

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 250 of 2001

- J.R. Swarnakar, S/o Late Shri Sevak Ram Swarnakar, Aged about 55 years, Civil Contractor, R/o 649 Sindhiya Nagar, Durg, District Durg (C.G.)

---- Applicant

Versus

1. M.P. Housing Board through the Housing Commissioner, E-5 Sector, Arera Colony, P.O. Tahsil & District Bhopal (M.P.).
2. The Dy. Housing Commissioner, M.P. Housing Board, Circle Raipur, Shankar Nagar, P.O. Shankar Nagar, Tehsil & District Raipur (M.P.)(Now C.G.)
3. The Executive Engineer, M.P. Housing Board, Division Durg Padmanabhpur, Tehsil P.O. & District Durg (M.P.) (Now C.G.)
4. Madhya Pradesh Arbitration Tribunal, Ground Floor, Vindyal Bhawan, Bhopal.
5. Chhattisgarh Grih Nirman Mandal, Raipur Through its Competent Authority, A Statutory Body constituted under the relevant provisions of Chhattisgarh Grih Nirman Mandal Adhiniyam, 1972 having its office at Shankar Nagar, Raipur, District Raipur (C.G.)

---- Respondents

For the Petitioner	:	Shri Alok Bakshi, Advocate
For the Respondents	:	Shri Sanjay Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/07/2016

1. Heard.
2. The instant civil revision has been preferred against the award dated 11-01-2001 passed by the Madhya Pradesh Arbitration Tribunal, Bhopal in reference Case No.20/1991 whereby the claim of the applicant herein has been partly allowed. Claim of Rs.3,49,960/- was submitted by the applicant before the Tribunal. However, the Tribunal has awarded total sum of Rs.52,389/- only and has also awarded interest @ 12% per annum on

Rs.48,063/- only from the date of filing of the reference petition i.e. on 02-02-1991 till the date of realization and a further direction has been passed that the respondent will pay cost of the petitioner in proportion to success and counsel fee of Rs.2000/-. Out of this the major part is the refund of security deposit and the earnest money deposit.

3. The applicant is registered as a civil contractor, he has entered into an agreement/contract with respondent No.1 for construction of 125 E.W.S. Quarters at Lakholi Rajnandgaon District Rajnandgaon (C.G.). The tender was flouted on 03-06-1980 and the work order has been issued on 23-12-1980.

4. The applicant entered into works contract with respondent No.1 on whose behalf the contract was signed by respondent No.2. The salient features of the contract are as follows :

i)	Tender floated vide No.30180-81	dt. 03-06-1980
ii)	Work order issued vide EE's letter No.16223-27	dt. 23-12-1980
iii)	Agreement No.431 signed at Durg on	dt. 16-12-1980
iv)	Nature of the work	Construction of 125 EWS quarters at Lakholi, Rajnandgaon, District Rajnandgaon (M.P.)
v)	CSR applicable vide circular No. 5540/T/86/SCR/86-C dt. 29-08-89	Revised CSR which was 40% above the od CSR 46.83% above the said revised CSR
vi)	Tender rate	46.83% above the said revised CSR
vii)	It was conditional offer having conditions vide letter	dt. 28-06-1980
viii)	Only 2 out of 5 conditions accepted vide Housing Commissioner's letter	dt. 19-08-1980

Note : The material that remained as on accepted condition was that the applicant shall use bijwood for the shutters.

ix)	Stipulated period of completion	9 months including rainy season
x)	Stipulated date of completion as from the date of issue of work order	22-09-1981
xi)	Working drawings and lay out was given on	02-02-1981
xii)	Work commenced on	02-02-1981
xiii)	Earnest money deposited	Rs.4,825.00
xiv)	Security deposit to be recovered from the Running Bills @8% (in addition the Earnest money as to be converted into initial security deposit as per terms of the Agreement)	
xv)	Work rescinded on	19-01-1984
xvi)	Again extended upto	30-09-1984
xvii)	Old termination of contract made Effective from 19-01-1984 vide letter	dt. 11-10-1984

5. Upon appreciating the oral and documentary evidence available on record, learned Arbitration Tribunal by its award dated 11-01-2001, partly allowed the Reference Petition as mentioned in opening paragraph of this order.

6. Learned counsel appearing for the applicant would submit that the findings arrived at by the learned Arbitration Tribunal refusing various claims around Rs.3,00,000/- is arbitrary and perverse. He has drawn my attention to paragraph 20 of the award in which it has been recorded that for execution of work in question, he has purchased 1300 Sq. M. flag stone at work site for which respondent has paid 70% of cost of flag stone in 3rd and 4th running bills but he has only utilised 363 meter flag stone and 229.7 meters of flag stone was kept by the department which

was neither returned nor the cost of the said flag stone was added to the bill and as such finding is perverse. The Tribunal assigned valid reason that the balance flag stone was in possession of the petitioner himself and he was the responsible for the custody of the said flag stone and no evidence has been adduced that said flag stone was handed over to the respondents, as such it cannot be held that such a finding is perverse and contrary to the record.

7. Learned counsel for the applicant further submits that loss of profit of balance work as per Schedule 'C' appended with the petition has not been awarded and the applicant is entitled for 15% loss of profit amounting to Rs.43,041.02/-. The Tribunal has assigned valid reason that the applicant has not adduced any evidence to substantiate his claim of over-head expenses and the loss of profit by leading some evidence. It has been further held that in absence of evidence, the applicant is not entitled to claim loss of profit as the applicant work was prevented and it was got done by another contractor. As such valid reason is assigned by the Tribunal for not awarded claim in above stated head.

8. However, interest has been awarded on Rs.48,063/- from 02-02-1991 till its realization whereas, the applicant has been held entitled to Rs.52,389/-. There is no valid reason assigned by the Tribunal as to why the applicant is not entitled for 12% interest on the entire amount of Rs.52,389/-. Accordingly, it is held that the applicant would be entitled for 12% interest on 52,389/- from 02-02-1991 till its realization.

9. In paragraph 20.1 of the award, learned Tribunal has held that the applicant is entitled for Rs.6,952/- but has awarded Rs.5475.80 erroneously. The applicant is further entitled to Rs.1477/-.

10. Learned Tribunal has also held that the respondents shall also pay the cost of petition quantified at Rs.3532/- but taking into consideration the facts and circumstances of the case and the order passed in this revision applicant is held entitled for the cost of litigation at Rs.15,000/-.

11. Thus, the applicant would be entitled to the following claim :

(a)	Amount already awarded	Rs.52,389/-
(b)	Additional amount as per paragraph 9 of this order	Rs. 1,477/-
(c)	Total cost as per paragraph 10 of this order	Rs.15,000/-

		Rs. 68,866/-
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and he will be entitled for the interest on the said amount from 02-02-1991 till its realization.

12. Accordingly, the revision is allowed in part to the extent indicated above.

Sd/-
(Sanjay K. Agrawal)
JUDGE