

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.92 of 2007

Narmada Equipments Private Limited, 2/3, Industrial Estate,
Govindpura, Bhopal 462 023 Through its Managing Director
Vijay Agrawal.

---- Petitioner

Versus

1. State of Chhattisgarh, through Principal Secretary, Water Resources Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. Superintending Engineer, Rampur, Korba, District Korba (Chhattisgarh)
3. Executive Engineer, Minimata Bango Dam Project, E & M Division, Machadoli, District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner:	Mr. Ashish Shrivastava and Mr. Anurag Verma, Advocates.
For State/Respondents:	Mr. Satish Gupta, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/08/2016

1. The reference petition filed by the petitioner contractor under Section 7 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 was considered and decided by the Chhattisgarh Madhyastham Adhikaran, Raipur (for short 'the Arbitration Tribunal') vide award dated 23-4-2007 passed in Reference Petition No.6/2005 partly granting the reference petition.
2. The petitioner by way of reference petition claimed a sum of

Rs.18,49,696/- with interest of 18% per annum under the following heads: -

- A) Rs.6,91,176/- towards compensation against increased cost of execution during extended period.
 - B) Rs.8,19,934/- towards loss of profit and overhead expenses due to prolongation of contract.
 - C) Rs.62,764/- towards refund of recovery of wastage of steel plates.
 - D) Rs.2,02,258/- towards payment of final bill.
 - E) Rs.73,564/- towards refund of balance security.
3. By the impugned award, the Arbitration Tribunal has granted Rs.4,67,115/- towards escalation during extended period and Rs.38,755/- towards revised rates items and payment of final bill with interest of 9% per annum.
4. In the reference petition, the petitioner claimed Rs.6,91,176/- against increased cost of execution of work during the extended period, whereas only Rs.4,67,115/- has been awarded towards escalation denying remaining amount of Rs.2,24,061/-; Rs.8,19,934/- towards loss of profit and overhead expenses; Rs.62,724/- towards refund of recovery, and also claimed interest at the rate of 18% per annum which has not been awarded by questioning the impugned award rejecting their part of claim made in the reference petition.
5. Mr. Ashish Shrivastava, learned counsel appearing for the

petitioner contractor, would submit that the learned Arbitration Tribunal has grievously erred in partly refusing the amount of escalation, loss of profit and overhead expenses, and refund of recovery of wastage of steel plates, and it ought to have granted 18% interest on the total amount.

6. Whereas, Mr. Satish Gupta, learned Government Advocate appearing on behalf of the State/respondents, would support the impugned award.
7. I have heard learned counsel for the parties and perused the award impugned and also gone through the record thoroughly.
8. Coming first to the amount of escalation, the Arbitration Tribunal upon consideration has granted Rs.4,67,115/-. In paragraph 14 of the impugned award, the Arbitration Tribunal has considered the Consumer General Index of Bhilai being the nearest centre in M.P. to the site of works while calculating the reasonable claim for labour escalation. Based on the data, labour escalation and material escalation of all commodities for the value of work done of the scheduled items of the contract agreement, the Arbitration Tribunal has granted Rs.4,67,115/- towards escalation. After hearing learned counsel for the parties and after going through the record, I do not find any illegality or it cannot be said to be contrary to the record or perverse, rather it is based on the material available on record. Therefore, the Arbitration Tribunal is justified in granting Rs.4,67,115/- towards escalation. The finding so

recorded is affirmed.

9. Coming to the head of loss of profit and overhead expenses due to prolongation of contract, the petitioner has claimed compensation against loss of profit and loss of overhead expenses due to prolongation of contract stating inter alia that he could have achieved desire progress of work for which he has mobilized necessary resources and established organizational set up which were never underutilized and at many times they were also rendered idle. Therefore, the petitioner is entitled for loss of profit and overhead expenses to the extent of Rs.8,19,934/-. The learned Arbitration Tribunal in paragraph 16 of the award has clearly held that the petitioner has submitted certified copies of income tax assessment for the year 1992-93 (Ex.P-54) and tried to substantiate his claim for loss of profit and overhead expenses relying upon the decision of the Madhya Pradesh High Court in the matter of **Mukesh Kumar Singhal v. Nagar Palika Parishad, Bhind**¹ in which the M.P. High Court has held that overhead expenses could not be awarded without legal and positive proof, and there is no evidence in this case.
10. In the matter of **Bharat Coking Coal Ltd. v. L.K. Ahuja**², the Supreme Court has clearly held that the contractor is required to raise pleading and establish that had he received the amount due under the contract, he could have utilised the

1 2006(3) M.P.H.T. 24 (DB)

2 (2004) 5 SCC 109

same for some other business in which he could have earned profit and in absence of that plea, claim for profit and overhead expenses cannot be granted. It has been held in paragraph 24 as under: -

“24. Here when claim for escalation of wage bills and price for materials compensation has been paid and compensation for delay in the payment of the amount payable under the contract or for other extra works is to be paid with interest thereon, it is rather difficult for us to accept the proposition that in addition 15% of the total profit should be computed under the heading “Loss or Profit”. It is not unusual for the contractors to claim loss of profit arising out of diminution in turn over on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilised the same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same. This aspect was very well settled in *Sunley (B) & Co. Ltd. v. Cunard White Star Ltd.*³ by the Court of Appeal in England. Therefore, we have no hesitation in deleting a sum of Rs.6,00,000/- awarded to the claimant.”

The petitioner has neither made any such pleading in the reference petition nor brought evidence to establish such loss. Therefore, the Arbitration Tribunal is absolutely justified in rejecting the claim under the head of loss of profit and overhead expenses to the petitioner and I do not find any such illegality in the said finding warranting interference in exercise of revisional jurisdiction.

3 (1940) 1 KB 740 : (1940) 2 All ER 97 (CA)

11. Likewise, the claim for refund of recovery of wastage of steel plates has also rightly been rejected by the Arbitration Tribunal, because as per clause 5.2.01 of the contract agreement, maximum permissible wastage and overlaps for fabrication of pipes shall not be more than 5% of the total weight of steel plates. In this case, the wastage has come to more than 15% for which recovery has been made and it is said to have been accepted by the petitioner and therefore it has rightly been rejected by the Tribunal in which no interference is required by this Court.

12. Now, finally coming to the question of interest, 9% interest, per annum, has been awarded by the learned Arbitration Tribunal relying upon the decision of the Supreme Court in the matter of **Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and another**⁴. The rate of interest recorded is also in accordance with law.

13. Thus, in view of aforesaid analysis, I do not find any merit in this civil revision. The civil revision deserves to be and is accordingly dismissed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁴ (2007) 2 SCC 720