
(2001) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Civil Revision No. 2740 of 2000

Seth Mohanlal Hiralal

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 5 MPHT 539

Hon'ble Judges : Bhawani Singh, C.J;A.K. Mishra, J

Bench : Division Bench

Advocate : V.R. Rao, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The petitioner filed a Reference-petition before the Madhya Pradesh Arbitration Tribunal with respect to a dispute arising out of the contract for construction of canal aquaduct at Channel 235 on Palakmati river. The estimated cost was Rs. 37.44 lacs and the tendered cost was Rs. 52.43 lacs. The period for completion was 18 months i.e. upto 11-10-79. The petitioner claimed that an amount of Rs. 5.60 lacs be paid to him on account of the difference in amount for using black trap instead of hard metal in all the items of concrete 14000 M. A further sum of Rs. 3.50 lacs was claimed on account of the loss suffered due to abnormal reduction in quantities of cement concrete 1:3:6 in foundation and superstructure. Interest at the rate of 12% per annum was also claimed. Another claim was added by way of an amendment during the Pendency of the Reference-petition before the Arbitration Tribunal. The amount of final bill Rs. 81,900/- was also claimed with interest. The petitioner restricted interest to Rs. 80,000/- only. Thus, a sum of Rs. 1,61,900/- was claimed on account of the outstanding dues of final bill.

2. The allegations were denied by the respondents. The case of the respondents was that Bineka Quarry was specified in the Agreement from where hard graded metal was to be collected. Black trap is one of the varieties of the hard metal.

This black metal was available in the Bineka Quarry which was at a distance of 11 Kms. The respondents also submitted that the petitioner started bringing the crushed gravel from Nayagaon which was at a distance of 4 Kms. from the site, which was obtained by crushing rocks and it was not a hard metal. It was further the case set up by the respondents that as per Clause 2-1-39 along with quarry chart Annexure-C which specifically mentions that the quoted rates of contractor shall be inclusive of all leads and lifts and that the details shown in Annexure-C were only as a guide to the contractors but the contractors before tendering should satisfy himself regarding quality and quantity available and provide for any variation in respect of lead, lift, etc.

3. The Tribunal came to the conclusion that the petitioner had used the material from Nayagaon Quarry which was not as per the requirement of the tender document. In Reference-petition Para 28 an averment is made that material extracted from Nayagaon Quarry was got examined by the petitioner in the laboratory but the report of the laboratory was not produced before the Tribunal. Hence, the Tribunal had drawn adverse inference against the petitioner. It was also recorded by the Tribunal that the petitioner was bound to use hard metal by extracting the same from Bineka Quarry and the metal used from Nayagaon Quarry has not been proved by the petitioner to be as per specifications and standard as specified in the contract. The Tribunal came to the conclusion that the petitioner's request to revise the items rate due to reduction in quantity of the work, was refused by the department. With respect to the claim of the final bill, the Tribunal has come to the conclusion that final bill was prepared during the pendency of the Reference-petition wherein it was found that an amount of Rs. 1,87,356/- was due against the petitioner. The correctness of the final bill has not been assailed. The Tribunal also found that the petitioner has failed to satisfy that the amount of Rs. 1,87,356/- was not due against him.

4. Learned counsel for the petitioner has urged that transportation of metal from Bineka Quarry involved the additional labour of 8 Kms. Thus, it should have been treated as an extra item. The metal from Nayagaon Quarry ought to have been allowed to be used in view of the recommendation of the Chief Engineer contained in Exhibit P-28, Annexure-III which is quoted below :-

"Contractor can bring materials like stones, metal & sand from any quarries other than specified in N.I.T. provided material brought to site are of required specifications and no claim for extra leads etc. is admissible."

5. The second submission of the learned counsel for the petitioner is that for abnormal reduction in quantity of work, the petitioner has suffered loss of profit to the extent of Rs. 3.50 lacs. The learned counsel relied on Clause 3.3.13 of the contract agreement which provides that the quantity may exceed by 15% and if "G" Schedule to the tender document, exceeds by more than 10%, will be paid at the estimated rates plus or minus over all percentage of the accepted tender. Sub-clause 3.3.13 A (b) clearly specifies the rates for altered quantity of work on which the contractor is bound to carry out the altered work, on such increase by

more than 15%.

6. It is also submitted by the learned counsel for the petitioner that the Tribunal ought to have awarded a sum of Rs. 81,900/- along with interest which was the amount of the final bill. It is further submitted that if the respondents wanted to adjust Rs. 1,87,356/-, it was for the respondents to file a counter claim before the Arbitration Tribunal to justify the amount Rs. 1,87,356/-.

7. The first claim raised by the petitioner with respect to difference in amount for using black trap from Bineka Quarry, is totally misconceived on two counts: firstly, Clause 2.1.39 provides that the quoted rates of contractor shall be inclusive of all leads and lifts. Thus, in view of Clause 2.1.39, the claim has been rightly refused, as not admissible. The letter of the Chief Engineer -Exhibit P-28 also specifically mentions that no claim for extra lead is admissible. Moreover, on facts, it is clear that the petitioner has failed to establish that Nayagaon Quarry was having material of the same standard and specification as given in the contract agreement. The laboratory report has been withheld. The material was got examined as per the allegations made by the petitioner in the Reference-petition. No such report had been produced before the Tribunal. Had such report been produced, that would have not supported the petitioner's case. Bineka Quarry was specified in Annexure-C as a Quarry from where the material v/as to be collected. Thus, the petitioner knew very well as to Bineka Quarry from where he had to collect the material. Thus, he cannot claim the same as an extra item as Quarry has not been changed and the contractor while submitting the tender knew it very well from where he had to collect the material. If it was available at a shorter distance, that also was not going to make out as an extra item as the agreement itself provides for extracting and lifting of material from Bineka Quarry. Moreover, on facts, the petitioner has not been able to establish that Nayagaon Quarry was having material of required standard and specification.

8. As per second submission raised by the learned counsel for the petitioner with respect to the claim of Rs. 3.50 lacs on account of the loss suffered by him due to reduction in quantity of work is also totally ill-founded. The claim which has been pressed into service is with respect to additional quantity of work which cannot be pressed into service for the diminished quantity of work, firstly because it is an item rate contract. The petitioner has been paid at item rate for the work done by him. It has been further found by the Tribunal, which finding has not been assailed before us, that the contractor has already been paid as per the contract rate for the quantities whereas the reduction is more than 30%. As such, the petitioner cannot be said to be entitled to claim amount of Rs. 3.50 lacs and interest thereon for the work not done by him as that would amount to unjust enrichment and in item rate contract variation is permissible.

9. With respect to the third claim of final bill of Rs. 81,900/- on account of the final bill and interest of Rs. 80,000/-, the case of the respondents is that the final bill was prepared and it was found that an amount of Rs. 1,87,356/- was due against the petitioner on account of the quantity of steel and cement which was

retained by the petitioner and it was not the case set up by the petitioner that steel or cement was returned by him. Thus, the petitioner has failed to challenge the correctness of the final bill prepared by the respondents.

10. The submission raised by the learned counsel for the petitioner that the respondents ought to have raised claim before the Tribunal in order to entitle them to recover Rs. 1,87,356/- and in the absence of raising the counter claim it was not open for the respondents to prepare the final bill, is totally devoid of merit. It is a duty enjoined on respondents under the terms of the contract itself to prepare the final bill they can recover the amount found due from the petitioner. This question has been considered by this court in the case of Chandrashekhar v. State of Madhya Pradesh, 2001 R.N. 6 wherein it has been laid down that if adjudication by authority under agreement is in favour of Government, it need not prefer claim before Tribunal as it is not aggrieved by the final bill, there was no occasion to file counter claim. It may be necessary only in case where Government is dissatisfied by final adjudication under the agreement of dispute, as is equally true for any other party to such contract. In view of the said decision, it is clear that it was not necessary for the respondents to raise a counter claim before the Tribunal. As a matter of fact, no award has been passed in favour of the respondents. They are having an independent right to recover the amount found due from the petitioner under the terms of the contract agreement.

11. Thus, we find that the Reference-petition has been rightly dismissed by the Tribunal and the findings are based on due appreciation of evidence and are not found to be perverse or such which should have been interfered with in a reasonable manner. There is no merit in the present revision-petition. The same is dismissed.