
(2005) 02 MP CK 0096

In the Madhya Pradesh High Court

Case No : Civil Revision No. 744 of 2004

Sanjay R. Trivedi

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 19, 7B

Citation : (2005) 4 MPHT 57

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

Bench : Division Bench

Advocate : V.R. Rao, for the Appellant; Vibhuti Jha, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—In this revision preferred u/s 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (for brevity "the Act"), the applicant has called in question the sustainability of the award dated 28-10-2004 passed by M.P. Arbitration Tribunal (in short "the Tribunal") in Reference Case No. 35/2002 whereby the Tribunal has held that the two claims putforth by the petitioner were barred by limitation and further the same were not tenable on merits also.

2. The facts which are essential to be stated are that the petitioner/revisionist as claimant was awarded a contract No. 7/DL of the. year 1991-92 in respect of the work VRB (Village Road Bridge) at R.D. 2005 meters of right bank canal of Bargi Dam. As per the claimant, he completed 82% of the contract work in about nine months. He applied for grant of extension on 2-12-1992 for a period of three months which was granted by the Executive Engineer but he could not utilize the same as there was non- supply of requisite quantity of steel by the owner. The petitioner completed the work as far as possible as per the supply quantity of steel. It was admitted by the owner that the petitioner had completed the contract work of about Rs. 9,05,466/-. According to the revisionist, he made a prayer to the respondents to finalize the contract and release the amount of final bill as well as security deposit/earnest money vide Exhibit P-10 to which a reply

was sent on 27-6-1996 as per Exhibit P-I that the contract in question had already been terminated by letter dated 5-5-1994 taking recourse to the Clause 4.3.3.3 of the agreement.

3. It was urged before the Tribunal that the rescission of the contract was absolutely arbitrary and, therefore, the petitioner was entitled to get a sum of Rs. 30,000/- in respect of final bill and earnest money and security deposit amounting to Rs. 60,000/-. Thus, in toto the claimant putforth a claim of Rs. 90,000/-. It was averred in the petition that the cause of action arose on 15-9-2000, when the claims were presented to the Superintending Engineer who is the final authority as per agreement and finally on 14-3-2001 when the Superintending Engineer has not given his decision on the claims.

4. The claims putforth by the claimant were resisted by the State and its functionaries on the foundation that there was no breach on their part and the petitioner was fully and completely liable. In essence, the stance taken was that there was breach of contract by the claimant and hence, the termination of contract was justified. In addition an issue relating to limitation was also raised.

5. The Tribunal addressed itself to the issue of limitation provided u/s 7-B of the Act and came to hold that the cause of action arose on 15-9-2000, when claimant's letter dated 7-9-2000, Ex. P-15, was received by the Superintending Engineer. The Tribunal laid emphasis on Ex. P-10, whereby the petitioner had submitted the quantified claim. The Tribunal further referred to a letter dated 7-9-2000, whereby the petitioner had repeated the claims which were submitted earlier on 25-3-1996. In this backdrop, the Tribunal expressed the view that the petitioner had referred his dispute for the decision of the final authority under the terms of the said contract for the first time on 25-3-1996 and the Reference Petition was filed on 14-3-2002, i.e., after more than one and half years which is beyond the time limit prescribed u/s 7-B of the Act, therefore was barred by limitation.

6. The Tribunal while dealing with the claims has held as under :-

"8. Claim No. 1: Final Bill: Rs. 30,000/-

8.1. The petitioner has adduced no evidence in support of this claim. The petitioner never submitted any bill to the respondents. On the other hand respondents have prepared the final bill in the M.B. No. 253 (Art. D) on pages from 66 to 81. As per this final bill, the amount of final bill as recorded by the Sub-Engineer is Rs. 577/-, before any corrections in the Division Office. After correction by the office of the Executive Engineer, the amount of final bill becomes (-) Rs. 771/-. There are some recoveries to be effected from the petitioner as per the memorandum of payment of final bill prepared by the respondents. Thus the amount payable to the petitioner in the final bill is nil. Thus, this claim is not maintainable and accordingly we reject this claim.

9. Claim No. 2: Earnest Money & Security Deposit: Rs. 60,000/-

9.1. The petitioner has adduced no evidence in support of this claim. The respondents have argued that against Rs. 60,000/- claimed by the petitioner only Rs. 16,999/- was available with the respondents under the head "earnest money and security deposit". "On perusal of running bills recorded in M.B. No. 253 (Art. D) we have noted that amount of security deposit deducted from running bills of petitioner, amount to Rs. 45,263/- . This amount does not tally with the amount claimed by the petitioner. Even if we add Rs. 5,020/- which was required to be deposited as earnest money before submitting tenders, the amount so arrived at, does not tally with the amount claimed by the petitioner. Further the respondents are claiming that some quantities of steel, cement, hard rock etc. still remain with the petitioner who has failed to return the material to the department after closure of the contract. The respondents have, therefore, shown recoveries of Rs. 1,14,794/- for the balance material issued by the department and which were not returned back by the petitioner. The petitioner has pleaded that he has consumed all the quantity of the material issued to him by the department. He has not supported his pleadings, with any document or evidence. The petitioner's argument that no notice was given to him for return of the balance material has no force, as the petitioner was duty bound to return the balance material in sound condition to the department, if the material was not consumed in the contract work as per Clause 3.10 of the contract agreement. Similarly he was required to employ technical person and furnish full details to the Engineer-in-charge in the prescribed format as per Clause 3.22 of the contract agreement. There is no provision of notice in this regard. The petitioner has failed to prove that Rs. 60,000./-, which as per his pleadings, is the amount of "earnest money" and "security deposit", is refundable to him. Thus this claim is not maintainable and accordingly it is rejected."

7. It is submitted by Mr. V.R. Rao, learned Counsel for the petitioner that the Tribunal has erred in coming to the conclusion that the claims putforth by the claimant were barred by limitation. Learned Counsel also criticized the conclusions on the merits of the case on the ground that the Tribunal has not applied its discretion in an appropriate manner as a consequence of which the just claims of the petitioner have been denied.

8. Shri Vibhuti Jha, learned Counsel for the respondents per contra resisted the submissions of Shri V.R. Rao, learned Counsel for the petitioner by contending that the Tribunal was absolutely justified in holding that the claims putforth by the petitioner were barred by limitation inasmuch as the approach was made to the competent authority, namely, the Executive Engineer on 25-3-1996 with an endorsement to Superintending Engineer and in any case there was no justification on the part of the claimant to sit over the matter till 7-9-2000 and to submit a fresh claim by representing the claim earlier submitted to the Superintending engineer on the ground that he was the final authority.

9. To appreciate the facts which are not in dispute what has been submitted by Shri V.R. Rao, learned Counsel for the petitioner is that he has approached the

Executive Engineer on 25-3-1996 and by adandunt caution the claims were endorsed to the Superintending Engineer. Submission of Shri V.R. Rao, learned Counsel for the petitioner is that when there is an endorsement but no real approach, cause of action has to be computed from the date of submission of the representation in regard to the claims in quantified manner before the final authority and then only the limitation stipulated u/s 7-B of the Act would be attracted.

10. The aforesaid submission though on a first glance looks quite attractive but on a deeper probing loses its significance. Whether there was endorsement to the Superintending Engineer who is the final authority to approach in the matter, we are not inclined to dwell upon the same as that is not necessary in this case. This Court in the case of Sermen (I) Road Makers Pvt. Ltd. v. State of M.P. and Ors., in Civil Revision No. 953/2003 : 2005 A.W.L.J. 583 (MP) has held that the claimant should approach the final authority within a period of three years from the date of the cause of arbitration arises.

11. In the present case, there can be no scintilla of doubt that the petitioner consumed more than three years in waiting for the decision of the Executive Engineer. Had the petitioner approached the Superintending Engineer within the period of three years, the matter would have been totally different.

12. We may hereby clarify that we are not expressing any opinion as to whether the endorsement made to the Superintending Engineer, who is the final authority, would mean the claims were made within the prescribed limitation. What we intend to state is that as more than three years had elapsed and the petitioner slept over the same, it has to be defeated on delay and laches.

13. Ordinarily, we would not have entered into the merits of the case. As the Tribunal has dealt with the merits of the case, we have perused the same and scrutinized the reasons ascribed by the Tribunal. It is perceivable that the approach of the Tribunal is based on material available on record and the Tribunal has been well-guided in coming to hold that the claims putforth by the claimant were not sustainable. We perceive no error in its delineation and accordingly give the stamp of approval to it.

14. In the result, the revision petition being devoid of merit, stands dismissed. There shall be no order as to costs.