturbed. The material was heaped here and there. I noticed that they did something more

than was stated in the inspection note. But I did not ask C.R.E. or G.E. to make Panchnama of what had happened. It did not occur to me that I

should send a copy of my rough notes to Government. I calculated the damages as 47 x 358. 5 plus 120% over it from my account books. I cannot

say that quantity of material I used for each shed upto 4.9.46. Nor can I say from accounts what was the cost of labour on these huts till 4.9.46. My

accounts do not show how much part of the demolished material was useful for the further work and how much was rendered useless. Under

Schedule CI was given some material free of charge. I do not agree that what I lost by demolition was the material which I could not use again and

the cost of labour"".

15. It is true that the plaintiffs' evidence was unsatisfactory. But on the view we have taken the plaintiffs have suffered some loss. The learned Trial

Judge awarded an amount of Rs. 18, 760/-. The High Court did not determine the quantum of loss suffered by the plaintiffs by reason of dismantling

of huts without following the conditions of Clause 17. It is true that from Ext. 189 the relief work order book - the note made by the officer in charge

of works dated August 17, 1946 be order dated August 18, 1946 and the defects pointed out in Type 6 Nissen Huts, Type IA and Type 2, the letter

dated August 6, 1946 Ext. 189, and Ext. 235 dated August 15, 1946 a number of defects have been pointed out by the military authorities. Since the

Calculations made by the trial court are not based on any justifiable principle and the High Court has not considered the question we must remand the

case to the High Court to deal with and dispose of this question on, the evidence before the Court.

16. We may now turn to the other claim for item (5). The averment made in the plaint is that the defendants have made unauthorised deductions in

respect of contracts Nos. 24, 26, 27 of sums aggregating to Rs. 67,237, which they had no power to make since there was no deviation occasioned

within the meaning of Clause 25 and even assuming that there was a deviation defendants should, as conditions precedent, have issued notices to the

plaintiffs. The written statement on this part of the case was vague. It was affirmed in paragraph 13 that the deductions made and recovered and the

compensation claimed and recovered by the defendants was legal and proper and that the plaintiffs claim for those amounts was not justified under

the circumstances of the case. But the plaintiff's case was that under the terms of the contract they were entitled in respect of the huts which were not

family quarters"" to construct ""wooden ends"", that they had accordingly made constructions of the huts with wooden ends, and that it was not open to

the C.R.I.E. to make any deduction on the ground that the plaintiffs had failed to carry out the terms of the contract in respect of contracts Nos.24,

26 & 27. The plaintiffs had agreed to construct 22 types of sheds type Nos. 1 to 10, 1A and 10A. Out of these types, types 1, 1A, 2 and 4 were

barrack type"" Nissen huts while the rest were ""family quarters"". It is common ground that in the case of family quarters brick ends were meant, as

Schedule B specifically provided for chullas with hoods and the plaintiffs understood this to be a clear indication that the ends were to be of brick and

not of wood. It is also common ground that in contract No. 26, 82 huts of type 1 were constructed with wooden ends in contract No.27 130 huts

consisting of 124 huts of type 1 and 6 huts of type 2 were constructed with wooden ends. In contract No.24, 150 huts in all were so constructed i.e.

123 of type 1, 23 of type 1A, 2 of type 2 and 2 of type 4. Deductions were made in the final bills in respect of these contracts.

17. The first question which has to be determined on this part of the case is about the terms of the contract relating to the construction of ends. In

contract No. 23 it was expressly provided by condition No. 8 that the Nissen huts will be ""supplied complete excluding purlins and well plates and

wooden ends. The contractor will supply the purlins and well plates and brick ends will be built in accordance with the specifications and drawing.

In Schedule "B" to contract No.24 which related to list of works showing order of priority and period of completion. Under the head ""Description of

work"", it is shown against Serial No1: ""fabricating (where necessary) assembling and erection of standard single Nissen Huts of 6 days each of Type

(1-A) excluding foundations but including P.C.C. Flooring brick walls and ends (above floor level only) painting 2 coats to corrugated sheets and

sheet work, x x x x complete all as per specifications and drawing (complete but with timber purlins and wall plates will be supplied under Schedule

"C"). Similar recitals are also found in Contracts Nos. 26 & 27. It is impossible to read the expression "brick walls and ends" as meaning "brick

walls and brick ends". But in Schedule C of which the heading is--"Particular specification"--it was recited that "the work to be executed under the

contract consists mainly of the erection of 133 Nissen Huts, British type, single span of varying sizes according to the types shown in the drawings

and in Clause 1 below, The types and the numbers of each type to be constructed are detailed below. A sufficient quantity of single Nissen Huts, 6

Bay, British type will be supplied under Schedule "C" for the erection of the net huts in accordance with the drawings and specifications." Then

follows a note that the contractor will note that not all types shown in the drawings are required. Then follow certain conditions, of which condition

No. 4 is important. It states;

"The Nissen Huts will be supplied complete including purlins wall and wooden ends. Brick ends will be built in accordance with specifications &

drawings & contractor shall remove the wooden ends to the nearest M.E.S. Store or dump & stock them as directed by the G.E.

This condition clearly indicates that the prefabricated Nissen Huts were to be supplied" completed with wooden ends" but "brick ends were to be

built in accordance with specifications and drawings" and the contractor was to remove the wooden ends to the nearest M.E.S. Store. Condition

No. 4 clearly provided that the construction of ends was to be in bricks. The same clause is to be found in respect of contracts Nos. 26 & 27. The

brick ends were to replace the wooden ends, and they were to be in accordance with the specifications and drawings.

18. Counsel for the plaintiffs invited our attention to certain plans which relates to Contract No. 23 in which the "longitudinal section" of a Nissen Hut

is shown, but in respect of plans for Contracts Nos. 24, 26 & 27 the plans shows "cross-sections" only. Counsel says that there were with the

contracts no specifications and drawings which required that the wooden ends in respect of particular classes of Nissen Huts should be substituted by

brick ends. As we have already stated that in "family quarters" there had to be brick ends and it was only in respect of "barrack type" Nissen Huts

that the dispute has arisen. The High Court has found from the terms of Clause 4 - to Contract Nos. 24, 26 & 27 that the words used showed clearly

that the contractor had to build brick-ends and not use the wooden ends which were supplied by the manufacturers. The High Court observed :

Even if one examines the drawings the same inference must be reached. In the first place, the end walls are shown by hatched lines except where the

door and the windows have to be fixed. The breadth of the hatched line is shown as 9"". Under the terms of the contract, the plaintiff was required to

familiarize himself with the terms of the contract and the specifications including the drawing x x x. Now the drawings in the disputed contract show

that there has to be honey comb construction on the sides and the walls have to be 2 feet in height. Then the cross-sectional design of the end shows

the openings for the doors from the ground level and for the windows and also the honey comb on the top of the door which could only be built in

brick work. Our attention is invited to the design in respect of type No. 4 in the same drawing where the partition height, and it is argued that if there

had to be an end wall, the heights would have been mentioned"".

The drawings and specifications which were before the High Court are not before us, and we are unable to hold that the High Court misread the

documents. This case was adjourned more than once in order to enable the plaintiffs to have the entire record produced in this Court, We are

informed at the Bar that the drawings & specifications which are referred to in Condition No. 4 in Schedule C are not available.

19. Counsel for the plaintiffs placed strong reliance upon the letter Ext. 100 dated July 2, 1946 written by the Garrison Engineer, Dehu Road to all

S.D.Os. in which it was recited :

Since a certain amount of confusion prevails in the minds of S.D.Os. with regard to the above contracts (construction of single Nissen Huts), the

following points have been clarified. These instructions to be incorporated in the Contractor's Work Order Books.

(1) Wooden ends to be provided in barracks (Type 1 & 1A, EDCE Drg. No. X 93 sheet I) but not in family/ blocks where brick and walls as per

contract drawing will be installed.

X X X X X

It is urged that the Garrison Engineer having construed the provisions of the contract as meaning that only in respect of ""barrack type"" huts wooden

ends had to be provided and not in family blocks in which brick end walls had to be installed, it was not open to the authorities to contend that in

respect of types 1, 1A, 2 and 4 Nissen Huts wooden ends were not within the contract. It is clear that the contracts were signed on July 24, 1946.

The work of construction was commenced before that date and in respect of the contracts obtained by the plaintiffs Numbers were allotted. But the

terms of the contract could not be interpreted in the light of what the Garrison Engineer understood to be the effect of the agreement under the formal

contracts which were not even reduced to writing when the Garrison Engineer wrote the letter. In our judgment the High Court was right in holding

that the plaintiffs failed to construct the Nissen Huts types 1, 1A, 2 and 4. with brick ends and thereby had deviated from the contract.

20. The contract with the Government of India in exercise of the executive authority of the Government is by Section 175(3) of the Government of

India Act, 1935, required to be expressed to be made by the Governor-General, and must be executed on behalf of the Governor-General, in such

manner as he may direct or authorise. The contention that after the contracts were executed instructions were given by the C.R.I.E. to deviate from the

term of the contract cannot, therefore, be entertained as furnishing valid defence. Nor is there any clear evidence on the record to show that any such

instructions were given.

21. The contracts were performed in a manner different from the manner in which they were by the covenants of the contracts to be performed. The

right of the plaintiffs can, therefore only be founded upon Section 70 of the Contract-Act which provides that where a person lawfully does anything

for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound

to make compensation to the former in respect of, or to restore, the thing so ordered delivered. The plaintiff did not act unlawfully in making the

conducts, even if they did not carry out the terms of the contracts strictly according to the specifications. The Government of India has enjoyed the

benefit of the work done by the plaintiffs. There was no demand for restoration and none could be made having regard to the nature of the work

done. The plaintiffs were therefore entitled to compensation from the Government of India in respect of the work done of which the Government

obtained the benefit.

22. The basis on which the deductions have been made by the Military authorities from the bills payable to the plaintiffs aggregating to Rs. 67,723/-

have not been disclosed. They have deducted Rs. 25,513/- from the Bill in respect of Contract No. 24 Rs. 16,734/- from the Bill in respect of

Contract No. 26 and Rs. 25,350/- from the Bill in respect of Contract No. 27. The figures appear to be worked out on the basis of some "deviation

slips" prepared by the C.R.I.E. The Trial Court accepted that; the plaintiffs entitled to receive the sums which were deducted. The High Court

negates the contention. But in our judgment, the difference between the price paid and the value of the structures which the Government of India

enjoyed should have been determined and the difference alone was liable to be deducted. As no such computation has been made, though we agree

view of the High Court that the plaintiffs have acted contrary to the terms of the agreement, the case will have to go back to the High Court for

determining the amount which is properly deductible out of the amount due to the plaintiffs.

23. We, therefore, set aside the decree passed under appeal, and remand the case to the High Court to determine, in the light of the observations

made in the course of the judgment, the amount of compensation payable in respect of item (3) which the plaintiffs are entitled to receive for the 38

Nissen Huts dismantled. The High Court will also determine the amount which is properly deductible in respect of item (5) out of the amount payable

to the plaintiffs and award to the plaintiffs the Amount, if any, properly awardable to them. If the High Court is of the view that the evidence on the

record is insufficient and a case is made out for permitting the parties to give additional evidence, the High Court may direct the Trial Court to record

evidence in that behalf.

In view of the divided success, there will be no order as to costs in this appeal.