

&ITEM NO.102

COURT NO.10

SECTION IV

SUPR EME COUR T OF I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6447 OF 2003

M/S. PAVANI CIVIL CONTRACTORS (P) LTD.

Appellant (s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With office report )

Date: 23/07/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant(s)

Mr.P.S.Patwalia, Sr. Adv.

Mr. Hardeep Singh Anand,Adv.

For Respondent(s)

Mr.P.P.Malhotra, ASG

Mr.Naresh Kaushik, Adv.

Mr. T.A. Khan, Adv.for

Ms. Sushma Suri,Adv.

Rr-Ex-Parte

UPON hearing counsel the Court made the following  
ORDER

The Appeal is disposed off in terms of the signed order.  
No order as to costs.

(Parveen Kr. Chawla)  
Court Master

( Indu Satija)  
Court Master

[Signed Order is placed on the File]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6447 OF 2003

M/s. Pavani Civil Contractors (P) Ltd. ..Appellant

versus

Union of India & Another

..Respondents

ORDER

This Appeal has been filed against the impugned judgment  
of the Punjab & Haryana High Court dated 16 November, 2002  
passed in Civil Revision No. 1989 of 2002.

The facts in detail are given in the impugned judgment as  
well as in the judgment and decree dated 18 December, 2001

passed by the learned Additional District Judge, judgment of the  
learned Civil Judge dated 15<sup>th</sup> November, 1999, and in the award  
dated 17 March, 1996. Hence, we are not repeating the same here.

Heard learned counsel for the parties.

The short point submitted by Shri Patwalia, learned  
senior counsel appearing for the appellant is that the High Court  
has erred in refusing to give compensation in respect of Item  
No.56 of the Statements of the Claim submitted by the contractor.  
It has been brought to our notice that

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under Clause 11(C) of the contract between the parties, no  
amount was payable towards compensation for prolongation of  
the contract. That clause states:

"No claim in respect of compensation of  
otherwise, however arising, as a result of  
extensions granted under Conditions (A) and (B)  
above shall be admitted."

It appears from a perusal of the award of the arbitrator  
that the arbitrator has lumped up three different heads in Item  
No.56 into a single head and awarded compensation of  
Rs.23,73,000/-, which has now been rejected by the High Court.

As regards clause (a) and clause (b) of Item No.56, they  
are certainly relating to prolongation of the contract but clause  
(c) does not relate to prolongation of the contract. Hence, in our  
opinion, the arbitrator could not have lumped up the two issues  
(i) relating to prologation of the contract, and (ii) non-  
prolongation of the contract, into a single head.

In view of the position explained above, we deem it  
appropriate to accept this appeal to the extent that we should  
remand the matter to the arbitrator to break up Item No. 56 into  
two different heads namely (i) clauses (a) and

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(b) i.e. compensation for prolongation of the contract and (ii)  
clause ©, which does not relate to it and decide the claim  
separately afresh in accordance with law as expeditiously as

possible, preferably within a period of three months from the date of receipt/production of a copy of this order.

We order accordingly and dispose off the appeal. No costs.

Learned counsel for the respondents has submitted that as regards clauses (a) & (b) of Item No.56, no amount is payable for prolongation of the contract. In our view, this contention can be raised before the arbitrator.

If for some reason, the arbitrator is not available, then, some other arbitrator shall be appointed in accordance with law as per the Arbitration Act, 1940.

.....J.  
[MARKANDEY KATJU]

NEW DELHI; .....J.  
JULY 23, 2009. [V.S. SIRPURKAR]