(2023) 08 CHH CK 0043

In the Chhattisgarh High Court

Case No : Civil Revision No. 131 Of 2015

Arun Kumar Gupta — APPELLANT

Vs

Secretary, PWD / Bridge Construction — RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Citation : (2023) 08 CHH CK 0043

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Veena Nair, Ali Asgar

Final Decision : Dismissed

Judgement

1. The applicant has filed this revision being aggrieved by the order dated 24.09.2015 (Annexure A/1) passed in Reference Case No.02/2013 by the learned Chhattisgarh Madhyastham Adhikaran, Raipur, (in short 'the Tribunal') whereby the learned Tribunal has rejected the claim of the applicant for increased escalation in the cost which had become due on account of the increase in the price index notified by the appropriate authority.

2. Brief facts of the case, as projected by the applicant, is that respondents had invited NIT on 21.09.2007 for construction of HL Bridge including approach across Rehand River at Mohanpur Upka Road in Sarguja District. The total value of the work was stated to be Rs.3,18,12,014/-. The work was to be completed in 09 months (excluding the rainy season) from the date of work order. The construction work was assigned to the applicant. The work could not be completed within the stipulated period due to reasons attributable to the respondents, therefore, the completion period was extended till 30.05.2011 without imposing any penalty upon the applicant. The work was completed on 28.05.2011. As per clause 2.33 of the Tender, on 05.01.2012, the applicant filed a representation before the respondents requesting them to re-calculate the price escalation on the basis of final price index and pay the difference to him

amounting to Rs.9,69,602/-. The applicant had given his consent for extension of 60 days period for Superintending Engineer (for short 'S.E.') to decide the representation one on 02.03.2012 and the other on 02.05.2012. The S.E. took proceedings in the application and granted a personal hearing to the applicant on 24.02.2012 but no decision was communicated to the applicant. The applicant awaited patiently giving sufficient time for the S.E. to decide his representation but no decision was communicated to the petitioner by the S.E. Since the decision was forthcoming from the S.E., the applicant had submitted an appeal dated 15.07.2012 to the Chief Engineer (for short 'C.E.'). The Chief Engineer was required to take decision on the appeal within 90 days of its receipt as per the terms of the contract but no decision of the Appellate Authority was communicated to the applicant. In absence of decision on the application and appeal, the applicant moved a reference case before the learned Tribunal at Raipur, which was registered as Reference Case No.02/2013.

3. The learned Tribunal after hearing both the parties has considered first issue and held that the S.E. was required to take decision on the request submitted by the applicant on 05.01.2012 within 60 days (as per provision) but the same was decided on 13.04.2012, long after the expiry of 60 days. Therefore, the applicant was required to prefer an appeal before the C.E. within 60 days i.e. on or before 04.05.2012 but the applicant had preferred an appeal before C.E. on 19.07.2022, which is delayed by more than 60 days and the learned Tribunal decided the second issue against the applicant that the applicant had signed the bills and received final payment in full and final satisfaction on 16.12.2011. Nothing has been stated regarding additional amount of cost of escalation and decided both the issues against the applicant dismissing the case of the applicant. Hence this civil revision by the applicant with the following prayers :-

"1. To call for the entire records of the case from the learned Tribunal for its perusal.

2. To set aside the award impugned in this application and direct the respondents to pay the escalation cost as claimed by the applicant with interest @ 18% per annum.

3. To grant cost and expenses of this application.

4. To grant any other relief as this Hon'ble Court may deem fit and proper in the interest of justice."

4. Learned counsel for the applicant submits that the Ministry of Labour has published the final price index only on 20.12.2011. The publication of the final price index by the Ministry is not under the control of the applicant. Until the final price index was published, the applicant or the respondent was not aware whether the final price index would be less or more than the tentative price index, therefore, the cause of action for making the claim for payment of the difference between the tentative price index and the final price index arose only after publication of the final price index and not before. The learned Tribunal

erred in holding that the applicant ought to have made a claim at the time of signing the final bill in which the escalation cost was calculated on the basis of the tentative price index. The final price index was published for each month from January, 2011 to December, 2011 only on 20.12.2011. The escalation cause in the contract does not speak of tentative or final price index. It speaks of only escalation on the basis of Consumer Price Index published by the Ministry of Labour which should be taken to mean the final price index and not the tentative price index. Simple because payment has been made on tentative price index earlier, such payment does not bar payment of the escalation on final price index published by the Ministry of Labour. The respondents would be taking advantage of their own wrong if the escalation is not calculated on the basis of final price index and paid to the applicant, which is not permissible in law. No one can take advantage of of his own wrong. The learned Tribunal has committed serious error in holding that the applicant ought to have submitted the appeal to C.E. after expiry of 60 days from the date of submission of his request to S.E. The claim of the applicant before the learned Tribunal was for payment of the escalation cost on the basis of the final index published by the Ministry since there was already a decision in his favour. The learned Tribunal has misdirected by holding a roving inquiry into the entitlement of the applicant before it to receive the payment which was not a question raised by the applicant before the Tribunal. Entitlement of the applicant to receive the amount was already decided by the S.E. and the said decision holds good even today. If the respondents felt that the applicant was not entitled to receive the payment, they ought to have reviewed the said order and modified or cancelled it which they have not done. In support of his submission, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of Bharat Coking Coal Ltd. Vs. Annapurna Construction reported in (2003) 8 SCC 154 and R.L. Kalathia and Company Vs. State of Gujarat reported in (2011) 2 SCC 400.

5. On the other hand, learned counsel for respondents supporting the impugned order submits that all the payments have been made as per the existing price index, which have already been received by the applicant in full and final satisfaction. The payments have been duly accepted by the applicant without raising any objection whatsoever before the respondents, therefore, the present claim of the applicant is not at all tenable under the law. The final bill was prepared on 10.10.2011, which was endorsed by the applicant in Bill Book No.340 at page No. 113 and also marked his signature, which clearly shows admission of the applicant for the amount as mentioned in the final bill and consequently, on 16.12.2011, a cheque for Rs.14,99,348/- was issued to him. As per letter of the applicant dated 19.11.2011, the amount of performance guarantee to the tune of Rs.14,50,000/- has been duly granted to the applicant by way of depositing T.D.R. in favour of the applicant and also the amount of security amount t the tune of Rs.6,70,942/- has been duly given to the applicant on 28.12.2012, Thus, the learned Tribunal has duly considered the factual position that the applicant invoked provisions of Clause 1.17 of the contract

agreement, whereby the applicant made request to the S.E. on 05.01.2012, which was to be decided on 06.03.2012, however, the request of the applicant was decided on 06.03.2012 and therefore, the applicant was required to prefer an appeal before the Chief Engineer within 60 days i.e. on or before 04.05.2012, but the applicant had preferred an appeal before the Chief Engineer on 19.07.2012 with a delay of more than 60 days.

In impugned order, the learned Tribunal has also observed that the S.E. has already decided the request of the applicant on 13.04.2012 then there was no reason to writ second letter on 02.05.2012 for extension of time and even if on consideration of first letter dated 02.03.2012, it appears that the letter to be signed by the applicant alone and it does not bear acknowledgment of receipt by the office of S.E. and similarly there is no receipt of acknowledgment on letter dated 02.05.2012. The appeal of the applicant was barred by limitation as prescribed under Clause 1.17 of the contract agreement. The learned Tribunal has also observed that the price index was not applicable in the present case due to the fact that there was no retrospective effect of that price index at that relevant point of time and the petitioner is not entitled to receive escalation cost as claimed by him on the decision taken by the S.E. on 13.04.2012, as such, the instant revision is without any merit and is liable to be dismissed. In support of his submission, learned counsel place reliance on the decision of Union of India Vs. Hari Singh reported in (2010) 15 SCC 201.

6. Heard learned counsel for the parties and perused the material available on record.

7. In this case, it is not disputed by both the parties that final payment was done on 16.12.2011 and the applicant filed representation before the S.E. on 05.01.2012. At the time of receiving the the full and final payment, the applicant did not raise any objection. The learned Tribunal after hearing both the parties framed two issues for determination of the case, which are as under :-

"1. Whether the petitioner has complied with the terms and condition of the agreement in respect of period of limitation for making request and preferring appeal ?

2. Whether the petitioner is entitled for an award of Rs.10,96,650/- and interest thereon @ 18% per annum."

8. The learned Tribunal minutely observe all documents and recorded its finding that it is clear from the agreement clause that time was not extendable unilaterally and the applicant was required to appeal to C.E. within 60 days from the date of order of S.E. dated 13.04.2012.

9. Hon'ble Supreme Court in the matter of Hari Singh (supra), observed in para 9 and 10, which read thus :-

"9. This Court in Nathani Steels Ltd. V. Associated Constructions5 also had an occasion to examine a similar case. The Court observed that after settling the entire matter and receiving the payment, it was not open to the respondent to treat the settlement as non est and proceed to invoke the arbitration clause.

10. This Court in a relatively recent case has examined the legal position once again in National Insurance Co. Ltd. V. Boghara Polyfab (P) Ltd.6 In para 25 of the said judgment, the Court observed as under : (SCC p. 284)

"25. … Where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim."

10. In this case also, it is clear from all documents that at the time of final settlement, the applicant did not raise any objection and received payment. The learned Tribunal while passing the impugned order has minutely appreciated/ scrutinized all the issues. This Court does not find any illegality or infirmity in the order impugned.

11. Looking to the facts and circumstances of the case, and in view of decision of Hon'ble Apexe Court in Hari Singh (supra), the revision has no merit and is hereby dismissed.