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Arb.O.P.(Com.Div.) No.119 of 2023

In the High Court of Judicature at Madras

Reserved on 03.2.2026	Delivered on: 09.2.2026
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P. (Com.Div.) No.119 of 2023

The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-1.

...Petitioner

Vs

Mr.A.Manicavassalou,
Proprietor, M/s.A.
Manicavassalou, registered
engineering contractor, No.10,
Vellavari Street, Mariya Tower,
II Floor, Carmel Convent,
Muthialpet, Puducherry-3.

...Respondent

PETITION under Section 34(2)(b) of the Arbitration and
Conciliation Act, 1996 praying to set aside the award dated
06.4.2022 passed by the Arbitral Tribunal.

For Petitioner : Mr.Haja Mohideen Gisthi,
Standing Counsel

For Respondent : Mr.D.Vivekanandan



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ORDER

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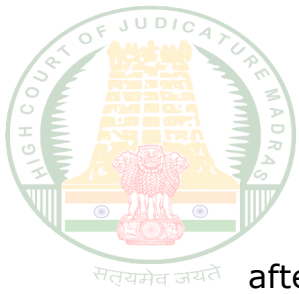
This petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the award dated 06.4.2022 passed by the learned Arbitrator to the extent the claims made by the respondent/claimant were allowed.

2. Heard both.

3. The facts leading to filing of this petition are as follows:

(i) The petitioner issued a tender dated 24.2.2013 for restoration of the damaged revetment structure at east of east quay due to cyclones 'Thane' and 'Nilam'. The respondent submitted his tender and was declared as a successful bidder, pursuant to which, the parties entered into an agreement on 03.10.2013. The work involved as many as 11 kinds of work and the respondent took over the site and commenced the work on 18.10.2013. As per the agreement, the time for completion of work was 10 months from the date of taking over the site and it was expected to be completed on 17.8.2014. However, the work was completed only on 24.9.2016

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after extension of time was granted by the petitioner. Thus, there was a delay of 768 days in completing the work.

(ii) The petitioner sought to recover the liquidated damages from the respondent and withheld a sum of Rs.49,19,960/- towards the same. Apart from that, the respondent also had other claims against the petitioner. The trigger notice was issued and a petition was filed before this Court in O.P.No.763 of 2018 by the respondent. Pursuant to the order dated 06.12.2018 passed in the said original petition, the learned Arbitrator was appointed by this Court.

(iii) In the claim statement filed before the learned Arbitrator, the respondent/claimant made the following claims against the petitioner:

"A. To repay/return the liquidated damages to an extent of Rs.49,19,960/- (Rupees Forty Nine Lakhs Nineteen Thousand Nine Hundred and Sixty Only) wrongfully deducted from the claimant together with 18% interest per annum as mentioned in Annexure – A;

B. To return the Service Tax of a sum of Rs.7,23,754/- (Rupees Seven Lakhs Twenty Three Thousand Seven Hundred and Fifty Four Only) deducted contrary to the agreement from the claimant together with 18% interest per



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annum as mentioned in Annexure – B;

C. To return a sum of Rs.2,18,836/- (Rupees Two Lakhs Eighteen Thousand Eight Hundred and Thirty Six Only) wrongly deducted towards the room rent charges from the claimant together with 18% interest per annum as mentioned in Annexure – C;

D. To pay a sum of Rs.1,06,60,000/- (Rupees One Crore Six Lakhs and Sixty Thousand Only) towards the rental charges of the machinery viz., Excavator Ex 220 and a container for the extended period as mentioned in Annexure – D;

E. To pay a sum of Rs.29,38,000/- (Rupees Twenty Nine Lakhs and Thirty Eight Thousand Only) towards the salaries paid to the employees for the extended period as mentioned in Annexure – E;

F. To pay a sum of Rs.36,48,147.40/- (Rupees Thirty Six Lakhs Forty Eight Thousand Hundred and Forty Seven and Forty Paise Only) towards the escalation of materials procurement cost incurred during the extended period to the claimant as mentioned in Annexure – F;

G. To pay a sum of Rs.2,54,002/- (Rupees Two Lakhs Fifty Four Thousand and Two Only) towards the renewal of insurance charges which was time and again renewed by the claimant as mentioned in Annexure G;



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H. To pay a sum of Rs.1,03,423.30/- (Rupees One Lakh Three Thousand Four Hundred and Twenty Three and Thirty Paise Only) towards the renewal of bank guarantee charges which was time and again renewed by the claimant as mentioned in Annexure – H';

I. To pay a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand Only) towards the rental cost for the container which was wrongly retained by the respondent even after the completion of work (from 24.9.2017 to 24.9.2018) together with 18% interest per annum as mentioned in Annexure-I;

J. To pay a sum of Rs.49,25,543.52/- (Rupees Forty Nine Lakhs Twenty Five Thousand Five Hundred and Forty Three and Fifty Two paise Only) towards the rental cost for the Machinery Excavator 220 which was wrongly retained by the respondent even after the completion of work (from 24.9.2016 to 24.9.2017) together with 18% interest per annum as mentioned in Annexure – J;

K. To reimburse/repay a sum of Rs.9,63,900/- (Rupees Nine Lakhs Sixty Three Thousand and Nine Hundred Only) towards the rent of genset utilized for electricity purpose incurred by the claimant together with 18% interest per annum as mentioned in Annexure K;



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L. To pay a sum of Rs.29,875/- (Rupees Twenty Nine Thousand Eight Hundred and Seventy Five Only) towards the interest for the delayed payment of the final bill as mentioned in Annexure – L;

M. To pay a sum of Rs.41,43,841/- (Rupees Forty One Lakhs Forty Three Thousand Eight Hundred and Forty One Only) towards the incentive/bonus to the claimant;

N. To a sum of Rs.1,00,00,000/- (Rupees One Crore Only) towards damages incurred for the loss of business to the claimant from 17.8.2014 till 24.9.2017; and

O. To pay the cost of the Arbitration."

(iv) In turn, the petitioner filed a statement of defence and took a stand that the delay in completion of work was attributable only to the respondent/claimant and that the agreement itself contemplated a pre-estimated sum as liquidated damages for the delay in completion of the work. That apart, the petitioner denied the various claims made by the respondent/claimant.

(v) The learned Arbitrator, after considering the pleadings on either side, framed the following issues:

"1. Whether the extension of the contract period for the work was approved/consented by the respondent as claimed in the statement of



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claim?

2. Who is responsible for the delay in completion of the contract? Whether the claimant or the respondent?

3. Whether the respondent impliedly approved the extension of the time to carry on the work by the claimant?

4. Whether the respondent is liable to pay the claims listed out in para 73-A to O of the statement of claim?

5. To what relief the parties are entitled to?"

(vi) The respondent/claimant examined C.W.1 and Ex.A.1 to Ex.A.90 were marked. The petitioner examined R.W.1 and marked Ex.R.1 to Ex.R.41.

(vii) The learned Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, passed an award in the following terms:

"a) the respondent is liable to re-pay/ return the liquidated damages to an extent of Rs.49,19,960/- along with interest which works out to Rs.20,38,332/- for different periods as calculated in paragraph 140-142. Therefore, as far as the claim covered by para 73A is concerned, the liquidated damages to be released and that is payable by the respondent



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to the claimant along with interest to be calculated at the rate of 14.3% works out to a sum of Rs.69,58,792/- (Rs.49,19,960 + Rs.20,38,832), which the respondent is directed to pay within 6 weeks from the date of passing of this award along with interest calculated at the rate of 6% per annum from the date of claim statement i.e., from 21.3.2019 till the date of payment. If the respondent fails to effect the payment as directed above, the respondent shall be liable to pay penal interest, in addition, calculated at the rate of 2% p.a. from the date of expiry of the 6 weeks' time fixed under this award till the date of actual payment;

b) the respondent is liable to pay the Service Tax amount deducted, namely Rs.7,23,754/- and the interest on that amount, which works out to Rs.2,99,207/-, the total claim comes to Rs.10,22,961/-. The respondent is therefore directed to pay the said sum of Rs.10,22,961/- along with interest at the rate of 6% p.a. from the date of claim statement and effect the payment within 6 weeks from the date of pronouncement of this award. If the respondent fails to effect the payment as directed within the said 6 weeks' time, the respondent will be liable to pay penal interest, in addition, calculated at the rate of 2% p.a. from the date of expiry of the 6 weeks' time till the



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date of payment;

c) the respondent is liable to pay the sum of Rs.2,18,836/-, the room rent charges wrongly deducted along with interest which works out to Rs.70,154/-, in all a total sum of Rs.2,88,990. Accordingly, the respondent is directed to pay the said sum of Rs.2,88,990/- along with interest at the rate of 6% p.a from the date of claim statement and effect the payment within 6 weeks from the date of pronouncement of this award. If the respondent fails to effect the payment as directed within the said period of 6 weeks, the respondent will be liable to pay penal interest, in addition, calculated at the rate of 2% p.a. from the date of expiry of the 6 weeks' time till the date of payment;

d) the respondent is liable to pay the sum of Rs.9,63,900/- towards rental charges for the genset hired by the claimant by way of reimbursement along with interest to be calculated at the rate of 14.3% p.a. for the period 10.10.2013 to 03.10.2016, totalling to a sum of Rs.13,75,147.27. The respondent is directed to make the said payment of Rs.9,63,900/- along with interest calculated at the rate of 14.3% p.a. for the above said period and effect the said payment within six weeks from the date of the passing of this award failing which the respondent would be liable to further



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pay a penal interest at the rate of 2% p.a. over and above 14.3% from the expiry of the said six weeks period till the date of actual payment; and
e) the respondent is liable to pay the sum of Rs.29,875/- by way of interest for the delayed payment of final bill along with interest to be calculated at the rate of 14.3% p.a. from the date of filing of the statement of claim i.e., 21.3.2019 within 6 weeks from the date of pronouncement of this award, failing which, the respondent would be liable to pay interest at the rate of 2% p.a from the date of expiry of the 6 weeks period directed in this Award till the date of payment."

(viii) The other claims made by the respondent/claimant were rejected. Aggrieved by that portion of the award passed by the learned Arbitrator granting the relief to the respondent/claimant, the above petition has been filed by the petitioner.

4. The learned Standing Counsel appearing for the petitioner focused his arguments only in so far as the issue of refund of liquidated damages ordered by the learned Arbitrator was concerned.

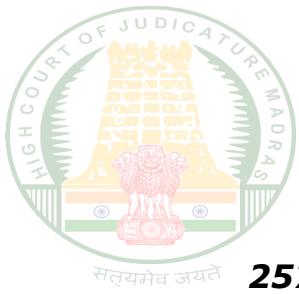


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5. It was submitted on the side of the petitioner that the respondent/claimant was expected to complete the work by 17.8.2014 whereas the work was completed only on 24.9.2016 with a delay of 786 days, that Clause 49.1 of the General Conditions of Contract provides that the petitioner would be entitled to levy liquidated damages for the delay, that therefore, considering the delay that was attributable to the respondent/claimant and after condoning 18 days towards inclement weather conditions, the liquidated damages were confined to 750 days, that the learned Arbitrator, after rendering a finding that the respondent/claimant was solely responsible for the delay, ordered for the refund of the liquidated damages to the tune of Rs.49,19,960/- with interest, which is contrary to law and that consequently, this finding suffers from patent illegality.

6. In order to substantiate his submissions, the learned Standing Counsel appearing for the petitioner, placed reliance upon the latest common order passed by me in ***M/s.Prime Store, Rep. by its Partner Mr.S.Kaarthi & others Vs. Sugam Vanijya Holdings Private Limited & others [Arb.O.P. (Com.Div.) Nos.***



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257 of 2021 & 209 of 2022 dated 08.10.2025].

7. Per contra, the learned counsel appearing for the respondent/claimant submitted as follows:

The learned Arbitrator had taken into consideration the relevant clause in the General Conditions of Contract namely Clause 49.1 and found that the petitioner had not duly followed the procedure provided under the said clause in a proper perspective. The learned Arbitrator found that the liquidated damages retained by the petitioner were not reasonable and it was not a genuine pre-estimate of damages. Therefore, the learned Arbitrator came to the conclusion that the action of the petitioner in deducting the liquidated damages was in violation of the judgment of the Hon'ble Apex Court in ***Kailash Nath Associates Vs. Delhi Development Authority [reported in 2015 (4) SCC 136]***. In the absence of the petitioner proving the actual loss sustained by them, the petitioner would not be entitled to retain the amount towards liquidated damages. Accordingly, the learned counsel justified the award passed by the learned Arbitrator and sought for dismissal of this petition.

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8. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award passed by the learned Arbitrator.

9. Since the entire focus was bestowed only on the issue of retention of amount by the petitioner towards the liquidated damages, it will suffice to render a finding on this issue.

10. Before dealing with this issue, it will be relevant to extract Clauses 1.10 and 49 of the General Conditions of Contract as hereunder:

"Clause 1.10:

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the contract."

.....

"Clause 49: Liquidated Damages

49.1 In case of delay in completion of the contract, liquid damages (L.D) may be levied at the rate of 1/2% of the contract value per week of delay or part thereof, subject to a maximum



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of 10 per cent of the contract price.

(i) The owner, if satisfied, that the works can be completed by the contractor within a reasonable time after the specified time for completion, may allow further extension of time at its discretion with or without the levy of L.D. In the event of extension granted being with L.D, the owner will be entitled without prejudice to any other right or remedy available in that behalf, to recover from the contractor as agreed damages equivalent to half per cent (1/2%) of the contract value of the works for each week or part of the week subject to the ceiling defined in Sub-Clause-49.1;

(ii) The owner, if not satisfied that the works can be completed by the contractor and in the event of failure on the part of the contractor to complete work within further extension of time allowed as aforesaid, shall be entitled, without prejudice to any other right or remedy available in that behalf, to rescind the contract;

(iii) The owner, if not satisfied with the progress of the contract and in the event of failure of the contractor to recoup the delays in the mutually agreed time frame, shall be entitled to terminate the contract;

(iv) In the event of such termination of the contract as described in Clauses-49.1(ii) & 49.1(iii) or both the owner shall be entitled to



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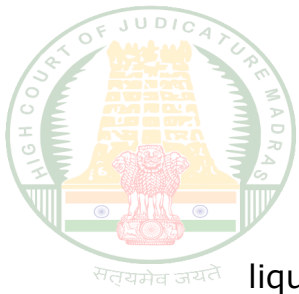


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cover L.D up to ten per cent (10%) of the contract value and forfeit the security deposit made by the contractor besides getting the work completed by other means at the risk and cost of the contractor;

(v) In case part/portions of the work can be commissioned and Port operates the portion for commercial purposes, the rate of L.D will be restricted to the uncompleted value of work, the maximum LD being on the entire contract value."

11. The learned Arbitrator, while dealing with issue No.2, rendered a finding that the delay in the completion of the contract was attributable only to the respondent/claimant. After having rendered such a finding, the learned Arbitrator went into the issue of the levy of liquidated damages by the petitioner. The learned Arbitrator, while interpreting Clause 49 of the agreement, rendered a finding that five sub-clauses (i to v) of Clause 49.1 must be read in consonance with the opening clause in Clause 49.1 and not in isolation. Having found so, the learned Arbitrator rendered a finding that the Authority must establish that there was a genuine application of mind before any action was contemplated for levy of

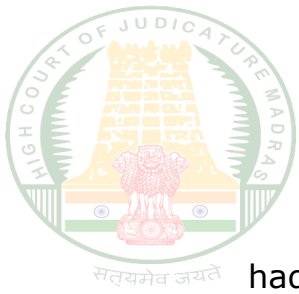


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liquidated damages and must satisfy itself that such a levy was imperative. Hence, the Authority must exercise the discretion at the very threshold of satisfaction being arrived at that the works completed by the contractor were within a reasonable time after the time specified.

12. The learned Arbitrator thereafter proceeded to refer various exhibits namely the correspondences that had taken place between the parties and also the meeting that was held between the parties and came to the conclusion that the petitioner was extending the time so as to enable the respondent/claimant to complete the work and did not choose to terminate the contract under Clause 58. The learned Arbitrator also took into consideration Ex.A.24, which was a show cause notice issued to the respondent/claimant and for this purpose, the respondent/claimant also gave a reply and on receipt of the same, the petitioner did not proceed further with the show cause notice. Ultimately, the work completion certificate marked as Ex.A.36 was taken into consideration wherein the petitioner had acknowledged that the respondent/claimant had executed the work to the complete satisfaction even though they



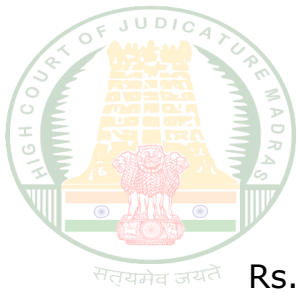
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had taken more time to complete the work.

13. In the entire process, only in the letter dated 25.1.2016 marked as Ex.A.25, the petitioner mentioned about the levy of liquidated damages. This is nearly after one year and five months from 17.8.2014. The petitioner informed the respondent/claimant that they levied the liquidated damages to the tune of Rs.28,47,989/- and that the balance recovery amount of Rs.19,74,572/- would be withheld and considered for release depending upon the performance of the respondent/claimant. Thereafter, on 29.11.2016, the petitioner expressed its decision to affirm the levy of liquidated damages and informed the respondent/claimant that a sum of Rs.39,91,535/- has already been recovered and that the balance amount would be recovered from the final bill.

14. The learned Arbitrator thereafter took into consideration a very important aspect, which ultimately lead to denying the retention of liquidated damages. The learned Arbitrator found that the contract value was fixed at Rs.4,82,15,608/- whereas the entire work was completed though with some delay, for a lesser value of

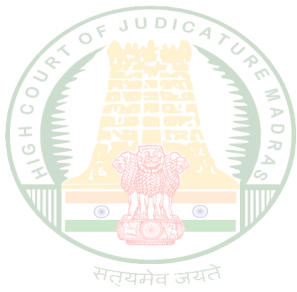


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Rs.4,14,54,674/-. Thus, as a matter of fact, the learned Arbitrator found that the petitioner certainly did not suffer any loss or damage even though the delay in the completion of work was attributed to the respondent/claimant and that on the other hand, the petitioner was able to save to the tune of Rs.67,60,934/- in this project.

15. The learned Arbitrator also took into consideration the fact that the levy of liquidated damages resorted to by the petitioner was for the total value of contract work by fixing the figure at Rs.4,91,99,600/- and 10% of this amount was calculated and appropriated as the liquidated damages to the tune of Rs.49,19,960/-. However, even as per Ex.A.56, the total value of work completed by the respondent/claimant was Rs.4,14,38,412/- and in spite of the same, the petitioner imposed levy on the value that was quoted by the respondent/claimant in his bid and that such levy was neither on the contract price of Rs.4,82,15,608/- nor on the actual value of execution to the tune of Rs.4,14,38,412/-. Hence, the learned Arbitrator reached a conclusion that the very levy of the liquidated damages was in violation of Clause 1.10 read with Clause 49.1 of the General Conditions of Contract.



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16. Keeping these facts in mind, the learned Arbitrator applied the ratio laid down by the Hon'ble Apex Court in ***Kailash Nath Associates*** and came to the conclusion that withholding the amount of Rs.49,19,960/- was illegal and hence, directed this amount to be released along with interest. While fixing the interest, the learned Arbitrator once again assigned reasons.

17. The decision relied upon by the learned Standing Counsel for the petitioner in ***M/s.Prime Store, Rep. by its Partner Mr.S.Kaarthi & others*** will have no application to the facts of the present case. Firstly, the learned Arbitrator rendered a factual finding that the petitioner, in fact, did not incur any loss and on the contrary, was able to save a sum of Rs.67.60 lakhs in this particular project. The learned Arbitrator also found that the liquidated damages levied by the petitioner were unreasonable since such a levy was made on the value of the bid amount whereas what was permissible under the contract was the value of the contract price after its final adjustment.



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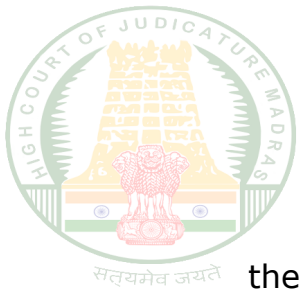
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18. In the decision in ***M/s.Prime Store, Rep. by its Partner Mr.S.Kaarthi & others***, I have held that in a case covered by Section 74 of the Indian Contract Act and the parties have agreed to a pre-estimated sum named in the contract towards the liquidated damages and also the Court finds that such pre-determination is a reasonable sum and due to the breach of contract, one party has suffered a legal injury i.e loss or damage, it is not necessary that the party must once again prove the actual loss or damage. This law was further confirmed while dismissing ***Rev.A.Nos.1 and 2 of 2026*** by a common order dated **03.2.2026**.

19. The decision of a learned Single Judge of the Bombay High Court relied upon by the learned Standing Counsel for the petitioner in ***Hindustan Petroleum Corporation Limited Vs. G.R. Engineering Private Limited [Commercial Arbitration Petition No.984 of 2018 dated 18.6.2025]*** will also not apply to the facts of the present case.

20. In the light of the above discussions, this Court does not find any perversity or patent illegality in the findings rendered by

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the learned Arbitrator on the issue of liquidated damages. In so far as the other claims awarded in favour of the respondent/claimant are concerned, no arguments were put forth by the learned Standing Counsel for the petitioner and in any event, the learned Arbitrator rendered findings by assigning sufficient reasons towards each claim that was awarded in favour of the respondent/claimant and they certainly do not suffer from perversity or patent illegality. Further, the case in hand does not fall within any of the eight pigeon holes available under Section 34 of the Act.

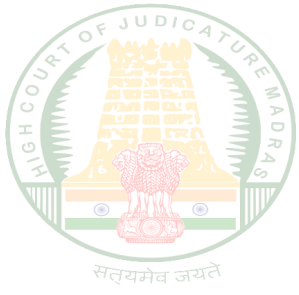
21. In the result, the above original petition stands dismissed.

No costs.

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Neutral Citation : Yes

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