

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.574 of 1992

M/s. Mahavir Construction Company, A-II Class Contractor,  
Dongargaon, Distt. Rajnandgaon (M.P.) (now C.G.)

---- Applicant

Versus

1. State of Madhya Pradesh (now State of Chhattisgarh), through  
Secretary, Govt. of M.P. (now Govt. of C.G.), Water  
Resources Department, Bhopal (M.P.) {now Raipur (C.G.)}
2. Executive Engineer, Water Resources Division, Water  
Resources Department, Rajnandgaon (M.P.) (now C.G.)  
---- Non-applicants

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|---------------------------|---------------------------------------------------------------------------|
| For Applicant:            | Mr. P.K.C. Tiwari, Senior Advocate with<br>Mr. Kripesh G. Kela, Advocate. |
| For State/Non-applicants: | Mr. S.C. Khakharia, Deputy Adv. Gen.                                      |

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Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

22/06/2016

1. Invoking revisional jurisdiction of this Court under Section 19  
of the Chhattisgarh Madhyastham Adhikaran Adhiniyam,  
1983, this revision has been filed by the applicant / contractor  
questioning the part of award passed by the Arbitration  
Tribunal on 27-8-1992 whereby the part of the claim of the  
applicant has been rejected.
2. Above-stated challenge has been made in the following  
backdrop: -
3. The applicant made a reference under Section 7 of the

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, for recovery of Rs.1,56,526-50 ps. arising out of percentage rate contract agreement No.2/DL of 1986-87. In the said reference, the applicant claimed Rs.65,000/- for recovery of final bill, Rs.36,000/- on refund of security deposit, Rs.3,700/- towards refund of earnest money and interest of Rs.51,826-50 ps.. It was further pleaded that agreement No.2/DL of 1986-87 was executed in between the parties for balance work of Head Work and excavation of approach channel of Ghumaria Diversion Weir, based on Unified Schedule of Rates (UCSR) of Irrigation Department in force from 1-8-1984 inclusive of all corrections up to the date of tender. The probable amount of contract was Rs.3,09,000/- and the stipulated period of contract was six months from the date of issue of work order excluding three months of rainy season. The work order was issued on 2-5-1986. The applicant executed earth work of afflux bund to the tune of 16135.58 cu.m. and work of pitching stone 1118.43 cu.m. in quantity as extra items.

4. The Department by filing written statement opposed the claim made by the applicant herein and submitted that the applicant was made excess payment in fourth running bill at the rate of 10.20 per cu.m. for the extra items which was later-on rectified at the time of making final payment and he was entitled for rates as per rates prescribed for item No.401(b) of UCSR and as per piece work rate which is in accordance with law. Other

claims were also opposed.

5. On behalf of the contractor, Jethmal Jain was examined and Exs.P-1 to P-12 were exhibited whereas, on behalf of the defendants Department, documents Exs.D-1 to D-18A were exhibited to support their case.
6. Learned Arbitration Tribunal by its impugned award partly allowed the application holding that the applicant is not entitled for amount towards the rate of earth work for afflux bund and executed as extra item, however, entitled for claim of lead of 15 kms. instead of 3 kms. and after deducting accordingly, Rs.5068-12 ps. to modify the final bill of the applicant and further granted security deposit amount of Rs.36,524/- and earnest money of Rs.3,500/- and also granted interest and cost.
7. Feeling aggrieved against the part of award of the Arbitration Tribunal by which the claim of the applicant for unauthorized deduction of Rs.65,000/-, this revision under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 has been filed.
8. Mr. P.K.C. Tiwari, learned Senior Advocate appearing on behalf of the applicant, would submit that the Unified Schedule of Rates (UCSR) applicable to the applicant for execution of extra earth work of afflux bund admitted by the applicant was executed as per the rates of UCSR item No.417(a) is duly

entered in the measurement book by the competent officer and therefore there was no reason to deduct it while making final payment at the rate of Rs.7.60 and Rs.6.22 per cu.m. and the Tribunal has committed legal error in relying upon the documents Exs.D-10 and D-18A to reject the claim of the applicant and therefore the impugned award to that extent deserves to be set aside, as the Department has not taken action against the person who entered the measurement book by which he was granted rate at the rate of Rs.10.20 per cu.m. for the extra item which the applicant has executed in the fourth running bill.

9. Mr. S.C. Khakharia, learned Deputy Advocate General appearing on behalf of the State/non-applicants, would submit that the applicant is not entitled to claim rate of earth work of afflux bund at the rate of Rs.10.20 per cu.m. Under item No.417(a) of the UCSR rate or under item No.401(b) of the UCSR and he has been paid as per the rates prescribed for item No.401(b) and the prevalent piece work rate for remaining work and as such, the finding recorded by the Arbitration Tribunal is a finding of fact based on record and no interference is warranted in exercise of jurisdiction under Section 18 of the of the Chhattisgarh Madhyasthan Adhikaran Adhiniyam, 1983.

10. I have heard learned counsel for the parties, considered their

rival submissions and also perused the record with utmost circumspection.

11. It is not in dispute that the applicant was awarded percentage rate work contract of DL of 1986-87 and he was also awarded on the executed earth work of afflux bund to the tune of 16135.58 cu.m. as an extra item. It is also not in dispute that for the extra item of earth work of 16135.58 cu.m., a supplementary schedule was prepared vide Ex.D-18(A) and the applicant executed the earth work of afflux bund as an extra item. At the time of fourth running bill, the applicant was paid at the rate of Rs.10.20 per cu.m., but at the time of making final payment, the applicant was paid at the rate of Rs.7.60 per cu.m. as per item No.401(b) for 10829.30 cu.m. and paid at the rate of Rs.7.22 per cu.m. for 5306.28 cu.m. as a piece work rate on the basis of prevalent piece work rates and necessary deduction was made.
12. It is the case of the applicant that the measurement was recorded and on the basis of measurement book at the rate of Rs.10.20 per cu.m. was paid. Illegal deduction has been made at the time of final bill reducing the rate to Rs.7.60 for 10829.30 cu.m. for item No.401(b) of UCSR and to Rs.7.22 for balance quantity of 5306.28 cu.m. on the basis of prevalent piece work rates. However, it is the case of the non-applicants that on the basis of statement of Rajan Prasad, SDO, coupled

with rates quoted by the applicant the supplementary schedule was executed and the nomenclature of work recorded at pages 58, 61 and 67 of the measurement book. The applicant accepted first, second and third running bills at the rate of Rs.7.60 per cu.m. without any protest. The applicant's case is that he executed earth work of afflux bund under item No.401(b) and not under item No.417(a) of UCSR. Item No.417(a) of UCSR would not be applicable in the case in hand and therefore he is not entitled as per the item No.417(a) of UCSR.

13. The only question that falls for consideration is whether the Claims Tribunal is justified in rejecting the claim of the applicant for the rate of earth work for afflux bund at the rate of Rs.10.20 per cu.m. under item No.417(a) of UCSR or under item No.401(b) of UCSR at the rate of Rs.7.60 per cu.m. for 10829.30 cu.m. and for the balance quantity of 5306.28 cu.m. at the prevalent piece work rate i.e. Rs.7.22 per cu.m.
14. Vide Ex.D-10, the applicant has agreed to execute extra work for 5306.28 cu.m. on piece work rate and he has prayed for grant of sanction order which has been duly granted by the competent authority and work in question has been executed. Ex.D-18(1) is a part of Ex.D-18 which is a tender for balance work of Head Work and excavation of approach channel of Ghumaria Diversion Weir for which rate of Rs.7.60 per cu.m.

has been prescribed. The applicant itself with open eyes has accepted the rate at the rate of Rs.7.60 per cu.m. for earth work of 10829.30 cu.m. on its own under item No.401(b) of UCSR and Ex.D-18(1) supplementary schedule was prepared which includes item No.401(b) of UCSR and item No.417(a) of UCSR has not been included in the supplementary schedule. Apart from this, the applicant accepted first, second and third running bills at the rate of Rs.7.60 per cu.m. without any protest. The applicant also voluntarily agreed to execute 5307 cu.m. of earth work for afflux bund at piece work rate vide Ex.D-10 which reads as under: -

प्रति,

श्रीमान् कार्यपालन यंत्री,  
सिंचाई विभाग, राजनांदगांव

विषय:—सप्लीमेट्री मात्रा के अलावा मिट्टी के कार्य बावत्  
एग्रीमेंट नं० 2 डी.एल.86—87।

आदरणीय महोदय जी,

सविनय निवेदन है कि मैं घूमरिया जालश्य में दिये गये मिट्टी का अतिरिक्त कार्य जो 10829 क्वी.मी.था इसके अतिरिक्त 5307 क्वी.मी. लगभग कार्य को ये विभाग द्वारा निर्धारित पीस वर्क निर्धारित दर पर करने का तैयार हूँ स्वीकृति प्रदान करने की कृपा करें।

भवदीय,  
(मे. महावीर कन्स्टक्सन कं०)  
डोंगरगांव

15. Thus, the applicant having accepted on its own the execution of work at the rate of Rs.7.60 per cu.m. (Ex.D-18A) and Rs.7.22 per cu.m. at piece work rate by Ex.D-10 now cannot

turn and claim that he is entitled for payment at the rate of Rs.10.20 per cu.m. for the above stated extra item of work which he has executed. The finding recorded by the Arbitration Tribunal holding that the applicant is not entitled for payment at the rate of Rs.10.20 per cu.m. for extra work as item No.417(a) of UCSR is in accordance with law as such, I do not find any illegality in the said finding. The finding recorded by the Tribunal is finding of fact based on record which is hereby affirmed.

16. Learned Senior Counsel appearing for the applicant vehemently argued that the applicant has been held entitled to claim a lead of 15 kms. and he has been entitled for Rs.36,078.23 ps. for pitching stone add after deduction, Rs.5,068/- has been granted. In the said deduction, I do not find any illegality and as such, the finding in this regard is affirmed.

17. In the result, the finding of the Arbitration Tribunal recorded is in accordance with law and I do not find any jurisdictional error warranting interference in exercise of jurisdiction under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983. The revision is accordingly, dismissed. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge