

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 08-02-2019

Judgment delivered on 08-03-2019

FA No. 47 of 2001

1. Food Corporation of India through its Regional Manager Bhopal.
2. The District Manager, Food Corporation of India, Bilaspur.
3. The Asst. Manager, Food Corporation of India, Raigarh.

---- Appellants.

Versus

1. Sardar Swaroop Singh Bhalia, 50 years, s/o Shri Glurumukh Singh Bhalia, occupation business Truck Operator, r/o. Darogapara, Raigarh. (died – deleted) through LR.
Gurmit Singh s/o. Late Sardar Swaroop Singh r/o. Darogapara, Raigarh, District Raigarh (CG)/

---- Respondent

For appellants : Mr. B.P. Gupta, Advocate.

For respondent : Mr. Ashish Gupta, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 21-12-2000 passed by the District Judge, Raigarh(CG) in Civil Suit No. 5-B/99 wherein the said court dismissed the suit filed by the respondent for recovery of outstanding and partially decreed the

counter claim filed by the appellants/defendants to the tune of Rs.28,686.76.

2) Original respondent Sardar Swaroop Singh entered into contract of transportation with the appellants on being successful in the tender floated by the appellants for the same and accordingly in terms of contract entered into between the parties, the work was to be started by the respondent/plaintiff from October 1986 till 1988. The respondent/plaintiff while entering into contract had already deposited security amount of Rs.17000/- on 7-10-1986 with the appellants. As stated above, the respondent had to start his work from October 1986 but he had started his work from 6-2-1987 and after starting the work of contract he used to submit his bills for payment before appellants/defendants No. 2 and 3 periodically. The respondent/plaintiff stopped the work before completion of the contract for which several correspondence were made, but he did not complete the work in terms of contract and submitted the bills for payments on different accounts to the tune of Rs.48,568/- and for other deposits. The said contract was given on higher rates with different people and for the same the defendant is liable to pay as per terms of the contract, therefore, appellants filed counter claim to the tune of Rs.2,53,790/- but the trial Court awarded only Rs.66,280 and adjusted the amount of respondent/plaintiff.

3. Learned counsel for the appellants would submit as under:

- i) As the respondent/plaintiff is responsible for violating the terms of contract, therefore, he is under obligation to pay the amount which was paid to other contractors on higher rate.
- ii) Engaging the other contractors was at risk and cost of the respondent/plaintiff in terms of the contract agreement as shown in Clause 10, therefore, finding of the trial Court is not liable to be sustained.
- lii) Finding of the trial Court is not in the fitness of the factual matrix and legal aspect of the matter, therefore, same is liable to be reversed.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial court is based on legal aspect and evidence adduced by both sides, therefore, same is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment and decree has been passed.

6. D.P. Dewangan (PW/2) was posted as Assistant Grade -I and thereafter as Assistant Manager of the appellants' institution i.e., Food Corporation of India. He admitted before the trial Court (para10) that work which was left by the respondent was allotted to some other contractors upto 1-7-1987 and risk and cost of the statement was prepared upto the period from 18-2-1987 to 28-5-1987. From the evidence of this witness,(para 10) it is clear that in the month of July, 1987 new tender was called and from July 1987 new contract with Jaspal Singh Siyal was entered into for two years and said Jaspal Singh Siyal worked for two years from July 1987. From the evidence of the appellants, it is clear that work which was left by the respondent was done by other contractors upto 1-7-1987 and risk and cost was prepared by this witness and as per Ex. D/66 and Ex.D/70 the amount of both bills comes out to Rs.66,628.98. From the evidence, it is clear that new tender was floated in the month of July, 1987 and new contract was entered into by the appellants and Jaspal Singh Siyal for two years beginning from July 1987 ending to June 1989.

7. Now the point for consideration of this court is whether the respondent is liable to pay the higher rate for the whole period of his contract starting from October 1986 to ending of September, 1988. From the evidence it is clear that new tender was floated in

the month of July 1987 and new contract was entered into by the appellants with Jaspal Singh Siyal. Once new contract is substituted to old contract, the respondent was not under obligation after new contract to perform old contract. Only term of old contract was binding on respondent and no term of new contract was binding on him. Therefore, if the appellants have paid higher rate for new contract, the same cannot be recovered from the respondent.

8. Looking to the legal aspect of the matter, the trial Court opined that the respondent was only under obligation for contract which was entered into between the respondent and the appellants, but he is not liable for terms of contract between other regular contractors and the appellants. After re-assessing the entire evidence, this court has no reason to substitute contrary finding. Partial decree passed by the trial Court in favour of the appellant is not liable to be interfered with. The appeal is liable to be dismissed.

9) Accordingly, decree is passed in favour of respondent and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.

- (iii) Pleader's fee., if certified, be calculated
as per Schedule or as per certificate
whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju