
(2005) 06 CHH CK 0003
In the Chhattisgarh High Court
Case No : Civil Revision No. 1501 of 1996

A.K. Construction Company	Vs	APPELLANT
The State of M.P. (now Chhattisgarh) and Others		RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 19, 7

Citation : (2006) 1 CGLJ 123 : (2005) 4 MPHT 15 : (2007) 1 MPJR 59

Hon'ble Judges : A.K. Patnaik, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Sanjay K. Agrawal and Saurabh Sharma, for the Appellant; V.V.S. Murthy, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

This revision is u/s 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the Act") against the award dated 19-5-1996 passed by the Madhya Pradesh Arbitration Tribunal, Bhopal in Reference Case No. 27/1990.

The facts briefly are that the petitioner filed the said reference case No. 27/1990 before the M.P. Arbitration Tribunal u/s 7 of the said Act. The case of the petitioner in the said reference case was that the Executive Engineer, Mahanadi Reservoir Project, Canal Division No. 1, Rudri invited tenders for the work of a pit near Right Guide Bund and in response thereto the petitioner quoted a rate of 1.26% above the schedule rate of tender and the tender of the petitioner was accepted by the Executive Engineer and an agreement was executed between the petitioner and the Executive Engineer. In accordance with the agreement, the petitioner completed the work and submitted the first and final bill of Rs. 74,188.30 for the work done, out of which Rs. 37,044/- was to be recovered as cost of the cement supplied and Rs. 1843.75 was to be deducted as income tax

and a sum of Rs. 35,660.55 was to be paid by the Executive Engineer to the petitioner. The Executive Engineer, however, did not pay the said sum of Rs. 35,660.55 and the earnest money of Rs. 2000/-The petitioner, therefore, claimed a sum of Rs. 35,660.55 with interest @ 12% for the period 7-7-1983 to 31-12-1989 before the Tribunal.

The respondents filed their reply in the said reference case No. 27/1990 before the Tribunal stating inter alia that the petitioner did work of the value of Rs. 74,188.30, out of which Rs. 37,044/- was deducted towards cost of cement and Rs. 1843.75 towards income tax and Rs. 5935.05 towards security deposit and the remaining sum of Rs. 29,725.50 was kept in a miscellaneous deposit for making payment to the petitioner. But in the meanwhile, the Executive Engineer, MRP, Canal Division No. 1, Rudri intimated that Government dues amounting to Rs. 7,98,725/- was to be recovered from the petitioner and the dues pending for payment to the petitioner should not be paid to the petitioner by the Executive Engineer. After receipt of the said communication from the Executive Engineer MRP Dam Division I, Rudri, the petitioner was informed by Memo dated 13-4-1987 to produce "No Due Certificate" from the Executive Engineer, MRP Canal Division I, Rudri. In the said reply, the respondents relied upon Clause No. 4.3.39.1 of the Agreement between the petitioner and the Executive Engineer under which the Government was entitled to recover "sums recoverable" not only under the instant contract but also under other contracts. After considering the pleadings of the parties as well as the evidence led by them by way of affidavit, the Arbitration Tribunal passed the impugned award dated 9-5-1996. In the said award, the Arbitration Tribunal held that an amount of Rs. 36,460.55 was payable by the Executive Engineer to the petitioner, but the said amount is to be paid to the petitioner only after "No Due Certificate" from the State Government was furnished.

Mr. Sanjay K. Agrawal, learned Counsel for the petitioner, submits that the Government can not be a judge in its own cause and can not recover the sum of Rs. 7,98,725/- from the petitioner until the said amount is held to be due and recoverable by way of adjudication either by the Court or by the Arbitration Tribunal. He further submits that the Arbitration Tribunal itself has noticed that two reference cases No. 28/1990 and 29/1990 disputing the aforesaid claim of the Government towards the said amount of Rs. 7,98,725/- have been filed and were being adjudicated separately by the Arbitration Tribunal. He cited a decision of the Supreme Court in case of State of Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli, , in which it has been held that the right of the State Government to assess damages would arise only if the breach of conditions of the agreement is admitted by the contractor or where a party to a contract disputes the said breach of conditions, the adjudication has been done by an independent person or body and not by other party to the contract.

Mr. V.V.S. Murthy, learned Deputy Advocate General appearing for the State of Chhattisgarh, on the other hand, relied on Clause No. 4.3.39.1 of the agreement

under which the instant work was awarded to the petitioner to show that the Government had reserved the right to recover "any sum recoverable" which at any time may have become due from the contractor under the instant or any other contracts with the Government. He submits that identical Clause 4.3.39.1 is provided in the contracts made by the petitioner with the Executive Engineer, MRP, Canal Division, Rudri and therefore, the Tribunal was right in coming to the finding that the amount of Rs. 36,460.55 can only be paid to the petitioner after the petitioner furnishes the "No Due Certificate" from the State Government.

Clause 4.3.39.1 on which Mr. Murthy relies upon is quoted herein below:

4.3.39.1. Recovery of dues from the contractor: "Whenever any claim, against the contractor for the payment of a sum or money arises out of or under the contract Government shall be entitled to recover such sum by appropriating in part or whole, the security deposit of the contractor and to sell any Government promissory notes etc. forming the whole or part of such security. In the event of the security being insufficient or if no security has been taken from the contractor, then the balance or the total sum recoverable as the case may be shall be deducted from any sum then due or which at any time thereafter may become due to the contractor under this or any other contract with the Government should this sum be not sufficient to cover the full amount recoverable from the contractor then it shall be recovered from him as an arrears of land revenue." It will be clear from second sentence of the aforesaid clause that in the event of the security being insufficient or if no security has been taken from the contractor, then the balance or the total sum recoverable, as the case may be, shall be deducted from any sum then due or which at any time thereafter may become due to the contractor under the instant or any other contract with the Government. The expression "sum recoverable" would mean any sum that is admitted by a contractor to be due to the Government or that is disputed by the contractor but adjudicated by the Court or the arbitrator to be due and recoverable from the contractor. This can be the only interpretation of Clause 4.3.39.1 consistent with the principle of natural justice that no person can be a judge of his own cause. In case, it is held, as has been held by the Arbitration Tribunal that the "sum recoverable" is any amount which the Government or any authority of the Government considers to be recoverable from the contractor, then the Government or such authority will be a judge of its own cause and would be entitled to recover any sum from the contractor, even though the said sum is disputed and not adjudicated to be due and recoverable from the contractor by the arbitrator or the Court.

In the case of *State of Karnataka v. Ratneshwara Rice Mills, Thirthahalli* (supra), a similar question as is raised in the present case came up for consideration before the Supreme Court. Clause 12 of the Agreement between the parties provided inter alia that for any breach of conditions set out in the agreement the first party shall pay damages to the second party as may be assessed by the second party, in addition to the forfeiture in part or whole of the amount

deposited by him and any amount that may become due or payable by the first party to the second party under any part of the agreement shall be deemed to be and may be recovered from the first party as if they were arising out of land revenue. The Supreme Court interpreting the said Clause 12 of the Agreement held:

"Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement can not be an arbiter in his own cause interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will however be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the Officer of the State even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12." For the aforesaid reasons, we set aside the impugned award dated 9-5-1996 of the M.P. Arbitration Tribunal in Reference Case No. 27 of 1990 and direct that the respondents will pay a sum of Rs. 36,460.55 to the petitioner with interest @ 6% per annum calculated from the date of application filed by the petitioner before the Tribunal, i.e., with effect from 22-3-1990.