
(2007) 07 MP CK 0005
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 1279 of 2003

M.P. Textile Corporation Ltd. and others	APPELLANT
Vs	
M/s Mahendra Construction, Bhopal	RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Companies Act, 1956 — Section 617
Contract Act, 1872 — Section 70

Citation : (2007) 4 MPLJ 141

Hon'ble Judges : K.S. Chauhan, J;A.K. Mishra, J

Bench : Division Bench

Advocate : K.S. Wadhwa, for the Appellant; Ashish Shrotri, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This revision has been preferred u/s 19 of M.P. Madhyastham Adhikaran Adhiniyam, 1983 (For brevity "the Adhiniyam") assailing an award dated 28-8-2003 passed by M.P. Arbitration Tribunal in reference Case No. 11/2000.

The respondent filed a dispute before the arbitration tribunal claiming a sum of Rs. 10,47,910/-.

The Managing Director had invited tenders vide NIT dated 6-3-1997 for "renovation work of Avanti show-room at G.T.B. Complex, T.T. Nagar, Bhopal" on 14-3-1997 for a probable amount of contract of Rs. Two lacs to be completed in 2 months. An item rate tender costing Rs. 23,31,474.97 was accepted. Acceptance was communicated as per letter dated 17-4-1997. An agreement was entered into. The work order was issued on 9-5-1997. Avanti show-room was vacated on 20-5-1997 and lay out was given on 1-6-1997. Thereafter entire work was completed including some extra work on 13-10-1997. M/s M.P. Textile Corporation Ltd. (hereinafter referred to as "the Corporation") delayed the payment of running account bills, that delayed an execution of work. Extension

of time was applied up to 30-10-1997. However, the entire work was completed on 13-10-1997 and the show-room started functioning. The contractor executed and completed the extra items in anticipation of sanction of rates. The contractor was asked to quote the rates with quantities executed for extra items so that proper sanction could be obtained from the competent authority. It was submitted to the General Manager on 22-10-1997. The total cost of extra items executed was Rs. 2,07,793.28. The earnest money and security, deposit had to be refunded by the Corporation. Reminders were sent, however, the claims were not settled, hence dispute was raised before the arbitration tribunal.

The respondent raised a preliminary objection that petition was not maintainable before the arbitration tribunal as contract in question was not a work contract. The Corporation was not a public undertaking, hence, tribunal had no jurisdiction to decide. Inter alia it was also contended that no orders were obtained from competent authority to carry out extra work, therefore, contractor could not claim any thing on this account. Other facts are not being referred in view of three submissions raised by learned counsel for petitioners.

Shri K.S. Wadhwa, learned counsel for petitioners, has submitted that the arbitration tribunal did not have the jurisdiction to entertain the claim as the Corporation was not a public undertaking. Secondly it was not a work contract it being for repair of show-room. He has also submitted that for extra item rates, no sanction was obtained, as such an award made by the tribunal for extra work done being illegal, be set aside.

Shri Ashish Shroti, learned counsel for respondent, has submitted that section 2 of the Adhiniyam defines a "public undertaking". The Corporation is Government of M.P. undertaking owned by State Government, as such the tribunal had the jurisdiction to entertain the dispute. He has also submitted that it was works contract, construction of the building was done. He has also relied upon a definition of "works-contract" in section 2(i) of the Adhiniyam. He has further submitted that extra work was done as per instructions, the rates were submitted for the sanction to the competent authority, an extra work was not done gratuitously, the rates submitted have not been shown to be unreasonable nor they were excessive in any manner, thus, the tribunal has rightly awarded an amount of extra work done.

First coming to the question whether the Corporation can be said to be a "public undertaking" as defined section 2(g) of the Adhiniyam. Section 2(g) of the Adhiniyam is quoted below:

2(g) "Public Undertaking" means a Government Company within the meaning of section 617 of the Companies Act, 1956 (No. 1 of 1956) and includes a Corporation or other statutory body by whatever name called in each case, wholly or substantially owned or controlled by the State Government.

The definition of a "public undertaking" is inclusive of a Corporation or

other statutory body which is wholly or substantially owned or controlled by the State Government, is a public undertaking. We have no iota of doubt that the Corporation has been created by the State Government and owned by it, as such the objection raised has no merit, same deserves to be rejected.

Coming to the submission whether it was a works contract, a "works-contract" is defined in section 2(i) of the Adhiniyam. Section 2(i) reads thus:

2(i) "works-contract" means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, workshop, power house, transformers or such other works of the State Government or Public Undertaking as the State Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works.

It the agreement in question an extensive building renovation work was required to be done inclusive for sanitary, interior works, electric works, air-conditioner, it was clearly a works contract, there was an extensive renovation of the entire building involved, thus, it was clearly a works contract considering the nature of the contract. Thus, the second submission raised has no legs to stand.

Coming to third and the last submission as to the award made by tribunal for an extra work done. The tribunal has awarded a sum of Rs. 1,68,843.81. The extra work was done, has not been disputed, the rates of which were not covered by the schedule of items. It was informed by the petitioner on 13-10-1997 that he had completed certain item not enumerated in schedule of item of work and he would be submitting the rates of such items; thereafter contractor was asked as per letter (Ex. P.14) dated 6-9-1997 to submit the details, which were submitted as per letter (Ex. P.23). It is apparent from document (Ex. P.12) that extra work was undertaken after discussion and suggestion given by the Managing Director, General Manager, Marketing, etc., these works were agreed upon between the parties, thereafter it was not proper for the respondent to withhold the payment under the guise of sanction. On specific query being raised whether the rates claimed were unreasonable, learned counsel for petitioners is not able to point out any material that rates claimed were unreasonable or excessive in any manner, the bills were signed by the Asstt. Engineer and figure/amount of claim was corrected, the tribunal has awarded a sum of Rs. 1,68,843.81 for the extra work done, as the work was not done gratuitously, even as per section 70 of the Contract Act it was necessary for the Corporation to make the payment for extra work done as per their directions. Thus, the award of aforesaid amount is also found to be proper.

Resultantly, we find no merit in this revision. Revision is hereby dismissed.

However, we leave the parties to bear their own costs as incurred.