

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :28/09/2021

Order passed on : 11 /11/2021

CR No. 162 of 2017

- Chief Municipal Officer, Nagar Panchayat, Naya Baradwar, Tehsil Sakti, District Janjgir-Champa, ChhattisgarhRespondent No.2, Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through the Secretary, Town Administration and Development, Naya Mantralaya, Naya Raipur, District Raipur, ChhattisgarhRespondent No.1, Chhattisgarh
2. Shashikant Agrawal S/o Matadin Agrawal, Aged About 49 Years, R/o Naya Baradwar, Tahsil Sakti, District Janjgir-Champa, ChhattisgarhPetitioner, District : Janjgir-Champa, Chhattisgarh
3. The Chief Engineer, Directorate, Town Administration and Development, (Engineering Cell) R.D.A. Bhawan Raipur, ChhattisgarhRespondent No.3, District : Raipur, Chhattisgarh

---- Non-applicants/ Respondents

CR No. 115 of 2017

- Shashikant Agrawal S/o Matadin Agrawal, Aged About 49 Years, R/o Naya Baradwar, Tehsil Sakti, District Janjgir-Champa, Chhattisgarh, Chhattisgarh

----Applicant

Petitioner

Versus

1. State Of Chhattisgarh, Through the Secretary, Town Administration and Development, Naya Mantralaya, Naya Raipur, District Raipur, Chhattisgarh, Chhattisgarh
2. Chief Municipal Officer, Nagar Panchayat, Naya Baradwar, Tehsil Sakti, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
3. The Chief Engineer, Directorate, Town Administration and Development, (Engineering Cell) R.D.A. Bhawan Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

----Respondents

Non-applicants

For Applicant in CR No.162/2017 & for respondent No.2 in CR No.115/2017 – Shri Sourabh Sharma, Advocate.

For Applicant in CR No.115/2017 & for respondent No.2 in CR No.162/2017 – Shri Pawan Kesharwani, Advocate

For State/Respondents No.1 & 3 in both the cases – Shri Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

11-11-2021

1. Both the revision petition have been filed against the award dated 21-03-2017 passed by the Chhattisgarh Madhyastham Adhikaran, Raipur (C.G.) in Reference Case No.18/2013, hence, they are being decided by this common order.

2. The applicant in CR No.162/2017 shall be referred as applicant and respondent No.2 in this case shall be referred as respondent No.2 for both the cases.

3. Respondent No.2 Shshikant Agrawal who is petitioner in CR No.115/2017 is registered civil contractor. He was allotted work order dated 05-06-2008 after tender process for construction of W.B.M.C.C. Road. The work could not be completed and it is claim of respondent No.2 that he has suffered loss.

The respondent No.2 then preferred reference petition under Section 7 A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (in short 'the Adhiniyam, 1983') making a claim of damages of Rs.8,35,208/-. The learned Tribunal has decided the reference and passed the impugned award which has been partly allowed. The applicant, Chief Municipal Officer has been directed to make payment of compensation of Rs.1,73,210/- along with 6% interest per annum to be paid from the date of award.

4. It is submitted by learned counsel for the applicant that the impugned award is erroneous and unreasonable which is not sustainable. The finding recorded in the award that the stopping of the work had been by respondent No.2 himself, hence, under such circumstances, respondent No.2 was not entitled for refund of the amount of payment withheld and refund of the security deposit. The work was stopped at the request of respondent No.2, therefore, he cannot take benefit of the lapse committed by himself. The amount

deducted from the security deposit 90,710/- and Rs.18,000/- was justified, because the loss has been equally suffered by the applicant side. Hence, the impugned award is unsustainable, which may be set aside.

5. Learned counsel for respondent No.2 opposes the submission and submits that the impugned award is unreasonable and it is not a speaking order. The work could not be completed by respondent No.2 for which reasons are attributable to the applicant side. After issuance of work order, only half of the lay out plan was given to respondent No.2 and in the middle of it Sub-Engineer In-charge was transferred. Subsequent to that, the Sub-Engineer joined in the month of September, 2008. The ongoing work had to be stopped again and again because of lack of supervision by the applicant side. After arrival of monsoon (rainy season) the work again stopped from 18-11-2009. In such adverse conditions the respondent No.2 has completed the work in the month of January, 2010. Despite the hurdles the work have been completed by respondent No.2 even then respondent No.3 has deducted the amount Rs. 64,500/- from the bill of payment in favour of respondent No.2 and amount of security deposit was also withheld. Despite number of requests the applicant did not release the amount of bill withheld and the security deposit amount. Hence, the reference was made to the Tribunal.

It is submitted by learned counsel for respondent No.2 that learned Tribunal has not properly exercised its jurisdiction, no consideration was given on the reasons for delay in conclusion of work. The evidence of the witnesses and the documents produced in evidence have not been appreciated in proper manner. Hence, the impugned award suffers from grave infirmity. It is submitted that the delay was fully attributable to the applicant side, therefore, respondent No.2 is fully entitled for claim of damages he has suffered and by not granting the same the learned Tribunal has committed error.

Reliance on behalf of the respondent No.2 has been placed on the

judgment of Chhattisgarh High Court in the matter of **Central Mine Planning & Designing Institute Ltd. & Anr. Vs. M/s Telekrik Electricals (Nagpur) Pvt. Ltd.& Ors**, (2017) 4 C.G.L.J. 84 (DB), according to which the Arbitrator is required to pass a reasoned award. Therefore, the civil revision filed by the applicant be dismissed and the civil revision filed by respondent No.2 be allowed granting relief.

6. State/respondents No.1 and 3 are formal parties and therefore, there is formal objection by the State counsel.

7. In reply, it is submitted by learned counsel for the applicant Shri Sourabh Sharma that the claim made by respondent No.2 in reference petition is unreasonable as no loss has been suffered by respondent No.2. Therefore, the impugned award is totally unsustainable.

8. Heard learned counsel for the parties and perused the documents.

9. It has been observed by the learned Tribunal in paragraph 9 of the impugned award, that as per the documents filed and proved by both the parties, it was on account of deposit of water and other obstructions the work was delayed and remained stopped for about two months and further it was respondent No.2 who had requested for stopping the work. Therefore, it was held that respondent No.2 is not entitled for any damages and only the amount of bill payment withheld and the amount of security deposit deducted by the applicant side has been ordered to be refunded to respondent No.2 in the impugned award.

10. Perused the record in the reference Petition No.18/2013. Respondent No.2 has stated in his affidavit evidence that he was provided with incomplete lay out, however, he started the work on 05-06-2008, but the Sub-Engineer In-charge was transferred because of which the construction work was stopped from 10-06-2008 for the reason that there was no officer to supervise the construction. The work resumed in the month of September, 2008 after another

Sub-Engineer took charge, subsequent to which it continued. However, on 18-02-2009 the Sub-Engineer proceeded on leave, because of which the work was again stopped. The work then resumed on 03-04-2009, after the Sub-Engineer reported on duty. There had been interference by the applicant side which is also a cause of delay. However, the respondent No.2 completed the work in the month of January, 2010.

Statement of respondent No.2 has been cross-examined. In which he had denied the suggestions given by the applicant side.

11. The evidence on affidavit of respondent No.2 has been rebutted by the witness from applicant side Pravesh Chandra Kashyap, Chief Municipal Officer, Nagar Panchayat, Naya Baradwar, stating that complete lay out was provided to respondent No.2. The other statements of respondent No.2 were denied. It was also denied that the transfer of the Sub-Engineer had been reason for stoppage of the work. It is stated that reminder was issued to respondent No.2 to resume and complete the work and thus it was denied that the applicant side had been the cause of delay in construction of the road.

No request was made by respondent No.2 to cross-examine the affidavit statement of the Chief Municipal Officer.

12. Form A of Nagar Panchayat, Naya Baradwar which was issued by respondent No.2 at the stage of submitting his bid includes Percentage Rate Tender and Contract for Works along with General Rules and Direction for the Guidance of Contractors. Clause 3 of this Contract provides as follows:-

“Clause 3 :- Action when the work is left incomplete abandoned or delayed beyond the time limit permitted by the Nagar Palika Paishad:-

- (i) The C.M.O. may terminate the contract if the contractor causes a fundamental breach of the contract.
- (ii) Fundamental breach of contract shall include, but not be limited to, the following:-
 - (a) The contractor stops work for four weeks, when no stoppage of work is shown on the current programme or the stoppage has not been authorised by the C.M.O.

- (b) The C.M.O. gives notice that failure to correct a particular defect is a fundamental breach of contract and the contractor fails to correct it within reasonable period of time determined by the C.M.O. in the said notice.
- (c) The contractor has delayed the completion of work by the number of weeks [12(Twelve) Weeks] for which the 'maximum amount of compensation of 6% of contract sum is exhausted.
- (d) If the contractor has not completed at least thirty percent of the value of construction work required to be completed in half of the completion period (including validly exavaded period if any).
- (e) If the contractor fails to appoint the technical staff and if appointed do not function properly for 4 weeks even after due written notice by the C.M.O.
- (f) If he violates labour laws.
- (g) Any other deficiency which goes to the root of the contract Performance.
- (iii) If the contract is terminated, the contractor shall stop work immediately, make the site safe and secure and leave the site as soon as reasonably possible.
- (iv) The Engineer-in-Charge shall cause recording and checking of measurements of all items of work done (taking in to account quality and quantity of items actually executed) and prepare the final bill after adjusting all pervious outstanding dues. Such recording of measurements shall be done after due notice regarding time and date of recording measurement and directing the contractor to either remain present himself or his aj:norised representative so as to satisfy himself that the recording of measurement is just and proper. Failure on his parts either to attend and or refusing to acknowledge the measurement so recorded in the department measurement book, shall be at his sole risk and responsibility.
- (v) In addition to the provision contained in clause 2 above the C.M.O. shall forfeit the earnest money and or security deposit and further recover/deduct/adjust a compensation @ 10% (ten percent) of the balance value or work left incomplete either from the bill and or from available security/performance guarantee or shall be recovered as "Arrears of land revenue".

11. The work order issued on 05-06-2008 vide Annexure -A-8 is present in the record, which clearly shows that the time stipulated for completion of work was four months. Respondent No.2 by letter dated 06-06-2008 (Annexure-A-9) requested to resolve the issue regarding the demand made by the villagers for providing pipe crossing of water. Respondent No.2 was informed by letter dated 29-12-2008, that the issue raised by the villagers has been resolved and respondent No.2 should immediately proceed for the work. Vide Annexure-A-14 the applicant informed respondent No.2 on 18-02-2009, that during absence

of In-charge Sub-Engineer the construction work should be halted, on which respondent No. 2 by communication dated 19-02-2009 (Annexure -A-15) intimated the applicant regarding the loss he may incur in case the work is stopped. Respondent No.2 was then again given intimation by letter dated 30-03-2009 (Annexure - A-17) to resume the work as the In-charge Sub-Engineer has reported on duty. The Sub-Engineer gave intimation to respondent No.2 by letter dated 08-04-2009 (Annexure - A-18), that 20 MM metal (gitti) which was collected for use on the site has to be examined first and until such examination the work in progress should be kept in abeyance. Respondent No.2 was then informed by letter dated 04-05-2009 (Annexure- A-22) that he should resume the work. As it appears from the documents that the work was not resumed by respondent No.2, because of which a letter dated 13-11-2009 (Annexure - A-29) was issued informing that the work is not in progress and that respondent No.2 should resume the work within seven days and complete the same at the earliest.

12. Taking into consideration the documentary evidence present in the record it can be said that the delay of two months may be attributable to the applicants side, but after the communication dated 04-05-2009 vide Annexure - A-22 respondent No.2 had free hand to complete the construction, but even then he took about eight months to complete the same which was completed in the month of January, 2010. Hence, this part of delay is fully attributable to the respondent No.2 himself. Hence, I am of this view that the finding of learned Tribunal that although there is delay, but none of the parties can be held solely responsible for the same, is a proper conclusion drawn.

Regarding damages claimed, respondent No.2 has not brought any such evidence to prove regarding loss suffered by him. Therefore, the finding of learned Tribunal regarding non-entitlement of respondent No.2 for damages also appears to be proper which need not be interfered with.

Clause-3(v) of the condition of contract although gives authorization to the applicant for making deduction in the final bill and also from from the security deposit, but as it is found from the evidence present in the record that the applicant is also responsible for the delay in conclusion of the work, as the work was ordered to be stopped time to time by the applicant side, due to the absence of the In-charge Sub-Engineer on leave and also time taken for getting examined the material which was proposed to use for construction by respondent No.2. Hence, as held by the learned Tribunal, that the applicant is not entitled to withheld the final payment and also to make deduction from the security amount deposited by respondent No.2, appears to be correct decision. Hence, I am of this view that the impugned award does not suffer from any infirmity. Therefore, both these petitions are dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge