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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

CIVIL REVISION No. 765 of 2002

Between:-

M/S P.D. AGARWAL & CO., LIMITED
THROUGH SHRI P.D. AGARWAL S/O LATE
SHRI GORELAL AGRAWAL, PARTNER AGED
ABOUT 52 YEARS, R/O 23 JOY BUILDERS
COLONY, NEAR RANI SATI MANDIR, INDORE
(MADHYA PRADESH)

.....APPLICANT

*(SHRI VIJAY ASSUDANI, LEARNED COUNSEL FOR THE
APPLICANT)*

AND

- STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, WATER RESOURCES
1. DEPARTMENT, VALLABH BHAVAN,
MANTRALALYA, BHOPAL
EXECUTIVE ENGINEER, WATER RESOURCE
2. DIVISION WATER RESOURCE DEPARTMENT,
KHARGONE (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI UMESH GAJANKUSH, LEARNED ADDITIONAL
ADVOCATE GENERAL FOR THE RESPONDENTS.)*

*This revision coming on for orders this day, JUSTICE VIVEK
RUSIA passed the following:*

Heard and reserved : 18.07.2022

Order passed on : 07.09.2022

ORDER

The applicant has filed the present Civil Revision under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 being dissatisfied with the award dated 30.04.2002 passed by M.P. Arbitration Tribunal, Bhopal in Ref. Case No.97 of 1995.

[1] The applicant is a partnership firm represented by Shri Prabhudayal Agrawal as a partner and constituted attorney. Respondent No.1 is State Government represented through Water Resources Department and respondent No.2 is an Executive Engineer, WRD, Khargone, in charge of the project in question.

[2] Respondents invited Notice Inviting Tender (In short " NIT") for the following work:-

[i]. Filling of Cut Off Trench (COT), puddle trench, sluice Work and excavation and earthwork of side hereinafter referred to as **Group-1**.

[2] Construction of an earthen dam as part of Bhadwali Tank Project vide NIT No.4/92/93 dated 10.07.1992 hereinafter referred to as **Group-2**.

[3] The applicant submitted bids for both groups 1&2 and found success for the Group-2 work for an estimated value of the contract of Rs.59.11 Lacs. Vide letter dated 16.02.1993 the applicant was communicated about acceptance of tender. Thereafter agreement No.25/92/93 was executed between the parties on 23.03.1993 followed by a work order dated 23.03.1993. The stipulated period of the contract of 9 months excluding 3 months of the rainy season. Although the actual date of completion was 22.03.1994 it was completed on

26.08.1994. The date of the second and final bill was paid on 23.11.1994 to the applicant.

[4] The applicant approached under Section 7 of M.P. Madhyastham Adhikaran Adhiniyam, 1983 claiming the amount of Rs. 69,92,955/- contending that the Group -1 work was initially awarded to M/s Manikchand Ajmera who failed to complete the work, thereafter the process of re-tendering was initiated in which the applicant and one O.P. Mittal participated. The applicant was found L-2, accordingly, work was awarded to O.P. Mittal who also failed to complete the work. The applicant offered that he is ready to work on Group-1 because, without completion of Group-1, Group-2 cannot be started and completed. Vide letter dated 28.10.1993, the Superintending Engineer, Khargone rejected the offer of the applicant and asked to carry out Group-1 work as additional and extra work under the relevant terms and conditions of Group-2 work. The applicant accepted the aforesaid offer with three conditions namely; (1) Escalation, (2) Extension of completion period up to 31.07.1994 and;(3) this offer would be valid for 45 days.

[5] Vide letter dated 09.12.1993, the Executive Engineer rejected the aforesaid offer. Accordingly, vide letter dated 03.12.1993, the applicant agreed to withdraw the aforesaid conditions and agreed to work with Group-1 as additional work as per the terms and conditions of Group-2. Vide letter dated 06.01.1994, respondents accepted the offer and directed the applicant to complete the work of Group-1 and Group-2. The applicant completed the work on 18.06.1992 and thereafter final bill was paid on 23.11.1994.

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[6] By way of Ref. Case No.87/1995, the applicant claimed Rs.69,92,955/- under the following claim:-

1	Claim of Escalation	Rs. 7,31,000/-
2	Claim for executing Group No.1 as per Schedule-1	Rs.35,28,818.00
3	Claim for interest @ 22% on the delayed payment of final bill as per Schedule-2 up to 17.08.94 and from 18.08.1994 to 22.11.1994 on the amount of the final bill of Rs. 1,28,84,802, <div style="text-align: right; margin-right: 50px;">Rs. 7,53,320/-</div> Total <div style="text-align: right; margin-right: 50px;">Rs. 14,36,528/-</div>	
4	Ante-lite Interest @ 22% from 18.09.94 upto 30.09.95 on the above three claims amounting to 12,97,603/-	
	Thus he has claimed a total amount of Rs. 69,92,955/-	

[7] The applicant claimed Rs. 7,31,006/- towards the escalation because Group-2 work was delayed because the work of Group-1 was not completed in time by the earlier contractors. Claim No.2 for Rs.35,28,818/- was based on extra work under clause 4.3.13.3 (c). According to the applicant by executing the work of Group-1 quantity exceeded by 88.59 %, accordingly last para sub-section-clause (c) should have been made applicable in his case and the applicant should have been paid for executing this additional work at the market rates plus 25% sundry, overhead charges and profit, hence, entitled to claim Rs. Rs.35,28,818/-.

[8] Vide claim No.3, the applicant claimed interest on delayed payments of Rs.14,36,528/- under the head of ante-lite interest.

[9] The respondents filed a reply by refuting that all the claims are liable to be rejected as the applicant accepted the final bill without any reservation. The applicant is not entitled to any amount under the escalation because the claim of escalation had already been denied vide letter dated 09.12.1993

and thereafter applicant withdrew his claim of escalation vide letter dated 03.12.1993. So far as applicability of clause 4.3.13.3 is concerned, the applicant was awarded work of Group-1 as an additional work of Group-2 under the same terms and conditions of the contract, therefore, payment under sub-clause (c) is not liable to be made to the applicant. Vide letter dated 06.01.1994, the schedule was attached for Group-1 work and the payment has been made under the said schedule.

[10] After evaluating the evidence that came on record, the learned Tribunal has rejected the claim No.1 and Claim 2 of the applicant and partly allowed the claim No.3 and 4 by directing the respondents to pay the amount of Rs. 4,17,258/- with pendente-lite and future interest @ 12% p.a. on Rs. 4,17,258/- till the amount is paid to the applicant.

Being aggrieved with the aforesaid award, the contractor/applicant approached before this Court by way of present Civil Revision.

[11] At the very outset, learned counsel for the applicant submitted that he is not pressing present revision for claim No.1. The main challenge in this revision is only in respect of rejection of claim No.2. Learned counsel for the applicant has drawn our attention to sub-clause 4.3.13.3 and argued that the applicant was awarded work of Group-2 since no one was in the position to complete the work of Group-1 and applicant himself came forward and offered to complete the work of Group-1 because without completing the work of Group-1, the work of Group-2 could have not been completed. The work of Group-1 was awarded to the applicant as an additional work of Group-2, therefore, it is a case of an increase in quantity during

the execution of the contract hence, clause 4.3.13.3 would apply. The case of the petitioner falls under sub-clause (c). Since the rate cannot be determined under sub-clause (a) and (b) then the rate shall be determined by the additional charges on the basis of the prevailing market rate to include the prime cost of material and labour charges plus 25% extra to cover the sundry, overhead charges etc.

[12] Shri Gajankush learned Additional Advocate General refuted that the case of the applicant would not fall under clause (c) as he was awarded the work of Group-1 as an additional work of Group-2 under the same terms and conditions of work of Group-2, which the applicant did accept and completed both the work. In the letter dated 06.01.1994, it had clearly been mentioned that no other conditions/claim would be accepted on any account whatsoever. The schedule of items of additional work was attached along with the aforesaid letter dated 06.01.1994. The rate has already been determined, therefore, even clause (c) will not apply as the schedule of items of additional work has already been given to the applicant and he accepted it vide letter dated 08.01.1994.

We have carefully gone through the entire record and award passed by the learned Tribunal, hence do not find any grounds for interference for the following reasons.

[13] Learned Tribunal has considered the aforesaid claim of the applicant in detail and rejected the same. The learned Tribunal has held that the applicant was not called upon to execute the work of Group-1, rather, the applicant himself offered to execute the work of Group -1 as additional work of Group-2 on the same terms and conditions. Accordingly, the

payments were made to the applicant.

[14] Group-1 work was originally given to M/s Manikchand Ajmera Earthmoving and Construction Company for the total amount of Rs.21,07,169.60/ on 03.02.1989. Later on, the period was extended up to 15.03.1991. Since the contractor failed to complete the work, hence, it was terminated and a fresh NIT was issued for balance work. The applicant submitted a tender for executing the debitible work of Group-1 by quoting rates 44.44% above U.S.R. The tender of Shri O.P. Mittal was accepted on 12.02.1993 for an amount of Rs.31,87,276.01/-. Since the debitible agency also failed to complete the work, the applicant was second lowest, hence came forward to execute the work as Group 2 work was held up. Vide letter dated 16.02.1993, the applicant's tender for work of Group-2 was accepted. Applicant vide letter dated 04.06.1993 written to the Chief Engineer gave an offer that in the overall interest of work, he is willing to do the work of Group-1 by reducing the rate @ 1.75%. Vide letter dated 30.10.1993 petitioner gave consent to carry out the work of Group-1 with the work of Group-2 with three conditions, which were rejected by the Superintending Engineer. Vide reply dated 03.12.1993, the applicant withdrew all the conditions and tendered willingness to execute the Group -1 work as additional work as per the terms and conditions of Group 2. The said offer was accepted by the competent authority vide letter dated 06.01.1194 which is reproduced below:-

Office of the Executive Engineer, Water Resources Division, Thikri.
Memo No.57/SAC/Thikri/ Dated 06/01/94

To,

M/s P.D. Agrawal & Co., 23, Joy Builders Colony,
Near Rani Sati Mandir,
I N D O R E-452003

Sub: Balance work of benching, construction of filter, see-page drains, boulder toe, E/W of main dam and pitching from R.D. 870/855 M. to 1230/1200 M. (Nalla Closure work) and excavation of approach and spill channel R.D. (-) 60 M. to R.D. 135 M. Including construction of guide bund from R.D. 200 M. to R.D. 410 M. of Bhadwali Tank Agr. No.25/-2/93.

Ref: Your willingness letter No.W-3-2/93/429/ Dt. 03.12.93 and ressed to S.E.L.N.C., Khargone and copy to this office.

Your willingness under reference has been accepted by competent authority. You are hereby requested to carry out the work under agreement, alongwith following additional work:-

" Balance work of earthen main dam from R.D.O.M. To R.D. 855/885 M. and from R.D. 1200/1215 M. to 1635 M. Including pitching boulder too, filter etc. and excavation and filling, cut off, puddle trench and sluice work at R.D. 885 M. of Bhadwali Tank. "

Consequent upon award of above additional work, you will adhere to the terms and conditions of agreement No.25/92/93.

No other conditions/claims will be accepted on any account whatsoever.

You are further advised to please arrange to submit an application for granting appropriate time extension immediately through S.D.O. W/R Sub-Division, Segaon. Please also arrange to mobilise your men and machinery at site of work and start the work without any further loss of time.

Encl: Schedule of items of additional work.

Encl;- As above

1. Copy of Schedule of times of additional work.
2. Copy of agreement

Executive Engineer
Water Resources D. Thikri.

[15] Without any protest, the applicant accepted the aforesaid letter and commenced the work. Vide letter dated 08.01.1994, the applicant demanded a copy of agreement No.25 of 1992-93 and demanded an extension of time of 9 months to complete both the work. Vide reply dated 22.01.1994, the copy of the schedule of items of additional work along with departmental rates was sent to the applicant for his guidance. Copy of agreement No.25 of 1992/93 was also provided. The applicant was requested to send willingness and arrange to complete the work. As per the enclosure, a copy of the schedule of items of additional work and a copy of the agreement was provided to

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the applicant. The reply dated 22.01.1994 is reproduced below:-

Office of the Executive Engineer, Water Resources Division, Thikri.

Memo No.379/SAC/Thikri/ Dated 22/01/94

To,
M/s P.D. Agrawal & Co., 23, Joy Builders Colony,
Near Rani Sati Mandir,
I N D O R E-452003

Sub: Balance work of benching, construction of filter, see-page drains, boulder toe, E/W of main dam and pitching from R.D. 870/855 M. to 1230/1200 M. (Nalla Closure work) and excavation of approach and spill channel R.D. (-) 60 M. to R.D. 135 M. Including construction of guide bund from R.D. 200 M. to R.D. 410 M. of Bhadwali Tank Agr. No.25/-2/93.

Ref: Your letter No. W-4-2/469 dt. 08.01.1994

Para wise reply to your letter under reference is as under:-

- (1) Copy of schedule of items of additional work alongwith departmental rates is enclosed herewith for your guidance please
- (2) Copy of agreement No.25 of 92-93 is enclosed herewith for your record.
- (3) Agreement was executed by you, as per the acceptance of tender by Govt. of M.P. Water Resources Department. Both the parties are now bound with provision of said agreement please.
- (4) You are required to furnish separate application for time extension giving specific reason for delay in commencement of work. Your application should also be accompanied with construction programme.
- (5) Decision in this respect will be communicated to you in due course of time please.
- (6) It is denied that there was any prevention to execute the work under contract agreement No.25/92/93.

Your requested to mobilise men and machinery and arrange to complete the work, as per the construction programme.

Executive Engineer
Water Resources D. Thikri.

[16] It is clear from the aforesaid communications between the parties to the contract, that for the additional work i.e. Group-1 work, a separate schedule was provided to the applicant and accordingly he commenced and completed the

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work, therefore the applicant is entitled only to get payment as per G Schedule of additional work.

[17] The first time, the applicant claimed its rates for extra items covering the additional work vide letter dated 27.04.1994 and requested for its sanction. Once, the applicant had accepted the letter dated 06.01.1994 along with a copy of the schedule of items of additional work then he is stopped from submitting his own rates for extra work. The learned Tribunal has not committed any error while dismissing the claim. The applicant is only entitled to payment as per G schedule of additional work enclosed letter dated 22.01.1994.

In view of the above, Civil Revision is hereby dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI)
JUDGE

praveen