
(2014) 08 MAD CK 0165

In the Madras High Court

Case No : Original Side Appeal No. 292 of 2013

P. Janakiraman

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0165

Hon'ble Judges : Satish K. Agnihotri, J; M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The plaintiff is the appellant before us. The respondent invited tender for the work of widening and strengthening of the road branching from K.M. 11/8 of Madras-Chengalpet-Kancheepuram-Arakonam-Tirutani Road to Pudupattinam via Vitlapuram KM 0/0-17/0. The tender of the appellant, being the lowest among others, an agreement was entered into between the parties on 27.08.2003. The agreement was drawn for a total value of Rs. 4,38,53,328/-. The appellant was supposed to complete the work on or before 26.11.2004. The agreement got extended as the work could not be completed. The respondent accordingly extended the agreement till 04.04.2005.

2. For providing granular sub-base, the specification was granular sub base (SG Mix), which is for providing, laying and compacting well graded material for preparing sub grade in accordance with the requirements of the specification. The materials shall be made in one or more layers as sub-base or lower sub-base and upper sub-base as necessary according to lines grades and cross sections shown in the drawing or as directed by the Engineer. As per the MOST specification 111, 112, 401 and 900, the granular sub-base (SG Miz) was rated by the appellant as Rs. 165.24 paise per cubic meter and for the entire contract, the appellant has valued for Rs. 26,81,019/-. Based on the calculation arrived by the appellant, the respondent has awarded the contract to the appellant and the agreement signed has four schedules as stated by the appellant which forms part of the contract wherein Schedule-A contained the description of the items to be

executed by the Contractor, the quantity to be executed along with the relevant MOST specification and the rates for the work as filled in by the Contractor to be executed. The Schedule-C contains the descriptive specification report. Finally Schedule-D contains the rules for provision of health, sanitary arrangements for the workers.

3. The appellant sent a letter to the respondent requesting it to specify the grading in which he has to carry out the work to execute granular sub-base. Under Ex. P3, the following reply was given by the respondent in and by the letter dated 19.11.2003.

"Since in the design traffic is more than 2MSA for the above road, the GSB should be provided as per the MOST specification 401 Granular sub base and grading 1 of table 400-1 in order to satisfy to minimum CBR value of 30 to receive base over it.

Also, in the item No. 4 of schedule A of the agreement itself, it is clearly stated that the GSB should be provided and Sub-Grade prepared in accordance with the requirements of the specification as per MOST No. 111, 112, 401 and 900. Hence, you are requested to complete the granular Sub-Base work as per the provisions contained in the MOST specifications mentioned above and to produce the test results accordingly."

4. The appellant, by way of a reply dated 24.11.2003, stated that he is entitled to receive the new rate of Rs. 482.45 per cu.m to provide GSB-Grading-1 as per the terms and conditions of contract. However, the request made by the appellant was not considered favourably. Claiming the following relief, the appellant filed the suit before this Court in C.S. No. 994 of 2010.

"a) Directing the defendant to pay to the plaintiff a sum of Rs. 1,97,61,768/- together with interest at 18% per annum on the principal sum of Rs. 1,08,28,149/- from the date of suit till the date of realization.

b) Directing the defendant to pay the cost of the suit.

c) Pass such further or other orders to this Honourable Court may deem fit and proper in the circumstances of the case."

5. After hearing the parties and after perusing the records, the learned single Judge framed the following issues.

""1. Whether the plaintiff is entitled to receive Rs. 47,020/- for the additional quantity of 500 per MC gravel filling work done by the plaintiff at the agreement rate of Rs. 94.04 per MC?

2. Whether the plaintiff is entitled to receive an amount of Rs. 1,60,000/- from the defendant for the jungle clearance work done by the plaintiff for 1,00,000 MC @ Rs. 1.60/- per MC?

3. Whether the plaintiff is entitled to receive an amount of Rs. 51,17,362/- as the

difference in cost for the granular sub base work carried out instead of sand gravel mix item of work as directed by the engineer?

4. Whether the plaintiff is entitled to claim Rs. 32,03,111/- against the defendant towards loss of profit and overheads due to prolongation of contract?

5. Whether the plaintiff is entitled to receive a sum of Rs. 15,02,609/- as interest at the rate of 18% per annum from 04.04.2005 to 15.03.2010 due to delayed payment of final bill and retention money of Rs. 16,87,130/-?

6. Whether the plaintiff is entitled to receive the amount of Rs. 7,98,047/- for 21/2% retention money of Rs. 11,11,443/-?

7. Whether the plaintiff is entitled to payment of interest on one or more of the claims? If so, what rate and from which rate?

8. Whether the plaintiff is entitled to cost?

9. To what relief if any the plaintiff is entitled?"

6. To prove the suit claim, the appellant examined himself as P.W. 1 and marked Exs. P1 to P30. No witness was examined and no document was marked on the side of the respondent. The learned single Judge, on a consideration of entire materials available on record, decreed the suit in part in the following manner.

"For all the reasons stated above, the suit is decreed in part and a decree is passed directing the defendant to pay a sum of Rs. 41,43,136.00 together with an interest @ 12% per annum on Rs. 28,04,755/- being the principal component of the decreed amount, (consisting of Rs. 16,87,130/- being the balance amount of final bill + Rs. 11,17,625/- being the retention money) from the date of plaint till the date of decree and thereafter, with a further interest at the rate of 6% per annum from the date of decree till the date of payment. Defendant shall also pay proportionate cost to the plaintiff."

Challenging the part of the decree, by which the relief sought for by the appellant was rejected, the present Original Side Appeal has been filed.

7. The learned counsel appearing for the appellant submitted that the description of item in Serial No. 4 as granular sub base (SG Mix) has been misconstrued. SG Mix is a different from granular sub base. The work is one for granular sub base. The rate as shown in the figure at 165.24 per cubic meter cannot be made applicable and in such a case, the new rate as offered by the appellant as 482.45 per cubic meter is liable to be paid. The learned single Judge has not considered the payment for the additional work, such as, widening, clearing the trees and bushes, filling of gravel etc. The reasons assigned by the learned single Judge are not factually correct. No payment has been made for the delayed completion of work. Therefore, the judgment and decree of the trial Court insofar as the disallowed part of the relief sought for will have to be set aside and the suit will have to be decreed in toto.

8. The learned Special Government Pleader appearing for the respondent submitted that it is the appellant, who has assigned the document pertaining to granular sub base. The granular sub-base should be provided as per the MOST specification 401 granular sub base and grading-I. The appellant cannot unilaterally fix the rates. It is he who has quoted the rates for the above item at Rs. 165,24 per cubic meter as per the MOST specification. The granular sub base (SG Mix) is only the descriptive synonyms used for providing, laying and compacting well graded material. The execution of the above said granular sub base did not differ from each other. Both granular (SG Box) and (SG Mix) are one and the same.

9. Insofar as the other submissions made by the learned counsel appearing for the appellant is concerned, it is submitted that the agreement was entered into between the parties after proper inspection as provided under Clause 103-03 of PS to SSRB Rules. As per the said rules, it is the duty of the appellant to make inspection of the site and satisfy himself before bidding. Therefore, it is not open to him to contend contra. The delay in completion of the work was due to the appellant. That is the reason why after prolonged communication it was extended. For the mistake committed by him, he cannot seek any relief. The learned single Judge has considered the entire materials available on record for coming to the just conclusion. Therefore, no interference is required.

10. Discussion:-

10.1. As rightly contended by the learned Special Government Pleader, it is the appellant, who has quoted the rates for the granular sub base as Rs. 165.24 per cubic meter. The appellant has not established that both granular SG Box and SG Mix are not one and the same and they differ from each other. Having entered into the agreement with eyes wide open, it is not open to the appellant to make unilateral claim for higher amount. Under Ex. P3 the respondent has clearly told the appellant that he has to complete the granular sub base work as per the provision contained in the MOST specifications. Even in the communication dated 24.11.2003 sent by the appellant, it is clear that he has sought for new rate of Rs. 482.45 per cubic meter to provide granular sub base Grade-I. There is no agreement between the parties for the said amount. The appellant cannot rely upon the National Highways Work standards revision of rates, which do not have any application to the case on hand. The appellant has not executed any new item and the rate quoted by him was uniform throughout the contract. The learned single Judge has considered the entire materials insofar as the said issue is concerned and declined the relief sought for. We do not find any error in the order passed by the learned single Judge.

10.2. Insofar as the other issues raised are concerned, as per Clause 103-3 of PS to SSRB Rules, it is the duty imposed upon the appellant to make appropriate inspection of the site and satisfy himself before making his bid. Therefore, it is not open to him contend contra and claim amounts as if additional work has been executed. No inspection notes or instruction has been given by the

Engineer concerned. Similarly, the appellant completed the work only on 04.04.2005. He has not shown that the work was completed belatedly only due to the delay caused by the respondent. On the contrary, the materials available on record would show that it was the appellant who was responsible for the same. Therefore, even on that ground, the appellant cannot claim any relief.

11. Accordingly, we do not find any merit in this Original Side Appeal and the same is dismissed confirming the judgment and decree of the court below. However, in the circumstances of the case, there is no order as to costs.