

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision :February 10, 2012

+ RFA(OS) No.35/2010

DELHI DEVELOPMENT AUTHORITY ...Appellant
Through: Mr.P.K.Mittal, Advocate.

versus

CONSTRUCTION & DESIGN SERVICES UP JAL NIGAM
....Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. With reference to Section 73 and 74 of the Indian Contract Act, in the absence of there being any proof of the loss suffered, the learned Single Judge has held that neither Ex.PW-1/34 nor Ex.PW-1/35 evidence basis on which the Superintending Engineer levied penalty invoking clause-2 of the contract and thus held that claim of DDA to recover the penalty levied must fail.

2. Vide Ex.PW-1/2 dated 28.09.1995 DDA awarded work of constructing a Sewage Pumping Station to the respondent and vide Ex.PW-1/3 dated 04.10.1995 a written contract was executed. The work progressed very slowly and was ultimately rescinded vide Ex.PW-1/33 dated 17.09.1999 and even till then only around 40% of the work was completed.

3. Various exhibits referred to by the learned Single Judge in para 4 and 5 of the impugned judgment would highlight

that the respondent was very slow in executing the work and various letters were written to it by the appellant. As against 15 months' time within which work had to be completed i.e. 07.01.1997 not more than 40% work could be completed till 17.09.1999.

4. Clause-2 of the contract reads as under:-

“The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be deemed to be the essence of the contract on the part of contractor and shall be reckoned from the Tenth Day after the day on which the order to commence the work is issued to contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as Compensation an amount equal to one percent, or such smaller amount as the Superintending Engineer Delhi Development Authority (whose decision in writing shall be final) may decide on the amount of estimated cost of the whole work as shown in the tender, for every day that the work remains uncommenced or unfinished, after the proper dates. And further, to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which time allowed for any work exceeds, one month (save the special jobs) to complete one-eighth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed, three-eighth of the work, before three-fourth of such time has elapsed. However, for special job if a time-schedule has been submitted by the Contractor and the same has been accepted by the Engineer-in-Charge, the contractor shall comply with the said time-schedule. In the event of the contractor failing to comply with this condition, he shall be liable to pay as compensation an amount equal to one percent or such smaller amount as the Superintending Engineer Delhi Development Authority (whose decision shall be final) may decide on the said estimated cost of the whole work for everyday that the due quantity of work remains incomplete; provided always that the entire amount of compensation to be paid under the provisions of this

clause shall not exceed ten percent of the estimated cost of work as shown in the tender.

The contractor shall be required to submit a detailed programme for completing of work with the stipulated period in the form of a Bar-Chart, covering all major activities, to the Engineer-in-Charge, within 10 days from the date of award of work, modification suggested by the Engineer-in-Charge shall be ensured by the contract or that the time schedule as laid down in the aforesaid Bar-Chart is adhered. To in case of any slip, the time lost will have to be made good by the contractor by speeding up the activities in such cases, he shall be bound to follow the Engineer-in-Charge.”

5. The respondent had been proceeded against ex-parte at the trial and has chosen not to appear even before us. The evidence led by the appellant has remained unrebutted.

6. Suffice would it be to state that the observations of the Supreme Court in para 68 of the decision reported as AIR 2003 SC 2629 ONGC v. Saw Pipes Ltd. are squarely applicable in the instant case as per which delayed constructions such as completing construction of road or bridges within stipulated time would be difficult to be linked with actual losses suffered by the State and in such cases the pre-estimated damages envisaged in the contract have to be paid.

7. Now, a Sewage Pumping Station is not something from which Revenue would be generated by the State. It is a public utility service and has a role to play in maintaining or preserving clean environment. If Sewage Pumping Stations are not set up, sewage would stagnate as cess pools in low lying areas and would cause environmental degradation, both air and soil. That apart, in a delayed project, interest on blocked capital would obviously be a measure of damages.

8. The learned Single Judge has ignored as aforesaid and held that in the absence of proof of damages, compensation levied under clause-2 cannot be recovered. The learned Single Judge is incorrect in view of the law declared by the Supreme Court and thus we allow the appeal and set aside the impugned decree. Suit filed by the appellant is decreed in sum of ₹20,86,446/- with pendente lite and future interest @9% per annum from date of suit till realization and the suit filed by the appellant is disposed of accordingly with costs all throughout.

**(PRADEEP NANDRAJOG)
JUDGE**

**(PRATIBHA RANI)
JUDGE**

FEBRUARY 10, 2012
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