
(2006) 05 MP CK 0027

In the Madhya Pradesh High Court

Case No : Civil Revision No. 2145 of 1997

Seth Mohan Lal Hiralal (Firm)

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 19

Citation : (2006) ILR (MP) 1103 : (2006) 3 MPLJ 520

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

Bench : Full Bench

Advocate : R.C. Sobhjani, for the Appellant; S.K. Yadava, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

The petitioner-claimant has filed this revision petition u/s 19 of the M.P. Madhyastham Adhikaran, Adhiniyam, 1983 (in short "the Act") against the award dated 26-8-1997 passed by M.P. Madhyastham Adhikaram Bhopal in Reference Case No. 40/92, dismissing the claim of the applicant.

The facts giving rise to this revision are that the claimant entered in a contract with the respondents for construction of "Canal Aquaduct at Ch. 280" on Suka River under Contract Agreement No. 2 of 1977-78. As alleged the contract was executed for the work of amounting Rs. 43.65 lakhs (Forty three lakhs and sixty five thousand), on item rate basis. It was to be performed by the petitioner in accordance with the terms and conditions of the Contract as per Schedule "G" of the Contract. The claimant has to complete the quantity of item No. 9, providing/ laying cement concrete in 1:3:6, 12941.25 Cu.M. at the rate of Rs. 220/Cu.M. up to the reduced level 318.0 M at the foundation as shown in the drawing No. 4, the part of the said agreement Annexure-3.

During subsisting the contract period quantities of this item of cement and concrete 1:3:6 in foundation and superstructure work was abnormally reduced

by the respondents on account of refixing excavation level at reduced level from 12941.25 Cu.M. to 10115 Cu.M. Accordingly work of contractor was reduced for Rs. 6,21,775 which is amounting to abnormal decrease up to 21.8% from the total contract. It was also pleaded that he was paid the consideration of work carried out by him in accordance with the terms and conditions of the Contract including some Additional work which was necessary as per Contract in compliance of the order of the respondent No. 2. He was paid finally Rs. 39,91,520/- up to the payment of 24th running bill.

As per claimant, due to aforesaid abnormal reduction of the work he has suffered loss of over heads and loss of profit on account of not providing the full contractual work. He filed the claim by assessing the same at Rs. one lakh and also for And. lit. Interest on it @12% per annum for three years Rs. 36,000/-. Accordingly the claim was preferred for Rs. 1,36,000/-.

The aforesaid claim was denied by the respondent in his written statement as it was not the term or condition in between the respondent and claimant as per the aforesaid contract. In the absence of any provision in the Contract itself the claimant is not entitled to claim any over heads expenses or its losses or the interest on it.

The respective parties have filed their documents and affidavits to prove their case. On appreciation of the same in the lack of condition in the contract itself, the claim was dismissed by the impugned award. Hence this revision.

Learned counsel for claimant has submitted that according to clause 3.3.13(B) (a), the contractor was bound to perform additional work as per orders of the Officers of the respondents and if such work is more than 10% from the allotted work then the contractor was entitled for additional 10% amount of the total bill of the work and if the additional work is below 10% in such circumstance the claimant contractor was not be entitled for the payment on higher rate as said above. It was also said that as per initial agreement the claimant had to perform the work of 12941 Cu.M. while during subsisting of Contract it was reduced upto 10113 Cu.M. Hence claimant could perform 2737 Cu.M. less from the initially allotted quantity of work. It was more than 21.8% of the original allotted work. The rate quoted by the claimant for the aforesaid contract on account of sum huged work but on reducing the same he sustained the overheads expenses as well as loss of profit and also has been deprived to use such amount in his business. According to him, the respondents are liable to pay the same. He further said if respondents were bound to pay 10% more amount on total bill. If the additional work is allotted more than 10 per cent from the original allotted work. Thus, in view of this term respondents were bound to indemnify the aforesaid loss sustained by the claimant. Hence tribunal ought to have awarded the impugned claim by giving liberal construction of aforesaid terms of contract but contrary to it, by holding the lack of specific condition in this regard arbitrarily dismissed the claim. In support of his contention he also placed his reliance on a reported decision of the Apex Court in the matter of S. Harcharan

Singh Vs. Union of India, .

While, other hand, Shri Sanjay Kumar Yadav learned Dy. Advocate General by supporting the impugned award has submitted that as per clause No. 3.3.13(B) (a) of the Contract there was a condition in between the claimant and the respondent to perform the additional work of the Contract when such work is more than 10% then the claimant is entitled 10% from the allotted work Additional payment on total bill but there was no condition vice versa. On the contrary, as per clause 2.1.32 of the said Contract the competent authority of the respondent had a power to reduce or increase the work during subsistence of the Contract and performing the work thus as such order was binding against the claimant hence even on reducing the work by virtue of said clause of agreement the claimant had no authority to say anything against the terms of the contract, therefore his claim was not tenable either in view of the aforesaid contract or under the existing legal position. Even otherwise claimant has already been paid some more amount in respect of the additional work in which he already earned the profit so on account of that also the claim was not maintainable. Hence the Tribunal has not committed any error in dismissing the claim for the alleged expenses and loss of profit and also for the claim of interest on it. Thus, the impugned award does not require any interference at this stage.

Having heard the learned counsels, on perusing the record as per contract's Agreement No. 2 of 1977-78 there was a condition in Clause 2.1.32 for reducing or enhancing item during subsisting the contract and by virtue of the same if some work was reduced by the competent authority of the respondent then the same was within their limit and in accordance with the condition of the contract. Hence the claimant was not entitled for any sum on account of either overhead expenses or loss of profit or interest on it.

The interpretation of Clause 3.3.13(B)(a) of the Contract, as advance on behalf of the claimant has not appealed us in any manner because the same is related for the additional payment on performing the additional work at the instance or the order of the competent authority so this terms of the contract cannot be interpreted for extending any benefit to the claimant on reducing the work of contract. Except the aforesaid terms and conditions of the contract no other terms or conditions were appraised to us. Therefore we are of the considered view that in the absence of the terms in the contract itself the claimant had no any authority to get or claim the overhead expenses or loss of profit or any sum of the interest on it on account of reducing the work of contract.

So far the decision of the Apex Court, cited by the appellant is concerned, that is not based on reducing the work but on the contrary it is based on some claim of payment on enhanced rate for additional work, carried out by the contractor which is not the case of the claimant here. Hence, this decision is also not helping to the claimant in any manner.

In view of the aforesaid discussion, we are of the considered view that

subordinate Tribunal has not committed any perversity or error of jurisdiction in dismissing the claim by the impugned award hence by dismissing this revision the impugned award is hereby affirmed. There shall be no order as to the costs.