

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 164 of 2006**

- M/s Ferro Concrete Consultants Private Limited, Bhagirathpura, Indore, Madhya Pradesh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department of Water Resources, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. Chief Engineer, Water Resources Department, Mahanadi Project, Raipur, Chhattisgarh.
3. Superintending Engineer, Water Resources Department, Mahanadi Canal Pairi High Dam Circle, Rudri, Dhamtari, Chhattisgarh.
4. Superintending Engineer, Water Resources Department, M.R.P. Disnet Circle, Raipur, Chhattisgarh.
5. Executive Engineer, Water Resources Department, M.R.P. Phase-II, Work Division, Raipur, Chhattisgarh.
6. Executive Engineer, Water Resources Department, Disnet Division No.1, Rudri, Dhamtari, Chhattisgarh.
7. Executive Engineer, Water Resources Department, Disnet Division No.2, Abhanpur, Raipur, Chhattisgarh.

---- Respondent**And****CR No. 63 Of 2007**

1. State Of Chhattisgarh, through the Secretary, Water Resources Department, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. Chief Engineer, Water Resources Department, Mahanadi Project, Raipur, Chhattisgarh.
3. Superintending Engineer, Water Resources Department, Mahanadi Canal Pairi High Dam Circle, Rudri, Dhamtari, Chhattisgarh.

4. Superintending Engineer, Water Resources Department, M.R.P. Disnet Circle, Raipur, Chhattisgarh.
5. Executive Engineer, Water Resources Department, M.R.P. Face-II, Work Division, Raipur, Chhattisgarh.
6. Executive Engineer, Water Resources Department, Disnet Division No.1, Rudri, Dhamtari, Chhattisgarh.
7. Executive Engineer, Water Resources Department, Disnet Division No.2, Abhanpur, Raipur, Chhattisgarh.

---- **Petitioner**

Vs

- M/s Ferro Concrete Consultants Private Limited, Bhagirathpura, Indore, Madhya Pradesh.

---- **Respondent**

For Petitioner : Shri Ashish Shrivastava, Advocate.
 For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :13/06/2016

1. These two civil revisions filed by the respective applicants under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short 'the Adhiniyam') arise out of the same award passed by the Chhattisgarh Madhyastham Adhikaran (henceforth 'the Tribunal') partly allowing the claim of the applicant-M/s Ferro Concrete Consultants (for short 'M/s Ferro') directing State of Chhattisgarh to pay a sum of Rs.11,89,640/- together with interest @ 12% per annum from the date of award till its realization. While M/s Ferro has

preferred a revision claiming award of the entire amount claimed in its statement of claim, the State of Chhattisgarh has preferred a revision to assail the award of Rs.11,89,640/- in favour of M/s Ferro.

2. Facts of the case, briefly stated, are that Chief Engineer Mahanadi Bodhghat Hasdeo Project invited tenders for the work of engineering consultants for survey, planning, design, estimating of distribution systems of World Aided Madhya Pradesh Major Irrigation Project. M/s Ferro submitted its tender for MRP Group-III and Abhanpur lift irrigation scheme. The tender was accepted and contract bearing agreement No.5/DL-1982-83 was signed between the parties. The contract was for Rs.39.48 lakhs based on the negotiated rate of Rs.94/- per hectares for net CCA 42000 per hectares. The work order was issued on 8.11.1982 mentioning the completion period of 24 months including rainy season. The date of completion was thus estimated to be 7.11.1984, however, the work continued up to 31.8.1987 causing delay of about 34 months.
3. As per the schedule, the first stage of work was for preparation of survey map, its submission to Irrigation Department for review/approval; in the second stage, the contractor was to proceed to prepare preliminary irrigation and drainage layout and its submission for review/approval. The third stage was to prepare a detailed design. M/s Ferro claims to have set up full-fledged project office at Raipur and recruited necessary technical staff.

4. According to M/s Ferro, the respondent department was not fully geared up to match the progress set forth in the agreement inasmuch as there was delay in supply of control levels and other relevant data as provided under Clause 1.1.2 of technical specifications; delay in supply of contour map of the command area to the scale of 1 to 15000; delay in supply of index map showing the exact location of areas to be surveyed; delay in supply of village maps and Khasra records. Similarly, there was delay in supply of L-Section of existing distributaries and minors showing control levels pertaining to Mahanadi Main Canal. The department also failed to supply design criteria and water profiles of the distributaries. It also failed to provide timely approvals to the maps, lay outs etc. submitted by M/s Ferro. Delay was also caused in carrying out additional survey and preparation of contour maps for gross command area of 23,965 hectares under Abhanpur Lift Irrigation Scheme and 53,938 hectares under the Mahanadi Main Canal, totaling 77,903 hectares against a net CCA of 42000 hectares provided in the agreement.
5. Based on the above allegations, M/s Ferro has claimed compensation on the following heads:-

Sr. No.	Heads	Amount
1.	Loss suffered by way of infructuous overhead expenses and loss of profit as detailed in Schedule A with the claim petition	Rs.8,49,975/-
2.	Extra item of work resulting from 85% access over agreed	Rs.5,88,572/-

	quantity for survey of CCA & control mapping as detailed in Schedule B with the claim application	
3.	Release of final payment and other dues wrongfully deducted from running bills as detailed in Schedule C with the claim petition	Rs.8,99,149/-
4.	Supply of additional set of Ammonia prints as detailed in Schedule D with the claim petition	Rs.11,300/-
5.	Claim for providing colour notations on macro and micro plants detailed in Schedule E with the claim petition	Rs.45,500/-
6.	Claim for supply of additional copies of macro and micro plans detailed in Schedule F with the claim petition	Rs.26,470/-
7.	Claim for survey and plotting of L-Sections of existing minors under Mahanadi Main Canal as detailed in Schedule G with the claim petition	Rs.25,000/-
8.	For calculation of Khasra Bills	Rs.67,600/-
9.	For supply of L-Sections of sub minors	Rs.1,76,000/-
10.	Towards extra cost for preparing increased number of estimates	Rs.11,80,000/-
11.	Towards price adjustment on account of escalation in the cost of labour and material during the extended period of contract	Rs.6,71,834/-
12.	Towards interest due to delay in payment of bills	Rs.4,75,600/-
13.	Towards loss suffered due to idling of staff	Rs.5,10,000/-

6. Total claim raised by M/s Ferro was thus to the tune of Rs.54,87,000/-.
7. It was the stand of the State Government that special conditions and technical specifications of the contract agreement from clause 1.0 to 10.7 were part of the contract under which the petitioner was bound to keep employ necessary supervisory and technical staff, however, the petitioner never submitted details of staff and labour engaged by him.

Delay in execution occurred due to own fault of M/s Ferro. Petitioner was directed to improve progress of the work time and again, however, it failed to achieve timely completion as well as to remove discrepancies in the work pointed out by the officers of the department. In respect of L-Sections/blue prints, it was stated that it is nothing but the complete pictures showing levels at various places in the command area which were provided to the petitioner well in time but M/s Ferro completely ignored the same. M/s Ferro never raised any complaint during the monthly review meeting to discuss progress in the project, therefore, M/s Ferro is estopped from complaining about delay in finalizing drawing criteria etc. Insofar as claim towards covering excess in command area is concerned, the State contended that the petitioner was paid for 52000 hectares at the rate of Rs.94 per hectare of the net CCA instead of agreed area of 42000 hectares. Therefore, M/s Ferro has been paid in excess which is to be recovered from him. Rs.2.8 lakhs were withheld as recovery to be made on account of work having been left incomplete.

8. The State further stated that as per clause 31 of the General Conditions of Agreement, variation in the quantities of work in schedule shall not vitiate the contract and the rates quoted for the individual item shall apply for the quantities of work increased or decreased by not more than 30% of each of the items should the quantity of the work actually involved under any item vary by more than 30% the rate of such item of

work shall be revised in accordance with the procedures indicated under clause “Extra Item.” The payment of the item will, however, continue to be made at the original rate till the revised rate is decided, hence the claim can only be considered after working out the net CCA after approval of distribution system of all distributaries surveyed under the contract.

9. It was further stated by the State that M/s Ferro left planning, design and estimation of the additional area, therefore, there is no question of making payment for the work not carried by them. As per clause 10.3 of the Special Conditions and Technical Specifications, survey of map duly plotted, as per schedule complete with original tracing and 12 copies complete in all respect were required to be submitted by M/s Ferro, which was not complied with. Therefore, claim in this regard is wholly untenable. Similarly, strict survey and longitudinal sections were necessary for preparing daily estimates and location of general structure which comes within the scope of work covered in agreement as per clause 1.2, 1.3, 3.4.1, and 6.0 of the sub conditions and technical specifications which the petitioner has failed to provide, therefore, claim on this count is not maintainable. It was also stated that Khasra papers and village maps were not to be provided as they are not covered in the agreement. Khasra details were only for checks/sub-checks and were not defined in the contract agreement. In any case, number of groups were not increased, therefore, nothing new was proposed which

has already been specified in the procurement schedule approved by the World Bank. The State categorically submitted that M/s Ferro failed to complete the work due to its own mismanagement, ill-planning and haphazard manner of doing the work, which was sought to be done without deploying sufficient number of staff. Under clause 37 of the agreement, M/s Ferro was obliged to inform the department about various categories of labour employed by him which was not complied with.

10. In course of proceeding before the Tribunal, M/s Ferro examined one witness namely, PW-1 Mahavir Vidasariya whereas the department also examined one witness namely, DW-1 Mr. Krishna Mohan Gupta. The Tribunal, after considering in detail the entire material on record, has allowed the claim only to the extent of Rs.11,89,640/-.
11. In support of the revision application preferred by M/s Ferro, it has been argued that the Tribunal should have allowed the entire claim because the same has been duly proved and would arise from the terms of agreement. Whereas learned State Counsel has sought dismissal of the revision application preferred by M/s Ferro and at the same time has argued that the claim should have been dismissed in its entirety. Learned State Counsel has also prayed that the revision application preferred by the State deserves to be allowed.
12. This Court has heard learned counsel for the parties at length and

perused the entire record.

13. Before proceeding to deal with the merits of the claim in the respective revision applications, it is to be kept in mind that this Court is sitting under the revisional jurisdiction under Section 19 of the Adhiniyam wherein the High Court is entitled to interfere only upon finding that the Tribunal has exercised its jurisdiction not vested in it by law; or has failed to exercise the jurisdiction so vested; or has acted in exercise of its jurisdiction illegally; or with material irregularity; or has misconducted itself for the proceeding, or has made an award which is invalid or has been improperly procured by any party to the proceeding. While exercising the revisional power, the High Court would exercise the same power and follow the same procedure, as far as may be, as it does in deciding the revision application under Section 115 of the CPC. It is fairly well settled that while exercising the revisional jurisdiction, the High Court is not entitled to re-appreciate the evidence to interfere with the finding of fact unless the findings are utterly perverse.
14. When considered the matter within limits of its revisional jurisdiction, it is to be seen that the Tribunal has passed an elaborate award considering the documentary as well as oral evidence. Either while allowing the claim to the extent of Rs.11,89,640/- or while rejecting the remaining claim, the Tribunal has assigned reasons after referring to the evidence and the terms of the agreement. By referring to exchange of correspondence between M/s Ferro and the Department, the Tribunal

has categorically found in para-24 that the Department alone cannot be blamed for the delay caused in the work, however, such delay was not intentional but natural in view of the nature of the work. It has also found that M/s Ferro has not submitted details of employees or labours employed by him so as to work out how many of them were required to be kept idle because of delay caused by the Department. It has also found that no extra payment was required for L-section in terms of clause 3.4.3 of the agreement which includes minor also, which has been duly informed to M/s Ferro by the S.E. by communication Ex.-D/3. The Tribunal has thus justified withholding of amount of Rs.2.19 lakhs while refusing to award any amount for idling of staff and extra payment for L-section.

15. The Tribunal has also found that since the petitioner is also responsible for causing delay in completion of work, he is not entitled to be compensated for the loss suffered by way of overhead expenses and further that even the said incurring of overhead expenditure has not been proved. In respect of extra work and the agreed area, the petitioner has been allowed claim of Rs.5,88,572/-. The said claim has rightly been allowed by the Tribunal because there is no denial of the fact that the petitioner has carried extra work.

16. This Court has gone through the documentary evidence including terms of the agreement to find out whether finding recorded by the Tribunal suffers, in any manner, with perversity. However, this Court has not

been able to find out any such finding recorded by the Tribunal which is not borne out of the evidence on record. Otherwise also, the findings are in the nature of finding of fact which cannot be interfered by this Court in its revisional jurisdiction.

17. For the above stated reasons, this Court does not find any substance in both the revision applications. They deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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