

# Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Arbitrator's jurisdiction or expertise - arbitral tribunal's technical expertise cannot override the express contractual terms or the mandatory requirement of evidence to prove the incurring of expenditure - award of a lump sum amount based merely on the arbitral tribunal's opinion regarding "wrong design choice" and without any evidence of actual expenditure is unsustainable.**
- **Award on 'equity' or 'guesswork' - arbitral tribunal would act beyond jurisdiction by awarding a claim based on principles of "equity" where the contract terms do not permit it - similarly, an award cannot be justified by arguing the claim amount is "small" and thus, the arbitral tribunal is "not inclined to question the lack of evidence" - arbitral tribunal lacked the jurisdiction to interfere with the Engineer-in-Charge's valuation of additional work, particularly after finding the valuation to be "correct, fair and reasonable," and could not award a higher amount through "guesswork".**



- **Computation of extra work - consultant made valuation of the work based on actual man and machine days of resources deployed in execution of the work taking unit labour rates based on Schedule of Rates (SOR) and machine and item rates were taken on prevailing market rates - clause in the contract provided for working out the rates for additional altered or substituted work - Contractor declined to accept the valuation of the consultants - opinion of the Engineer-in-Charge as regards the rates was final and binding on the Contractor.**
- **Excepted matters - finality of Engineer-in-Charge's decision - where the General Conditions of Contract (GCC) stipulate that the rate for altered or additional work is to be worked out by the Engineer-in-Charge, and that the Engineer-in-Charge's decision on this issue is final and binding the matter becomes an "excepted matter".**
- **Clause for work without extra cost - contractual clauses that require the Contractor to comply with all requirements of concerned authorities e.g., Port Trust at no extra cost preclude any claim for additional payment for such compliance e.g., tree cutting / stem sizing.**
- **Limitation of liquidated damages Liability - in a works contract the period for levying liquidated damages for delay must be restricted to the date on which the core purpose of the contract is achieved, even if the formal work completion certificate is issued later.**

*[Larsen & Turbo Limited v. Hindustan Petroleum Corporation Ltd. - Bombay High Court - Decided on 8.8.2025]*

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- **Works Contract - Concession Agreement - exclusive Jurisdiction of the Madhya Pradesh Arbitration Tribunal - overriding power of the Madhyastham Adhikaran Adhiniyam - a concession agreement based on Build, Operate and Transfer / BOT or Toll plus Annuity model for the development of a State Highway / District Road is classified as a 'works contract' - Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (1983 Act) being a special law for works contracts involving the State, confers mandatory and exclusive jurisdiction upon the Madhya Pradesh Arbitration Tribunal.**
- **Status of a contractual arbitration clause - agreement of the parties under the contract or concession agreement to refer the disputes to ICADR arbitration under the Arbitration and Conciliation Act, 1996 is void ab initio to the extent it contravenes the statutory mandate of the 1983 Act, as contractual terms cannot override special statutory provisions - section 2(4) of the 1996 Act section preserves the operation of special statutory forums, reinforcing the exclusivity of the Madhya Pradesh Arbitration Tribunal.**
- **Madhya Pradesh Madhyastham Adhikaran Regulations, 1985 - effect of withdrawal - the Regulations bars a party who withdraws a reference or claim from the Madhya Pradesh Arbitration Tribunal without obtaining liberty to re-agitate the same subject matter from instituting a fresh reference - the bar applies to attempts to pursue the same claims before any alternative forum, including private arbitration under the 1996 Act.**

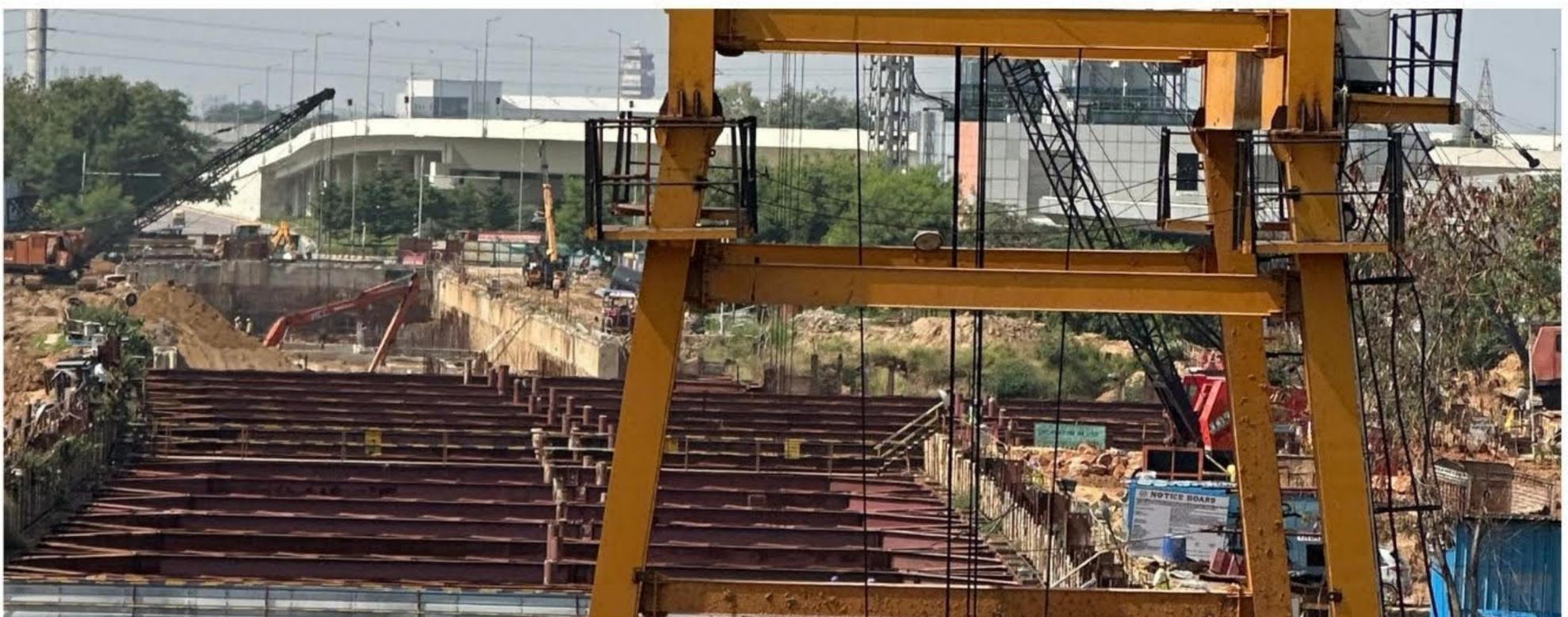
*[Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. v. M.P. Road Development Corporation - Supreme Court of India - Decided on 30.7.2025]*

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**Larsen & Tourbo Limited v. Hindustan Petroleum Corporation Ltd. -  
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The dispute arose between the parties from a works contract between Contractor and Employer for executing the work of laying, testing, pre-commissioning and commissioning of 18 inch diameter and 350 kilometers pipeline from Vishakhapatnam to Vijaywada, including temporary cathodic protection and optical fibre cable work. There was delay in completion of the work. The disputes were referred to arbitration, resulting in an award that granted the Contractor a substantial amount on several claims. Both parties challenged the award. The Court held that the levy of liquidated damages must cease on the date the pipeline was actually commissioned and charged with the product even though the formal completion certificate was issued later. The award was based on perverse findings and was contrary to the contract requiring Contractor to comply with authorities' requirements at no extra cost. Further, the award was based on no evidence of actual expenditure and was contrary to contractual terms, as the arbitral tribunal's expertise could not override the contract. The arbitral tribunal had no jurisdiction to interfere with the Engineer-in-Charge's final and binding decision on rate. Once the arbitral tribunal found the evaluation of Engineer-in-Charge to be fair and reasonable, it was beyond the power of the arbitral tribunal to award any additional sum. Thus, the findings recorded by the arbitral tribunal makes it clear that the evaluation by the Engineer-in-Charge was fair and reasonable. Not only the contract clauses dis-entitled the Contractor from claiming any damages for defect in the pipes after taking over their possession, there was total absence of evidence to demonstrate incurring of any additional expenditure by the Contractor for curing of the alleged defect. The arbitral tribunal did not have any material before it to segregate the damage caused to the pipes by Contractor's sub-contractor and alleged damages suffered on account of defect in coating. The finding of the arbitral tribunal that the isolation valve near the station was within the scope of work of Contractor and it must be within the battery limits but, since the drawings showed that the work was outside the battery limits, the same will have to be treated for the purpose of payment as extra work, was factually incorrect since the drawing showed the work falling outside the battery limits. Thus, no claim was contemporaneously raised before the Engineer-in-Charge who alone had authority to certify any particular work to be an additional work. In respect of every substituted work, the Engineer-in-Charge was contractually given authority to opine about the rates of the material and his opinion was agreed to the final. Therefore, the arbitral tribunal could not have awarded the claim only on the basis of his personal expertise / skill. The Court upheld the finding of the arbitral tribunal that even though the main purpose of the laying of the pipeline was achieved belatedly since the Employer's main requirement of petroleum transportation through pipeline was commenced / achieved on the date when the actual work of pipeline was completed the Employer could not have suffered loss beyond that date. The Employer is bound by and limited by the liquidated damages clause and even though the Employer may suffer more than the liquidated damages amount stipulated by the contract, the Employer has to limit his claim to the liquidated damages amount so agreed.



## Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. v. M.P. Road Development Corporation - Supreme Court of India - Decided on 30.7.2025

The Employer Madhya Pradesh Road Development Corporation entered into a Concession Agreement with Concessionaire for the development, maintenance, and operation of a State Highway / District Road on a Build, Operate and Transfer (BOT) basis involving toll and annuity payments. The contract constituted a "works contract" as defined under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (the 1983 Act). Disputes arose between the parties which were referred to arbitration. The Employer, recognizing the statutory mandate, initially filed a Reference Petition before the Madhya Pradesh Arbitration Tribunal, established under the 1983 Act, which is a special law governing works contracts of the State. The Employer subsequently withdrew its Reference Petition from the MP Arbitration Tribunal, without obtaining liberty to re-agitate the claims. Relying on a contractual arbitration clause in the Concession Agreement, which stipulated arbitration under the Arbitration and Conciliation Act, 1996, the Concessionaire initiated arbitration proceedings before the International Centre for Alternative Dispute Resolution (ICADR). The High Court allowed the Employer's writ petition, holding that the subject matter was exclusively covered by the special law (1983 Act). Therefore, the contractual arbitration clause under the 1996 Act was void ab initio, and the subsequent private arbitration proceedings were coram non iudice i.e. without jurisdiction. The Supreme Court upheld the High Court's decision on the issue of jurisdiction. The dispute arose from a works contract involving a State Corporation, mandating the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal (1983 Act). The general arbitration clause under the 1996 Act could not override this special statutory provision. The writ petition was maintainable as the dispute involved a public law element namely, the challenge to the fundamental issue of the proper and exclusive forum for dispute resolution in a public function (road development). Although the private arbitration was quashed and the claims were statutorily barred, the Supreme Court, in the interests of justice, permitted the Concessionaire to file an application to recall the withdrawal order and seek restoration of the original reference petition before the Madhya Pradesh Arbitration Tribunal.



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