(2006) 04 MP CK 0126

In the Madhya Pradesh High Court

Case No : C.R. No. 2179 of 1995

M/s. Gandhi Construction Co. Engineers and Contractors APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:
Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 19(1)

Citation : (2006) 3 MPJR 51

Hon'ble Judges : U.C Maheshwari, J;Dipak Misra, J

Bench : Division Bench

Advocate : V.R. Rao, for the Appellant; Om Namdeo, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.

The applicant/claimant has preferred this revision u/s 19 (1) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam 1983 (In short "the Adhiniyam") against the rejection of part of its claim vide award dated 23rd February 1995 passed by Madhya Pradesh Arbitration Tribunal (In short "the Tribunal"), Bhopal in Reference Case No.24/1990.

As per the applicant his tender was accepted by the respondents in respect of remaining construction of Jawaharlal Nehru 100 bedded Hospital, a hospital to cater to the needs of Gas victims of Bhopal. The said tender was accepted for 84.60% above CSR. The estimated cost of work was Rs.53,53,400/-. The earlier work was carried out by the Public Works Department and it was handed over to the applicant for remaining construction. The work order was given to the applicant on 24.10.1986 with the stipulation to complete the same within six months including the rainy season. As per terms of contract the time allowed for carrying out the work was to be reckoned from 15th day from the date of aforesaid work order. Accordingly, the work was to be completed on or before

07.05.1986. But the same was completed 30.09.1986, i.e. after delay of four months and 23 days. Be it noted that as per the respondent the same was completed on 14.11.1986, i.e. after expiry of six months and six days from the stipulated date.

The applicant carried out the work of Rs. 50,25,000/-. There is no grievance of the applicant that any thing was due on account of price of the carried out work. The petitioner had preferred his claim on the following items:

(a)

On account of loss of infructuous overhead expenses

Rs. 5,68,423.00

(b)

Loss of profits

Rs. 7,00,529.00

(e)

Amount withheld by respondents on account of delay in completion of work

Rs. 83,376.00

(d)

On account of certain items for which it was paid on reduced prices

Rs. 22,034.00

(e)

Refund of royalty charges paid by the applicant

Rs. 39,912.00

(f)

Ante lite interest as per schedule I of the petition

Rs. 1,53,938.00

Total

Rs. 15,68,212.00

The same is mentioned in the petition as 15,68,361 while on totaling it is found as mentioned above.

It is also stated in the claim petition that the delay was caused for the reasons attributable to the respondents in completion of the work and the applicant incurred the loss for which he is entitled to recover the same as a part of compensation from the respondents. According to the applicant he was entitled for extension of time but in spite of availability of sufficient reasons, and recommendation of the official, the State Government rejected the prayer of the applicant in this regard. Although no amount was recovered from the applicant on account of delay in completion of work but a sum of Rs. 83,376/- was withheld by the respondents towards the compensation for the delay as mentioned above.

According to terms of agreement this was a time bound project and was to be completed within maximum time of six months. As per clause 5 of the agreement the power for extension of time was with the Engineer In-charge up to three months and beyond the said period it was with the Superintendent Engineer on the ground of unavoidable hindrance in execution of work by the applicant. Such extension could be given only for the reasons beyond control of the applicant.

The claim of the applicant was denied by the respondent in their written statement, stating that the delay in compliance of work was not caused due to any act of respondents or it''s authorities. Hence, applicant is not entitled for infructuous overhead expenses or loss of profit. The material which was used by the applicant according to its verification after preparation of bill the same was paid. Hence, on account of price of any item the applicant is not entitled for any claim. The claim of royalty charges was also denied. The applicant was bound to compensate the respondents on account of delay in completion of work as it was not completed within the stipulated time. Thus, the amount of Rs. 83,376/- has been rightly withheld by the respondents. The applicant is also not entitled for ante-lite interest as claimed in his petition and prayed for dismissal of the claim.

On appreciation of the material brought on record the Tribunal has allowed the claim of the applicant for refunding the sum of Rs. 25,593/- as ante-lite interest on Rs. 6,18,398/- for the period from 16.08.1987 to 26.11.1987 @ 12 % p.a. and also awarded the withheld amount of Rs. 83,376/- the compensation on account of causing delay in completion of work. Besides this on consideration the claim of royalty charges the Executive Engineer, P.W.D. Bhopal was directed to consider the same and pass suitable order for refunding the same, within three months from the date of the impugned award and other claims of the applicant have not been found proved, the same were rejected. The applicant has preferred this revision against the non-allowing of the said part of his claim by the Tribunal.

Learned counsel for the applicant has submitted that the delay could not have been attributed to any act of the applicant. It occurred due to the reasons beyond the control of the applicant for which he was entitled for extension of time, more so, while, the same was recommended by the competent authority of the respondent department but it was refused by the State Government without any justification. The same was considered by the Tribunal in para 25 and onwards of the impugned award and held that, the reasons assigned by the Superintendent Engineer in his letter (Ex.P.44) were sufficient to extend the time but even after holding the same the Tribunal has not awarded the infructuous over head expenses of such period and loss of profit incurred by the applicant on account of the same. In support of this contention he has placed reliance State of Madhya Pradesh Vs. Madho Singh and other connected matters in Civil Revision No. 1342/94 and No. 1348/94 decided on 10.09.1998 and Govt. M.P. Vs. Arjun Kumar passed in Civil Revision No. 605/1999 decided on 09.07.2002. It was also submitted that in respect of loss of infructuous over head expenses the evidence available on record was not properly appreciated by the Tribunal, and therefore, his claim has been dismissed erroneously being contrary to settled principles of law.

The learned counsel for the respondents has supported the impugned award canvassing that the same has been passed on proper appreciation of evidence and it does not require any interference in this revision as no error of jurisdiction has been committed by the Tribunal.

To appreciate the aforesaid submissions, we have perused the record and the impugned award. It is true that the applicant was entitled for extension of time on account of the reasons beyond his control, the same was recommended by the S.E. by his letter (Ex.P.44) in which he had mentioned five grounds for extending the time for completing the work but the time was not extended by the State. The Tribunal has held that causation of delay in completing the work was beyond the control of the applicant. In consequence of it the respondents were directed to refund the amount of Rs.83,376/- withheld by them on account of compensation in respect of causing delay in completion of work within stipulated time.

We are of the considered view that mere refund of the said withheld amount to the applicant does not warrant justification for allowing the claim of the applicant regarding of infructuous overhead expenses. The reasons as mentioned in Ex.p.44 giving sufficient circumstance to draw an inference that on account of manufacturing and procurement of steel windows and some change in the drawing by the department had taken some time during that period the applicant would have occurred some loss on account of infructuous overhead expenses as the deployed persons were not in a position to work and sit idle. Hence, the applicant was entitled for some award in this regard but by committing error the Tribunal has not awarded the same. So for other claims of the applicant are concerned, in view of the evidence available on record we have not found any circumstance to award the same as the findings of the Tribunal in that regard are based on proper appreciation of evidence. Hence, it is held that applicant is not entitled for any claim on account of loss of profits or in relating to any item for which it was paid on reduced prices of such items.

The ante-lite interest for which the applicant was entitled has already been awarded by the Tribunal. Hence, at this juncture the applicant does not deserve for any further amount in this regard. Resultantly finding of the Tribunal in this respect is hereby affirmed.

As regard refund of royalty charges is concerned, the Tribunal has already directed the applicant to approach the S.E. of respondent and such Engineer was also directed to examine the same and pass the suitable order within three months regarding refund of royalty amount. Hence this question does not require any interference at this stage. On passing any adverse order by the said S.E. applicant shall be at liberty to approach the appropriate forum.

In view of the aforesaid the applicant is found entitled for the award in respect of loss incurred on account of infructuous overhead expenses. Thus the court has to consider that how much amount could be awarded in favour of the applicant in this regard. In this connection, the cases cited by the applicant are giving sufficient guideline to resolve the said question. In the matter of Madho Singh (Supra) the Division Bench of this Court has held as under:

8. As per terms of contract, it was an obligation of the State to make a site available and also to make all other obligation undertaken by them. But, it appears that the State could not make the site available to the contractor because of the Forest Conservation Act, which prevented the State from making the site available. But for that, the contractor could not be held responsible and the delay was caused by the State because of its inability to make the site available. Apart from this, the contractor was granted extension from time to time that shows that the State realised that the Contractor could not complete the work because of hindrances, it felt satisfied and extended the time up to 1985 for both these contracts. May other lapses, omissions and delay on the part of the State has been pointed out which we need not dilate here as the Tribunal has accepted the norms which has been laid down in the report of Measurement Irrigation Project of India and has laid down that how the overhead expenses is to be paid. The Tribunal has made a reference to para 2.36.1, of the report of Irrigation Projects in India, which reads as under:

''P.2.36.1: Overheads -

An allowance of 10% would be a adequate for the contractor''s actual expense on supervisory establishments, charges travelling expenses, insurances of damages of plant and injury to labourl Keeping in view of this guidelines, the Tribunal has worked out the calculation and on that basis, awarded the overhead infructuous expenses, and also awarded a sum of Rs. 5,000/- towards nominal damages for loss of profit. Likewise, in C.R. No. 1348/94, on the same reasoning, the Tribunal has awarded a sum of Rs. 1,68,753/-towards compensation for infructuous overhead expenses; Rs. 6000/- towards nominal damages for loss of profit and Rs. 23,440/- towards refund of earnest money and security deposit, i.e. total Rs. 1,98,193/-. Hence, we are of the opinion that the view taken by the Tribunal in both the cases appears to be just and proper and there is no ground to interfere with the award. There is no merit in both the revision petitions (C.R. No. 1342/9-.'' and C.R. No. 348/94) and the same are dismissed. No order as to costs.

The aforesaid decision was followed by the Division Bench of this court in Arjun Kumar''s (Supra), wherein it was held as under:

Learned counsel for the petitioner has placed reliance on two judgments of Division Bench of this Court passed in Civil Revision No. 608/89 (State of M.P. and others, Vs. Smt. Gyan Kaur & Ors.) decided on 17.08.1999 and Civil Revision No. 2136/95 (M/s Saluja Construction Company Vs. State of M.P.), decided on 07.09.1999, to contend that unless the actual loss sustained by the Contractor is proved, no amount towards over head could have been awarded. On the other hand Shri Y.I. Mehata appearing for the respondent, has placed reliance on the yet another earlier Judgment of Division Bench of this Court passed on 10.09.1998 in Civil Revision No. 1342/ 99 (State of M.P. Vs. Madhosingh), to contend that even without leading any evidence to claim over heads, the same can still be allowed.

We have gone through the aforesaid judgments, mentioned above. From the subsequent judgments of the Division Bench in the matter of M/s. Saluja Construction (Supra) and Smt. Gyan Kaur (Supra), it appears that the earlier judgment of this court in the matter of Madhosingh (Supra), was not brought to the notice. The earlier view of the Division Bench was that over heads can be paid to the Contractor on the basis of the report of Measurement, Irrigation Project of India, which contemplated as to how much dues are to be paid. In this context, reference has been made to paragraph 2.36.1, which reproduced herein below:

An allowance of 10% would an adequate for the Contractor''s actual expense on supervisory establishments, travelling expenses, insurances of damages of plant and injury to labour.

Here also after going through the impugned award and the record, we are of the view that reasonable amount of over heads has been awarded to the claimants, which have been worked at 8% or the prime cost but on account of various facts and circumstances of the case, it found the claim of over heads only to the extent of 8%. Against such a finding recorded by the Tribunal, which is based on proper appreciation of evidence, we find that no case for interference is made out. The Revision being devoid of any merit or substance is here dismissed.

Although the aforesaid decided cases were based on different terms and conditions of the contract and circumstance but on considering delay in completion of work for the reasons beyond control of the contractor the aforesaid principles would apply to the case at hand. Therefore in view of aforesaid discussion, it is held that applicant is entitled for the compensation on account of loss of infructuous over head expenses @ 8% of the total cost of the work alongwith the interest on such assessed amount @ 6% p.a. from 16.08.1987 till its realisation.

Accordingly, this revision is allowed in part without any order as to costs.

