(1981) 10 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 1570 Of 1970

Govindji Vathal Lal Bhojam APPELLANT

Vs

Gujarat Housing Board, Ahmedabad RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Citation : (1982) 1 SCC 412

Hon'ble Judges : V. Balakrishna Eradi, J;R. B. Mishra, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

V.B. ERADI, J.-This appeal by certificate granted by the Gujarat High court arises out of a suit instituted by the appellant - a partnership firm engaged in the business of undertaking and executing building contracts - involves mainly the question whether the High court was justified in modifying the decree passed in favour of the plaintiff by the court of first instance by disallowing a sum of Rs. 32,044.00 being the amount of deductions made by the government from the plaintiff''s bills on the ground that certain items of work included in the original Schedule were subsequently omitted and the deductions represented the costs of the items of work so omitted.

2. The work had been originally entrusted to another firm of contractors by name M/s Kalyandas. Apparently in view of unsatisfactory progress and quality of the work carried out by that firm, the contract with it was terminated and fresh tenders were invited for the execution of the balance work which remained uncompleted. In response to the said invitation the plaintiff submitted a lump-sum tender and after some negotiations the execution of the balance work was entrusted to the plaintiff for a total agreed amount of Rs 3,43,582.76. The formal agreement in respect of this arrangement was executed on 24/03/1958. It is common ground that it was during the currency of the contract entered into with M/s Kalyandas that certain items of work which had been originally included in the Schedule to the agreement of contract were omitted therefrom with the

result that the contractor was not called upon to carry out those items of work. The balance work which remained incomplete at the time of termination of the contract with M/s Kalyandas therefore could not take in those omitted items. It would, however, appear that this aspect was lost sight of while drawing up the agreement dated 24/03/1958 entered into with the plaintiff pursuant to the acceptance of his tender for carrying out the remaining work. The plaintiff duly carried out the balance work which had been left unexecuted by the previous contractor as at the time of termination of the latter''s contract and a certificate was issued by the Engineer-in-Charge that the plaintiff had satisfactorily carried out the whole of the work entrusted to it. However, taking advantage of the mistake that had crept into the agreement the Department took the stand that from the total amount payable to the plaintiff under the lump-sum arrangement an amount equivalent to the cost of carrying out the items of work which had been originally omitted from the Schedule even during the currency of the contract entered into with M/s Kalyandas should be deducted. In the present suit the plaintiff sought among other reliefs the recovery of the sum of Rs. 32,044.00 contending that the aforesaid deduction made from his bills was not legally sustainable. The trial court upheld the said plea of the plaintiff but on appeal by the State the High court reversed that finding and it modified the decree of the trial court by disallowing the plaintiff''s claim for recovery of the said sum of Rs. 32,044.00. The correctness of the decision so rendered by the High court is called in question before us by the plaintiff who has filed this appeal.

3. The High court itself has stated in its judgment that the evidence available on record clearly indicates that it was not the intention of either of the parties at the time when the contract was entered into by the Department with the plaintiff that any of the "omitted items of work" were to be carried out by the plaintiff under the said Agreement. Notwithstanding this, the High court held that since those items had also been included in the Schedule to the Agreement the Department was justified in deducting from the plaintiff''s bills an amount representing the cost of carrying out those unexecuted items of work. In our opinion the said conclusion reached by the High court is not correct or sound. Admittedly the tender submitted by the plaintiff was for carrying out the balance work left uncompleted by the previous contractor. It was on the basis of acceptance of the said tender that the contract was entered into with the plaintiff. The High court has rightly found that at the time of fixing of consideration and entering into the contract neither party had intended that the items omitted from the original Schedule during the currency of the agreement with M/s Kalyandas were to be carried out by the plaintiff. Hence no part of the lump-sum consideration fixed in the contract entered into with the plaintiff could possibly have related to the execution of any work concerning those omitted items. In other words, the lump-sum consideration fixed under the Agreement entered into with the plaintiff was only for the execution of the balance work left unfinished by M/s Kalyandas and admittedly the plaintiff has duly carried out the entirety of the said work. In this situation there was no justification whatever for

withholding from the plaintiff''s bills any amount purporting to represent the cost of carrying out the omitted items of work. Hence we set aside the High court''s finding on this question and hold that the plaintiff is entitled to recover from the defendant the sum of Rs. 32,044.00 which had been wrongly deducted from his bills by the Department representing the cost of carrying out the omitted items of work. The plaintiff has prayed for the grant of interest on the said amount. In the circumstances of this case we do not consider this to be a fit case for awarding past interest.

4. Accordingly this appeal is allowed in part and the decree of the High court is modified by enhancing the amount payable to the appellant thereunder by a sum of Rs. 32,044.00 with six per cent interest per annum from today. Parties will bear their respective costs.

