

CASE NO.:
Appeal (civil) 11031 of 1996

PETITIONER:
MANOCHA CONSTRUCTION COMPANY (NOW DISSOLVED)

Vs.

RESPONDENT:
VS.

DATE OF JUDGMENT: 16/02/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan.

JUDGMENT:

K.G. BALAKRISHNAN, J.
L...I...T.....T.....T.....T.....T.....T.....T...J
This appeal is directed against the judgment and order passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Civil Revision No. 296 of 1992 on 30th January, 1996. By the impugned judgment, the Division Bench dismissed the said Civil Revision filed by the appellant under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1982, challenging the award dated 16.3.1992 passed by the M.P. Arbitration Tribunal, Bhopal in Reference Case No. 11/1987.

The appellant, a construction company, entered into an agreement on 18.3.1982 with the respondent State of Madhya Pradesh, for the construction of a Dam in Barchar Tank Project, in the Sidhi district. The total cost of the construction was Rs.1,22,19,779/-. As per the work order given to the appellant, the appellant was to complete the work within a period of 15 months. The appellant was, however, given several extensions and the last of such extension was to expire on 30.6.1987. Payments were made to the appellant during the course of the progress of the work. The total quantity of the earth work to be done was 5,02,929 Cubic Meters. As per the contract, the appellant was also bound to do an additional 10% of the agreed earth work at the rate given under the agreement. According to the appellant, more than 10% of the agreed quantity of the earth work was carried out and for the additional quantity of the earth work done, a claim was made by him @ Rs.34.50 per Cubic Meter. The agreed rate for the earth work was Rs.15/- per Cubic Meter. Dispute arose between the parties as to the rate payable for the additional quantity of the earth work carried out and the matter was referred to the Arbitration Tribunal. The Tribunal passed an award on 14.7.1988 and by this award the rate of Rs.22/- per Cubic Meter was fixed for the additional earth work done by the appellant. Aggrieved by this award, the appellant preferred a Civil Revision (Registered as C.R.No. 459 of 1988) before the High Court of Madhya Pradesh. The respondent State of Madhya Pradesh also filed Civil Revision No. 512 of 1988 against the said award of the Tribunal. Whereas the Civil

Revision filed by the State was dismissed, the Revision filed by the appellant was remitted to the Tribunal with a specific direction, which is to the following effect :

"For the aforesaid reasons, the award of compensation for this extra work at Rs.22/- per cubic metre is hereby set aside and to that extent Civil Revision No. 459 of 1988 is allowed. Civil Revision No. 512 of 1988, filed by the State Government of M.P. and others is hereby dismissed. The matter shall go back to the Arbitration Tribunal, which shall, after giving due opportunity to the parties, determine the amount of compensation payable to the contractor, i.e., M/s Manocha Construction Co., for the additional work done, in accordance with the provisions of clause 4.3.13.3 of the agreement. We affirm the finding of the Tribunal as to the contractor's entitlement to the compensation for this additional work done."

Pursuant to the above Revisional order, the matter was again considered by the Arbitration Tribunal and a fresh award was passed on 16.3.1992. The Tribunal held that the work relating to the additional quantity of the earth was in respect of a temporary 'bund' and the construction of the same was completed by November/December, 1985. Therefore, in view of sub-clause (d) of Clause 4.3.13.3, the rate had to be fixed on the basis of the then prevailing market rate. On that basis the claim of the appellant was considered and it was held that the appellant was entitled to get at the rate of Rs.15.70 per Cubic Meter. The award thus passed by the Tribunal was challenged by the appellant before the High Court, but the Division Bench by its order and judgment as aforesaid, declined to interfere with the same. Hence this appeal .

We heard the learned Senior Counsel, Mr. S.B. Sanyal, for the appellant and also the counsel for the respondents, Mr. Krishnan Venugopal. Learned counsel for the appellant contended that the Tribunal had committed a serious error in appreciating the evidence and wrongly held that the additional earth work was completed in November/December, 1985 and thus adopted inappropriate criteria for fixing the total amount due to the appellant. It was argued that the series of correspondence between the appellant and the respondent would show that the officers of the respondent State Govt. had agreed to pay @ Rs.25.25 per Cubic Meter while the appellant had all along been insisting for payment @ Rs.34.50 per Cubic Meter for the additional earth work done by him. Therefore, it is argued that the Tribunal passed a wrong award and thereby failed to exercise the jurisdiction vested in it and the High Court should have interfered by virtue of the powers conferred on it under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1982, to correct the material irregularity committed by the Tribunal by improper appreciation of the evidence.

The learned counsel for the respondent State, on the other hand, contended that the direction relating to the construction of a temporary 'bund' was carried out by the appellant in 1985 and the rate of Rs.25.25 per Cubic Meter agreed to be paid to the appellant for the additional earth work was in respect of the main Dam work. He argued that the appellant had been paid at a higher rate than the contract rate.

It is evident from the pleadings that the additional earth work, for which the appellant had been bargaining for a higher rate, related to the construction of the temporary 'bund' in question. This temporary 'bund' was constructed for stopping the flow of the river to enable the department to clear the Dam area. In paragraph 2 of the letter written by the appellant to the Superintending Engineer of the respondent State on 25.12.1986, it is stated as under :

"The agreed quantity of earth work was given as 502929 Cums in Schedule 'G' of the contract document. During the course of execution, we were instructed to construct the temporary bundh for stopping the flow of river to enable the department to clear the dam seat of Nalla portion. The work was taken up by us in the month of October 1985 and the same was completed in the month of November 1985. We were paid the rate of Rs.15/- per Cum (tendered rate) for this item of work for the total of 48651.67 Cums in our running bills No. 20 dated 15.3.86 and 21 dated 4.5.86."

[Emphasis supplied]

The dispute referred to the Arbitration Tribunal related to the rate payable for this work. In its first award dated 14.7.1988, the Arbitration Tribunal had considered that the additional work related to the temporary 'bund' constructed by the appellant and the total earth work done by him was 49027.64 Cubic Meters. Therefore, there cannot be any dispute that the additional work related to the construction of the temporary 'bund'. It is also not possible for the appellant to contend that this work was carried out in May, 1986 after the receipt of Exh. P-12 letter dated 5.4.1986 from the Superintending Engineer. The contention of the appellant (I) that there was correspondence between the appellant and the Executive Engineer in charge of the construction work regarding the rate payable to the appellant; (ii) that the appellant by letter dated 6.4.1986 had only provisionally agreed for the rate of Rs.25.25 per Cubic Meter; and (iii) that he had been claiming the rate of Rs.34.50 per Cubic Meter is incorrect. Reference was made to the letter dated 5.4.1986 of the Executive Engineer and the appellant's letter dated 6.4.1986 addressed to the Superintending Engineer. It is clear that these letters and some other similar correspondence referred to by the appellant, related to the additional earth work, if any, done by the appellant in excess of the quantity of the earth work agreed to by him in respect of the main Dam. In the letter dated 31.10.1986 written by the appellant to the Executive Engineer, the appellant had made a reference to the construction of a temporary 'bund' and it was stated therein that he had undertaken that work under instructions of the Executive Engineer and the payment for the same was agreed at the rates of earthen dam. The respondent on the other hand contended that this work itself was an unauthorised work. We need not, however, dilate on that aspect as the Division Bench in its earlier order had stated that the appellant was entitled to get payment for the work relating to temporary 'bund'.

The learned counsel for the appellant contended that the Superintending Engineer, by his letter dated 5.4.1986 (Exh. P-12) had agreed to pay at the rate of Rs.25.25 per Cubic Meter and in the face of this admission it was not correct on the part of the Arbitration Tribunal to fix the rate at

Rs.15.75 per Cubic Meter. This letter referred to by the appellant is certainly not in respect of the temporary 'bund' constructed by the appellant in 1985. It seems that there was a dispute with regard to the rate payable for the additional work in respect of the main Dam. Though the appellant claimed Rs.34.50 per Cubic Meter, the Superintending Engineer by his letter dated 5.4.1986 agreed to pay Rs.25.25 per Cubic Meter. For this additional quantity of the work, the appellant was paid in excess of the contract rate.

However, the dispute before the Arbitration Tribunal was with regard to the temporary 'bund' and its work was completed by November/December, 1985 and the total earth work was 49027.64 Cubic Meters. The Tribunal went into this question and fixed the rate having due regard to sub-clause (d) of Clause 4.3.13.3 of the agreement which is to the following effect :

"If the rates for the altered, additional or substituted work cannot be determined in the manner specified in the Sub-clause (a), (b), (c) above, the S.E. shall determine the rate or rates and fix the same on the basis of prevailing market rates to include prime cost of material and labour charges (inclusive of hourlywise rates as determined by the department for machinery and equipments if used) plus 15% extra to cover the sundry, overhead charges and profits etc. of the contractor."

On the basis of the above clause, the Tribunal considered the prevailing market rates, including the cost of material and labour charges and an additional 15% was added to cover the sundry charges to arrive at the rate. The details are given in the award. Learned counsel for the appellant could not point out any defect or illegality committed by the Tribunal in fixing the rate payable for the additional work. When it was proved that the additional earth work was completed in November/December, 1985, there was nothing wrong in fixing the amount based on the rate prevalent at that time.

The learned counsel for the appellant lastly contended that by its earlier award dated 14.7.1988 the Arbitration Tribunal had fixed the rate of Rs.22/- per Cubic Meter for the earth work and that the Civil Revision filed by the respondent State Govt. against that award had been dismissed. Therefore, it was argued that at least the appellant should be entitled to get the rate of Rs.22/- per Cubic Meter. We do not find any substance in this contention. In the order passed by the Division Bench of the High Court on 26.7.1990, it was specifically stated that the rate for the additional earth work is to be refixed in accordance with the provisions of Clause 4.3.13.3 of the agreement and it was accordingly done by the Tribunal. When a fresh award has been passed by the Tribunal, whatever award passed by it earlier loses its significance.

We are of the view that the appellant failed to establish that there was any error of jurisdiction, illegality or material irregularity warranting interference by the Revisional court. The appeal has no merit and is dismissed accordingly, however, without any order as to costs.

JUDIS