
(2008) 02 MP CK 0059
In the Madhya Pradesh High Court

State of M.P.

APPELLANT

Vs

Bharat Construction Co.

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Citation : (2008) ILR (MP) 1807 : (2008) 5 MPHT 411 : (2008) 2 MPLJ 295

Hon'ble Judges : Syed Ali Naqvi, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The revision has been preferred by the State aggrieved by award dated 28-5-2002 passed by M.P. Arbitration Tribunal, Bhopal in Reference Case No. 196/91.

The facts in short giving rise to the revision indicates that M/s Bharat Construction Company was given contract for construction of 52 units of non-residential buildings. The agreement was executed on 24-2-1983 and work order was issued, it was to be completed within 12 months including the rainy season. The contractor was unable to complete the work, time was extended on four occasions, last extension was given till 30-6-1986. Work was completed on 30-9-1986. The Tribunal has awarded amount of Rs. 2,41,008/- by way of escalation and interest thereon. Aggrieved thereby the revision has been preferred.

Shri Sudesh Verma, learned Govt. Advocate has submitted that there was no escalation clause as period of contract was 12 months, hence grant of escalation is against the agreement. He has relied upon Clause 32 of the agreement, which provides that no claim for price escalation on account of any cause whatever shall be entertained as construction period was not more than 12 months.

Shri Ashok Chakravarty, learned Counsel appearing for respondent has submitted

that there was delay on the part of the State to carry out his obligation. The time was extended on four occasions due to fault of the State. Lay out was also given belatedly beside drawings and designs were also not given timely, thus period of contract in fact extended more than 12 months, thus the clause debarring escalation due to contract being of short duration became inoperative as the fault was on the part of the State. The finding recorded by the Tribunal is proper. No case for interference in the revision is made out.

The Division Bench of this Court in *Abdul Hafeez v. Secy. to the Govt. of M.P.* 1992 A.T.L.R. 439, has considered similar clause providing no escalation as contract was of short duration, however period was extended due to fault of the department. The Division Bench has held that the claim of escalation cannot be rejected in the circumstances of the case. It was laid down thus:

15. The next claim was towards escalation in labour charges and P.O.L. It was pointed out that the Tribunal in working out claim towards escalation of labour charges on fixed principles under PWD Manual, committed arithmetical mistake. The amount towards escalation of labour charges comes to Rs. 43,376.00, which has been wrongly worked out as Rs. 36,324.00. The learned Counsel for the department accepted that there is a calculation mistake. The award under this head of escalation towards labour charges deserves to be increased by Rs. 7,143.00 learned Counsel for the department challenged the above award towards escalation of labour charges stating that there was no escalating clause in the contract and, therefore, this claim could not have been awarded. The above contention of the department cannot be accepted, since it was initially a short duration contract, there was no escalation clause contained in it, but as there was a breach on the part of the department in handing over the site, the claim for escalation cannot be rejected only because of the omission of the escalation clause in the contract. A claim towards escalation can arise irrespective of any clause to the effect in the contract or not more so where the employer is guilty of a breach of a fundamental term of the contract.

Coming to the facts of the instant case in the light of the aforesaid decision. It is apparent that there was delay of 10 months in handing over the site as found by the Tribunal in Para 12 of the award, lay out was also not given timely. Lay out was not given together, lay out were given between 1-5-1983 and 8-1-1984, there was delay in furnishing the drawings and designs also as apparent from various correspondence relied upon in Para 15 by the Tribunal, thus there was fundamental breach on the part of the State in allowing the completion of work within 12 months.

It was clearly contemplated to be contract of short duration of 12 months, hence escalation was not to be granted but there was delay on the part of the department itself in carrying out its obligation, consequently period was extended effectively without any penalty clause for 40 months, thus contract did not remain contract for a period of short duration of 12 months, thus Clause 32 of the agreement which provides no price escalation to be granted on any count

as the period of contract was not more than 12 months was rendered ineffective due to extension of time made by the State there was extension made by the State for the period upto 40 months. The clause makes it clear that in case duration be more escalation to be permissible, due to short duration it was not stipulated as contract period was 40 months due to fault on part of department, escalation has been rightly awarded.

In the circumstances the escalation of labour charges that has been allowed by the Tribunal on the basis of evidence is found to be proper. There is no illegality in the award, consequently we find no merit in the submission raised.

Resultantly, revision being devoid of merit, is hereby dismissed. Parties to bear their own costs as incurred of this revision.