

P.S. 73. Arbitration :—In case of any dispute or difference between the parties to the contract either during the progress or after the completion of the works or after the determination, abandonment, or breach of the contract, as to the interpretation of the contract, or as to any matter or thing arising there under except as to the matters left to the sole discretion of the Executive Engineer under clauses 20, 22, 27 (C), 29, 36, 37 and 40 of the Preliminary Specifications or as to the withholding by the Executive Engineer or payment of any bill to which the contractor may claim to be entitled, then either party shall forthwith give to the other notice of such dispute or difference, and such dispute or difference shall be and is hereby referred to the arbitration of the Superintending Engineer of the nominated circle mentioned in the “Articles of Agreement” (hereinafter called the “Arbitrator”) and the award or such Arbitrator shall be final and binding of the parties unless contested by either party in a Court of law. Provided however that in cases where the Executive Engineer has entered into the contract on behalf of the Governor, the dispute or difference shall, in the first instant, be referred by or through the Executive Engineer to the Superintending

Engineers of the Circle, in which the work lies and his decision thereon obtained before referring such dispute or difference to arbitration under this clause. Progress of the work shall not be suspended or delayed on account of the reference of any dispute or difference to the Superintending Engineer of the circle in which the work lies or to arbitration under this clause. The decision of the Executive Engineer or the Superintending Engineer of the Circle in which the work lies, as the case may be on such dispute or difference shall be conclusive until reversed by the Superintending Engineer or the arbitrator. Either party may within a period, which shall be fixed by the arbitrator, file before the arbitrator a statement of the case and also all 'the documents relating to or having a bearing on the case. The arbitrator shall set that the award is passed, if reasonably possible, within a period of four months from the date of his entering upon the reference, but if any extension of that period is considered by him to be necessary, either *suo moto* or on the application of either party to the reference, the parties hereby agree and consent to such extension as the arbitrator may from time to time consider reasonably necessary, and any such

extension shall forthwith be communicated by him in writing to each of the parties hereto. The arbitrator shall not be bound to observe the ordinary rules of procedure applicable to trials before Judicial tribunals not to hear to receive formal evidence but may pass on award on the documents or statements of the case filed by both the parties under or on personal inspection. The arbitrator shall have power to view the subject matter of the dispute with or without the parties or their agents. The arbitrator shall also have power to open up, review and revise any Certificate, opinion, decision, requisition or notice, save in regard to the matters expressly excepted and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given upon every any such reference the costs of any incidental to the reference and award respectively shall be in the discretion of the arbitrator, subject to the condition that the amount of such cost to be divided to either party shall not in respect of, i.e., monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, Costs and

expenses incurred by either party; provided that where a monetary claim is disallowed in full, the said percentage shall be calculated on the amount of the claim. The arbitrator may determine the amount of the costs to be awarded or direct the same to be taxed as between solicitor and client or a party and shall direct by whom and to whom and in what manner the same shall be borne and paid.

The percentage above referred to in this clause is 5 per cent on any such monetary award which does not exceed Rs. 10,000, 3 per cent on the next Rs.40,000 or any part thereof, 2 per cent on the next Rs.50,000 or any part thereof and 1 per cent on any excess over Rs. 1,00,000

Provided that Government shall not be liable to any claim in respect of any such dispute or difference until liabilities, and the amount referred to is decided by the arbitrator ;

Provided that payment to the contractor based on the arbitration award shall be made only after acceptance of the award by the Chief Engineer if the value of the award is less than Rs. 20,000/- and the Government if the value is Rs. 20,000 above.

Note 1 :—Arbitration awards whose value is below Rs. 20,000:

The Chief Engineer is authorized to accept arbitration awards below Rs. 20,000 in value. The Chief Engineer shall make a review of the arbitration award within 15 days of service of the notice of the making of the awards in consultation with the local counsel and if in his opinion the award has to be contested, he shall file an application in the Court Within 30 days of service of the notice of making of the award for the filing of the award and take steps to contest the award.

If, for any reason, the Chief Engineer considers it in advisable to act according to the advice of the local counsel, he shall refer the matter to the Government for examination within 15 days of the service of the notice of making of the award.

Arbitration Awards whose value is Rs 20,000 or above:

The Chief Engineer shall make a review of the arbitration awards whose value is Rs. 20,000 and above and submit a report to the Government within 10 days of service of the notice of the making of the award. In such case a summary of the case, a copy of the agreement for the work, the facts pressed before the arbitrator by the parties along with the recommendations of the Chief Engineer, should be

furnished to the Government for all appreciation of the case. The Government will then take a decision in consultation with the law department whether the award should be accepted or not and communicate the same within 25 days of service of the notice of making of the award so as to enable the Chief Engineer either to take action on the basis of the award or to file an application in the Court within 30 days of service of the notice of the making of the award for filing of the award and for contesting it.

Note 2 :—Applications of contractors seeking arbitration should bear a Court fee stamp as per clause 10(K) of Schedule (II) to the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 but no stamp duty need be levied.

The awards passed by arbitrators shall be made on stamped paper the value of which should according to the value of claim to which the award relates as per Article 12 of Schedule I-A to the Indian Stamp Act.

If the aggrieved party goes to a Court of law challenging the award, he should pay the necessary Court fee.

[**Note 3** :—Except as otherwise provided in the contract any disputes and differences arising out of

or relating to the Contract shall be referred to adjudication as follows :

I. (i) Settlement of all Claims upto Rs. 50,000/- in value by way of Arbitration to be referred as follows :

(a) Claims upto Rs. 10,000/- Superintending Engineer of in value, another Circle in the Dept.

(b) Claims above Rs. 10,000/- Another Chief Engineer of and upto Rs. 50,000/- in same Department. value

The arbitration proceedings will be conducted in accordance with the provisions of the Arbitration Act, 1940 as amended from time to time. The Arbitrator shall invariably give reasons in the award.

II. Settlement of all Claims above Rs. 50,000/- in value:

All Claims above Rs. 50,000/- in value shall be decided by the Civil Court of competent jurisdiction by way of a regular suit and not by arbitration.

A reference for adjudication under this Clause shall be made by either party to the Contract within six months from the date of intimating the Contractor of

the preparation of final bill or his having accepted payment.

The relevant Clauses of Andhra Pradesh Detailed Standard Specifications stand modified to the extent provided in this Clause].

[Added by G.O.Ms.No. 158, Tr. & B. (B. III), Dt. 13-7-1992]