

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 25 of 2003**

Nagar Palika Parishad Manendragarh through its Chief Municipal Officer, Manendragarh, District Korla, Chhattisgarh --- **Appellant**

Versus

Deepak Sharma, aged about 30 years, S/o Ramshankar Sharma, R/o ward No.1 Manendragarh, District Korla, Chhattisgarh --- **Respondent**

For the Appellant : Dr. N.K. Shukla, Sr. Advocate with
Ms Abhyunnati Singh, Advocate

For the Respondent : Mr. Anurag Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****26.09.2018**

1. The present appeal is against the judgment and decree dated 25.11.2002 passed in Civil Suit No.3-B/1995 by the Additional District Judge, Manendragarh whereby the decree for Rs.1,12,569/- was passed along-with interest @ 9% per annum apart from other amounts of security deposit and earnest money. The suit was filed by the respondent for Rs.2,14,370/-.
2. It was the case of plaintiff that the defendant Municipal Council, Manindergarh had invited a tender for construction of concrete road at two places, one was at a place known as Amakhorva to MPEB Office and second place was known as Purani Basti Road to Amakhorva.
3. The plaintiff submitted his tender to construct the road wherein 13% and 17% less rate of the estimated expense was quoted. The offer was accepted and he was asked to deposit earnest money/ security amount. It was the case of

plaintiff that along with tender paper, neither the estimate of rate was given nor the schedule rate was shown, therefore, the plaintiff has filed his tender according to the rate applicable for construction of road as per Schedule of Rates (for short "SOR"). It is further stated that the construction of concrete road is not included in the SOR as such since the actual rate was not quoted, the initial tender was rejected. Subsequently the plaintiff wrote a letter on 31.05.1994 expressing that he is ready and willing to execute the construction of road works at the rate 13% and 17% less. Thereafter on 16.06.1994, a letter was issued to the plaintiff respondent herein that he should deposit the amount of security and execute the contract so that the work can be done. It was also stated that subsequently the plaintiff wrote a letter that in the schedule, the rate of Cement Concrete Road is not shown, therefore, the fact that at which rate they should construct should be specified and if the rate is shown or made clear then only he will deposit the earnest money. It was stated that the plaintiff wanted to clarify the rate before commencing the construction. The plaintiff further pleaded that on 10.04.1994 a letter was issued by Nagar Palika Parishad wherein his offer was accepted to execute the work at the rate less than 13% and 17% and agreement was asked to be executed. Along-with letter, another letter was also enclosed wherein the rate was shown as Rs.1183/- per cubic meter. Thereafter the plaintiff has deposited the security amount/earnest money of Rs.4000/- and Rs.7000/- respectively and initially the payment was made at the rate of Rs.1183/- per cubic meter.

But then specifically the deduction was made on the ground that crusher and bitumen machine were not used and mixer machine was also not used. It was further pleaded by the plaintiff that apart from the schedule job, additional job was done with the consent of Nagar Palika Parishad, for which, the payment should have been made @ Rs.1183/- and no deduction could have been made for the said job done and thereafter on different heads, suit was filed on 08.05.1995 for recovery of Rs.2,14,370/-

4. The defendant/appellant herein filed their written statement. They contended that along-with tender the estimate was also attached which are being used by the PWD and on the basis of Schedule of Rate (SOR), the contracts were invited. The defendant admitted the fact that the cement concrete road was not shown in the SOR as such initially the tender submitted by the plaintiff/respondent was rejected. It was further stated that according to the P.W.D. Manual, the rate was projected and the plaintiff agreed the work, thereafter constructed the road at the rate 17% and 13% less of Rs.1183/- for the two contracts respectively, therefore, he cannot turn around the same. Further it was stated that the rate of Rs.1183/- per cubic meter was with respect to the construction of bridges and culverts, therefore, that cannot be applied to the Cement Concrete Road and further it was contended that the plaintiff has accepted to construct the CC road at the rate below 17% and 13%. It is also contended that the rate of Rs.1183/- per cubic meter cannot be applied uniformly to the construction of concrete road and the payment made to the plaintiff at the rate of Rs.1183/- was

over and above the rate prescribed. It is further stated that the entire amount was paid to the plaintiff for the work done which was recorded in the measurement book and the deduction if any made was according to the agreed rate. It is further contended that the defendant stated that the rate of Rs.1183/- was not prescribed even in the PWD Manual and in the instant case the amount was paid according to the agreed contract with the plaintiff for which the tender was submitted by him. Therefore, the prayer for dismissal of the suit was made.

5. The learned court below after evaluating the pleadings framed 9 issues and the finding was in favour of the respondent/ plaintiff and a decree for Rs.1,12,569/- was passed in respect of the amount due towards construction of cement concrete road along with interest at the rate of 9% per annum thereon from 08.05.1995. Further the trial Court has decreed that the plaintiff is entitled to receive an amount of Rs.36,000/- towards earnest money and another amount of Rs.11000/- being the security deposit, thereby total amount of Rs.1,59,569/- (i.e., 1,12,569/- + 36000 + 11000), was awarded along-with interest thereon.
6. Learned counsel for the appellant would submit that the finding arrived at by the Court below is without any evidence. It is contended that as per the statement of plaintiff and the pleading it would go to show that the plaintiff himself has admitted to execute the work below the rate of 13% and 17% which was mentioned as per Ex.D-11 and therefore he cannot step back from the same. It is further contended that the finding of the court below that the

appellant has agreed to get the work executed below 12% of the rate quoted is also not supported with any evidence. It is stated that the entire evidence is vague and not distinct so as to give a finding. It is further contended that the appellant himself has admitted to have received the entire money over and above the contractual obligation, therefore, the finding of the court below is completely perverse which needs interference by this Court.

7. Per contra, learned counsel for the respondent supported the order of the court below. It is stated that Ex.P-4 would show that no rate was existing for construction of concrete road, as such, the Municipal Council demanded the information from P.W.D., and P.W.D., quoted the rate for bridge and culverts and advised that if the rate is 12% or below the same, the work could have been done. Accordingly, on the basis of consent the concrete road was constructed with rate applicable would be 12% below the existing rate for bridge and culverts. It is further contended that based on such consent, the work was executed, however, after doing the job the Municipal Council refused to pay the price @ 12% below and has paid at the rate of below 13% and 17% which should have been 12%. Therefore, the decree to the extent of difference of the rate is well merited which cannot be interfered.
8. Heard learned Counsel for the parties as also perused the records of the court below along-with documents and evidence.
9. It is not disputed between the parties that the plaintiff constructed two cement concrete roads within the municipal

limit of Manendragarh. The only question arises as to what was the rate fixed for such construction. Ex.P.1 is a letter dated 16.06.1994 addressed to the plaintiff/respondent laying down certain guidelines for construction. The same, however, do not show at which rate the work is to be done. The document dated 02.08.1994 Ex.D-9 is a letter addressed by the Municipal Council to the Superintendent of Engineer, P.W.D., seeking guidelines for construction of road and the rate thereof. The letter purports that the tenders have been invited for construction for road wherein according to GCSR i.e., construction manual the rate has been stated to be 13% and 17% less and the query was made as to what is the rate of PWD for construction of concrete road. The letter dated 03.08.1994 (Ex.P-4) i.e., photocopy of Ex.D-10 is an answer to the said query by the Superintending Engineer, P.W.D. By such letter, it was replied that for construction of bridge and culverts, the rate is 1183/- per cubic meter according to the SOR, the nominal mix concrete M-15 (C.C. 1:2:4). It was advised in the tender if the rate is below 12% of the same rate, the construction of road can be carried out.

10. Subsequent to it, the communication dated 10.08.1994 addressed to the respondent plaintiff is on record. The document is Ex.P-3 and the equivalent is Ex.D-11. In the said letter, reference has been made to the letter of the plaintiff dated 27.06.1994. The letter dated 27.06.1994 is Ex.P-2 written by the plaintiff asking the rate to fix the rate for construction of road. The answer Ex.D-11 which is copy of Ex.P-3 addressed to the plaintiff purports and reminds the rate quoted by the plaintiff that since he has quoted 17%

less and 13% less as per the SOR he was directed to deposit the security amount of Rs.7000/- and Rs.4000/- total amounting to Rs.11000/- and execute the job. Ex.D-11 was received by the plaintiff on 10.08.1994 as shown from the endorsement at the bottom. After receipt of such letter, the work was carried out by the plaintiff. No document is on record to show that the terms of such offer was further changed while the construction was carried out. Instead Ex.D-1 was an offer to the plaintiff to get the work executed @ 13% & 17% below the quoted rate which the plaintiff accepted. Ex.D-10 is an internal communication between the Municipal Council and the Superintending Engineer, P.W.D wherein plaintiff Deepak Sharma was not a party to it. Deepak Sharma comes in the picture vide Ex.D-11 whereby he was offered by the offer of Municipal Council to execute the job at the rate quoted by him i.e., 13% and 17% less of the estimated expenses which he accepted and completed. Consequently the offer of Municipal Council was not @ 12% below the rate of Rs.1183/- but it was actually for 17% and 13% below the rate of Rs.1183/-.

11. In the above context, the statement of D.W.1 Suraj Shrivastava would also be relevant. D.W.1 has proved the measurement book of the work done and the payment made to the plaintiff. The estimate of the rate for construction of road was shown to be Rs.826/- per cubic meter. The offer given by the plaintiff vide Ex.D-5 was 13% below the estimate rate. Likewise Ex.D-6 was the another offer which was quoted as 17% below the estimate rate. According to the witness, the total construction of both the roads of 13%

and 17% less quoted rates was 532.1 cubic meters, out of which, road construction of 237.6 cubic meter was in respect of 17% less quoted rate and remaining road construction of 285.5 cubic meter was of 13% less quoted rate.

12. The witness further deposed that according to the measurement of constructed road of tender work of 17% less quoted rate, the amount payable comes to Rs.1,96,297/- and after deduction of 17%, the payment of Rs.1,72,894/- should have been made whereas the plaintiff was paid an amount of Rs.2,27,447/-. Likewise, for the rate quoted 13% less of the tender, the amount comes to Rs.2,35,831/- and after deducting 13%, the payment of Rs.2,05,175/- should have been made whereas the plaintiff was paid Rs.2,15,915/-. According to the witness, after adjustment of Rs.40,000/- which the plaintiff has received in part to meet his exigency after completing both the works as per the bond paper Ex.D-15, still the plaintiff was paid over and above Rs.1,27,977/-.
13. Therefore, after evaluating the said documentary evidence and the statement of witness, it cannot be inferred that the Municipal Council at any point of time agreed to get the work done at a rate mentioned as per Ex.P-4 which was 12% below the rate of Rs.1183/- per cubic meter for construction of bridge and culverts, instead, when the offer was made, the plaintiff himself has accepted to complete the construction on the estimated rate as per Ex D-4 & D-5 i.e., at the rate of 13% and 17% less. Therefore on evaluating the payment made which is supported by D.W.1, prima facie, it appears that excess payment was made to the plaintiff even after

adjustment of the amount of Rs.40,000/- which the plaintiff has received in part for his exigency after completing both the works. Therefore, even after the adjustment of that amount, certain amount was due to be received from the plaintiff.

14. In the result, the finding arrived at by the learned court below appears to be out of the evidence which is not existing on the record and the finding is completely perverse which cannot be sustained.
15. In the result, the appeal is allowed. The decree of the court below is set aside. No order as to costs.

**Sd/-
GOUTAM BHADURI
JUDGE**