

No. RW/NHIII/P/12/79

Dated the 30th September, 1983

To

The Secretary, (Deptt. dealing with National Highways)
All State Govts. and Union Territories.

Subject : Recommendations of the group of Engineer-Secretaries, Engineer-in-Chief and Chief Engineers for Arbitration system for NH works and other Centrally sponsored works.

I am directed to say that this Ministry had constituted sometime back a group of Engineer-Secretaries, Engineer-in-Chief and Chief Engineers under the Chairmanship of Shri A.C. Padhi, Engineer-in-Chief and Secretary (Works) Government of Orissa to go into the entire problem of arbitration and make recommendations for efficient arbitration system. The above group examined the whole question and made certain recommendations as contained in the minutes of the 3rd meeting of the group held on 27th April 1981 a copy of which is forwarded herewith. The recommendations of the above Committee have been examined in this Ministry and it has been decided to accept the recommendations of the Committee with the modification that projects costing upto and including Rs 25 lakhs shall not go to arbitration and only projects exceeding this amount shall go for arbitration. I am now to request that the State Govts. may please take necessary action to implement these recommendations for efficiency and uniformity.

A copy each of the following documents is enclosed :-

- (i) Minutes of the 3rd meeting of the Group of Engineer-Secretaries, Engineer-in-Chief & Chief Engineers for Arbitration System held on 27th April, 1981, at New Delhi.
- (ii) OM No. FA.IIM.14/78.31833 dated 30.10.78 issued by the Government of Orissa.
- (iii) Arbitration Tribunal Rules 1979 framed by the Government of Orissa.

ENCLOSURES TO LETTER NO : RW/NHIII/P/12/79 DT. 30.9.83

MINUTES OF THE THIRD MEETING OF THE GROUP OF ENGINEER-SECRETARIES, ENGINEER-IN-CHIEF & CHIEF ENGINEERS FOR ARBITRATION SYSTEM HELD ON 27TH APRIL, 1981 AT NEW DELHI.

The third meeting of the Group of Engineer-Secretaries, Engineer-in-Chief and Chief Engineer for recommending the most suitable system for arbitration in respect of disputes arising out of contracts for the construction of various road and bridge works was held on the 27th April, 1981 at New Delhi. The following were present :—

1. Shri A.C. Padhi, Engineer-in-Chief & Secretary, Works, Government of Orissa. Chairman.
 2. Shri Y.N. Narayana, Chief Engineer (NH) Karnataka.
 3. Shri D.V. Sahni, Chief Engineer, PWD, Punjab.
 4. Shri B. Panderang Rao, Asst. Legal Adviser, Ministry of Law, Government of India.
 5. Shri J.S. Marya, Director General (Road Development) & Additional Secretary, Ministry of Shipping and Transport (Roads Wing).
 6. Brig. Gobinder Singh, Addl. Director General (Roads), Ministry of Shipping and Transport (Roads Wing)
 7. Shri P.C. Bhasin, Addl. Director General (Bridges), Ministry of Shipping and Transport (Roads Wing)
 8. Shri S.P. Bhargava, Superintending Engineer, P.W.D., Rajasthan.
2. Convenor of the Group, Shri, A.C. Padhi, welcomed the members to the Third meeting and drew attention of the members to the gist of discussions held at the Chief Engineers meeting at Patna on the 1st January, 1981. Shri Padhi pointed out that the matter regarding setting up of an Arbitration Tribunal as established in Orissa was referred for advice to the Union Ministry of Law and it had been intimated by the Joint Secretary and Legal Adviser that Arbitration Tribunal is not a forum for arbitration recognised under the Indian Arbitration Act and hence it would not be legally in order to set up a forum other than that provided under the Arbitration Act. Shri Padhi further informed that the Arbitration Tribunal has been set up in Orissa after getting the concurrence of the State Law Department and stipulation about the reference of Contractors' Claims to the Arbitration Tribunal is being made in the Notice Inviting Tenders. Shri Padhi requested the representative of the Union Law Ministry to give his considered views in the matter.
 3. Shri Rao explained that under the Arbitration Act one or more arbitrators could be appointed with the consent of the concerned parties and hence if there is a suitable clause in the contract agreement (which has been accepted by the contractor) about the reference of disputed claims to the one or more Arbitrators, the same would be valid under the Arbitration Act. Shri Rao, however, pointed out that it would not be legal under the Arbitration Act to set up a Tribunal. Hence, according to him, where as three Arbitrators could be appointed, the word 'Tribunal' for carrying out functions of Arbitration should not be used.
 4. After detailed discussion about the prevalent practices for settlement of arbitration cases in C.P.W.D., PWD Maharashtra, Kar-

nataka. Rajasthan and Punjab it was finally agreed that the following recommendations may be made by the Group for further consideration of State PWD's/State Governments and Government of India.

- (1) A committee of three Arbitrators (on the pattern of Arbitration Tribunal established in Orissa) may be set up for expeditious settlement of the claims of contractors. The membership of the above committee could be on either of the following two patterns :
 - (a) One member from the Superior Judicial service (Senior Branch), one Member from the Civil Engineering Departments of the State PWD not below the rank of Superintending Engineer and one Member from the Finance Service not below the rank of a Superior Financial Service Class I. The Senior most member would act as the Chairman.
 - (b) All the three Members from the Civil Engineering Department of the State PWD not below the rank of Superintending Engineer. The Senior most Member would act as the Chairman.
- (2) A clear stipulation should be made in the notice Inviting Tenders regarding the reference of Contractors claims to the committee of three Arbitrators. The awards shall be speaking awards i.e. the Committee (Chairman) and the members shall assign reasons for all awards. Further no reference for arbitration shall be maintainable unless the contractors furnishes a security deposit of a sum determined according to the table stated in the agreement etc.
(A copy of the Arbitration Tribunal rules, subsequent amendment and office memorandum issued by the Orissa works department is enclosed for reference).
- (3) The Committee of three Arbitrators shall have powers to hold Arbitration proceedings at stations considered most convenient by them for the particular parties involved for the early settlement of the claims.
- (4) The above mentioned Committee of three Arbitrators could be a full time organisation or a part-time one. In case the State Govt./State PWD decides to utilise the committee of three Arbitrators for all Engineering Departments in the State it could be a full time organisation or if the work load is not considered to be adequate, it could be a part time organisation.
- (5) Each of the State PWDs should have a properly staffed cell duly supported by competent, well qualified and experienced Legal Advisers, a Financial Adviser and experienced Civil Engineering fully conversant with the types of work being executed in the field of roads and bridges. This cell should preferably be working in the office of the Chief Engineer and should be kept abreast of various disputes/claims arising at different occasions during the currency of any contract. This cell should be entrusted with the preparation of defence for the arbitration proceedings and the case should be defended by the Civil Engineering in the cell duly assisted by the Legal Officer.
- (6) It should be worth while, as in the case of Haryana PWD to provide legal assistance to all Superintending Engineers in the different circles of the PWD who could help in preparation of defence initially and also advise upon suitable replies to be sent to the contracting agency in response to their letters for claims/disputes, etc.

*O.M. NO. FA. II M'14/78. 31833 DATED THE 30TH OCT. 1978
ISSUED BY THE GOVT. OF ORISSA, WORKS DEPARTMENT*

Subject : Amendments to clause 23 of F-2 Contract and Clause 19 of Lump-sum-Contract

Amendments to Clause 23 of the F-2 Contract and Clause 19 of the Lump-sum Contract were issued in this Department Office Memorandum No. 24944 dated 19.8.1978. But as per instructions subsequently issued in this Department letter No. 26523 dated 1.9.1978 implementation of the above amendments was deferred.

2. The question of prescribing the rate at which security deposit is required to be furnished by the Contractor involving arbitrator was under consideration of the Government. The scale of security deposit has now been finalised. Accordingly, in partial modification of this Department Office Memo No. 24944 dated 19.8.1978, the Governor has been pleased to make the following amendments to Clause 23 of the F-2 Contract and Clause 19 of the Lump-sum Contract.
3. Substitute the following in place of existing Clause 23 of F-2 Contract and Clause 19 of Lump-sum Contract each.

Except as otherwise provided in this Contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instruction hereinbefore mentioned and as to any other question, claim, right, matter or thing whatsoever, in any way arising out of or relating to the Contract, designs, drawings, specifications, estimates, instructions, orders of these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to arbitration by the Arbitration Tribunal, Bhubaneswar constituted by the State Government which shall consist of three members of whom one shall be chosen from among officers belonging to the Orissa Superior Judicial Service (Senior Branch), one from the Engineer in the active service of Government not below the rank of a Superintending Engineer, and the remaining member shall be chosen from officers belonging to the Orissa Finance Service not below the rank of Class-I officer.

The following are also the terms of this Contract, namely :—

- (a) No person other than the aforesaid Tribunal shall act as arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all;
- (b) the State Government may, at any time, effect any change in the personnel of the Tribunal and the new members or members appointed to the Tribunal shall be entitled to proceed with the reference from the stage at which it was left by his or their predecessor or predecessors, as the case may be;
- (c) the tribunal shall assign reasons for all awards;

- (d) the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this Clause together with the amount or amounts claimed in respect of each such dispute,
- (e) where the party invoking arbitration is the contractor, no reference for arbitration shall be maintainable unless the contractor furnished a security deposit of a sum determined according to the table given below and the sum so deposited shall, on the termination of the arbitration proceedings, be adjusted against the cost, if any, awarded by the Tribunal against the party and the balance remaining after such adjustment or in the absence of any such cost being awarded, the whole of the sum shall be refunded to him within one month from the date of the award

Amount of claim	Rate of security deposit
For claims below Rs 10,000/-	3% of the amount claimed
For claims of Rs. 10,000/- and above	
below Rs 1,00,000/-	5% —do—
For claims of Rs 1,00,000/- and above.	10% —do—

- (f) if the contractor (s) does not make any demand for arbitration in respect of any claim (s) in writing within ninety days or receiving the intimation from Government that, the bill is ready for payment, the claim of the contractor (s) shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the Contract in respect of such claim (s);
- (g) the Tribunal may, from time to time, with the consent of the parties, extend the time for making and publishing the award;
- (h) the Contractor shall not be entitled to invoke arbitration until and unless he has completed the work or until the Govt. have made alternative arrangements for completion of the work in question, as the case may be;
- (i) the tendency of arbitration proceedings shall not disentitle the Government to terminate the Contract and made alternative arrangements for the completion of the work; and
- (j) save as otherwise provided in this Contract the provisions of the Arbitration Act, 1940 and the rules made thereunder, for the time-being in force, shall apply to the arbitration proceedings under this clause.
4. These amendments shall take effect from the date of issue of this order.
5. These amendments have been concurred in by Law Department and Finance Department vide their U.O.No. 960/I dt. 4.4.1978 and U.O.R.No. 1320 EF-II dt. 22.4.1978 respectively.

O.M. DATED 18.5.79 ISSUED BY GOVT. OF ORISSA, WORKS DEPARTMENT.

Subject : Amendment to clause 23 of F-2 Contract and Clause 19 of lump-sum Contract

No. 15032-FA-IIM-33/79- The Governor has been pleased to make the following amendment to clause 23 of the F-2 Contract and clause 19 of the lump-sum Contract.

2. In sub-para (c) of clause 23 of F-2 Contract and clause 19 of lump-sum Contract at the end the following shall be added, namely -
- “In no case shall the Tribunal award interest in respect of any claim for any period prior to the date of the award as well as for the period from the date of the award till the date of the decree”.
3. This amendment shall take effect from the date of issue of this order.
4. The amendment has been concurred in by Law Department/Finance Department vide their U.O.R. No. 3399 L. dated the 7th December, 1978/No. 54 codes., dated the 3rd May 1979.

ARBITRATION TRIBUNAL RULES, 1979 FRAMED BY GOVT. OF ORISSA

1. (1) These rules may be called Arbitration Tribunal Rules, 1979.
 - (2) They shall come into force at once.
 2. These rules shall apply to all disputes arising out of Works/Supply Contracts relating to various Public Works Departments as well as other contracts with arbitration clauses, entered into by other Departments of the State Government after commencement of these Rules.
- Provided however that the disputes arising after the commencement of these Rules pertaining to contracts entered into prior to such date may also be referred to the Tribunal if both parties agree for such reference.
3. In these Rules, unless there is anything repugnant in the subject or context :—
 - (a) Government means Government of Orissa.
 - (b) Tribunal means the Arbitration Tribunal to be constituted by the State Government under the provision of Rule-4.
 - 4.1. There shall be an Arbitration Tribunal consisting of three serving members of the State Government.
 2. The members of the Tribunal shall be appointed by the Governor by nominating one member from the Orissa Superior Judicial Service (Senior Branch), another technical member from one of the State P.W.D. Departments not below the rank of

Superintending Engineer and the third member from Orissa Finance Service not below the rank of Superior Administrative Cadre in Class-I

- (3) The Government may at any time effect any change in the composition and personnel of the Tribunal and the new member/members appointed to the Tribunal shall be entitled to proceed with the reference from the stage at which it was left by his/their predecessors as the case may be.
5. The term of a member shall ordinarily be three years unless otherwise directed by Government in this regard.
6. The member from the Orissa Superior Judicial Service, Senior Branch shall act as the Chairman of the Tribunal.
7. Unless otherwise directed by the State Government the headquarters of the Tribunal shall be at Bhubaneswar provided, however, that the Tribunal may hold its sittings at any other place having regard to the convenience of the parties concerned.
8. The Tribunal may require attendance of parties, collect evidence and make spot inspection in course of proceedings.
9. It shall be competent for the Tribunal to secure the advice of experts of appropriate rank on various technical issues which it is called upon to decide in course of a proceeding.
10. In any proceeding before the Tribunal the case may be represented by the party himself or through his duly authorised representative (s).
11. The party invoking arbitration, shall specify the dispute to be referred to the Arbitration together with amounts claimed in respect of each such dispute.
12. The Tribunal will not entertain any claim if the contractor does not make any demand for Arbitration in writing within 90 days of receiving the intimation from the Government that the bill is ready for payment.
13. (1) No reference for arbitration shall be maintainable unless the contractor furnished a security deposit as prescribed in the Agreement. The sums so deposited shall on the termination of the arbitration proceeding be adjusted against the cost if any awarded by the Tribunal against the contractor and the balance remaining after such adjustment, or in the absence of any such cost being awarded, the whole of the sum shall be refunded to him within one month from the date of the award provided, however, that when the Government makes the reference for arbitration, no security deposit shall be required to be furnished.
- (2) The security deposit, as required should be credited to government account in chalan under the head "0-65-other Administrative services-(C) other Services-(C) Other receipts" and the duly receipted chalan should be presented along with the claim before the Tribunal.
14. The Tribunal shall make an award within a period of 120 days from the date of reference. It shall however be competent to extend the period of making award from time to time with the consent of the parties to the proceeding.
15. The Chairman and the members shall assign reasons for every award of the Tribunal. Failure to do so shall amount to breach of duty and may entail disciplinary proceedings.
16. (1) The amount of the award given by the Tribunal shall be to the nearest rupee.
- (2) The award amount shall be paid by the concerned parties within a period of 120 days of receipt of the notice of such award by the party.
Provided that if this amount is not paid within the stipulated period the Tribunal shall have power to direct payment of interest on the principal amount of award.
17. Save as otherwise provided in the Arbitration contract the provision of Arbitration Act, 1940 shall apply to the arbitration proceedings. The decision of the Tribunal shall be final, conclusive and binding on all parties to the contract.
18. The Tribunal shall submit to the State Government a return once in a quarter stating therein the number of cases pending before them the age of the cases, and the approximate time for disposal of the pending cases.
19. The Tribunal will function under the Administrative control of the Irrigation and Power Department.