M/S Bhullar Construction VsState Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Nov. 18, 2021

Acts Referred: Indian Contract Act, 1872 â€" Section 55

Hon'ble Judges: Rajendra Chandra Singh Samant, J

Bench: Single Bench

Advocate: Rajkamal Singh, Suryapratap Yuddhveer Singh, Sameer Oraon

Final Decision: Dismissed

Judgement

1. This civil revision is brought being aggrieved by the award dated 14.3.2018 passed in Reference Case No.12/2008 by the Chhattisgarh

Madhyastham Adhikaran, Raipur, Chhattisgarh.

2. Brief facts of the case are these, that the applicant firm is a registered civil contractor firm. Work order was issued in favour of applicant for

construction work of Ã¢â‚¬Å“Bhatapara-Lawan-Mahanadi-Road of length 22 kmÃ¢â‚¬. Cost of work was Rs.575.13 lacs. Applicant deposited earnest

money of Rs.2,88,000/-. After execution of formal agreement, the work was scheduled to start on 6.9.2005. Time allowed for completion of work was

18 months. Applicant also made security deposit of Rs.56,99,584/-. As per terms of agreement, progress of work could not be taken up at sufficient

pace. Respondent No.3 issued show-cause notice to applicant on 5.4.2006 (just after six months from the date of issuance of work order). Thereafter,

applicant was blacklisted by order dated 13.4.2006 by the respondents and contract was rescinded vide letter dated 22.4.2006. Reason assigned by

respondents for blacklisting the applicant and rescinding contract is that the work done by applicant was not as per specification and quality of work

was also very poor. Applicant has written letter dated 26.12.2006 to the Minister of Public Works Department alleging that the rescission of contract

and the blacklisting of the applicant by the department is illegal. The Ministry referred the matter to the Technical Advisor of Public Works

Department.

3. Applicant then preferred Writ Petition No.1469 of 2007 before this Court and this Court vide order dated 13.03.2007 allowed the petition and

declared that act of rescission of contract and blacklisting of the applicant by the respondents was illegal. The Chief Engineer vide order dated

17.02.2007 informed the applicant that his name has been withdrawn from blacklist and he was advised to make an application under clause 29 of the

agreement for revival of agreement. The applicant moved an application on 22.02.2007 before the Chief Engineer requesting for issuance of fresh

work order. Request of applicant was telephonically approved and on that basis the applicant resumed construction work. Respondent No.3 again

issued notice on 17.12.2007 to show cause as to why rescission of contract should not be ordered. Subsequent to that the petitioner was granted

extension vide order dated 03.01.2008. The contract was again terminated by the respondents on 1.3.2008. The applicant placed its claim before

respondent No.2 on 14.04.2008. Subsequent to that Reference Petition was filed before the Chhattisgarh State Arbitration Tribunal on 05.12.2008,

making a total claim of Rs.2,47,67,152/- against the respondents. The learned Tribunal decided the claim by the impugned award holding that the

applicant is not entitled for any compensation, damages or costs.

4. It is submitted by the counsel for applicant, that duration for completion of work fixed under the work order was 18 months. Conduct of the

Officers of the respondent had been totally non-cooperative throughout, who now and then raised false and frivolous issues interfering with process of

construction work. The work was started by the applicant in time even then contract was rescinded on 24.4.2006 and the applicant was blacklisted by

order dated 13.4.2006. The applicant challenged these orders in Writ Petition No.1469 of 2007 in which by order dated 13.3.2007, it was held that

rescission of contract and blacklisting of applicant was illegal. It is submitted that prior to this order the Chief Engineer of the respondent informed the

applicant by order dated 17.02.2007 to move application for revival of contract. It is further submitted that there is no such clause present in the

agreement by which rescinded contract can be revived. After the technical instruction from the officer of the respondent, applicant resumed

construction work, but again attitude of respondents was non-cooperative regarding which the applicant filed complaint against the SDO and Sub-

Engineer of the respondents. Applicant firm was pressurized to apply for extension of time for completion of contract and officer of the respondents

deliberately did not inspect and report the construction work done by the applicant firm. Finally the contract of the applicant was terminated on

1.3.2008, which was totally illegal and contrary to terms of contract. It is submitted that once High Court held in Writ Petition No.1469 of 2007 that

rescission of contract and blacklisting of the applicant was illegal, there was no requirement for the applicant to apply for revival of contract. The

learned Tribunal has made a mention of clause-3(v) of the agreement for dismissing the claim made by the applicant. Clause 3(v) of the agreement, as

mentioned in the impugned order, does not exist in contract agreement, therefore, it is submitted that the applicant is entitled for the claim. The learned

Tribunal has erroneously passed the impugned order, which is illegal, arbitrary and unsustainable, hence, the impugned order be set aside and relief, as

prayed, be granted to the applicant.

5. Learned State counsel submits on behalf of respondents, that the work order was issued on 6.9.2005 and expected date of completion of work was

5.3.2006. Performance of work by the applicant firm was not only at slow pace but also of sub-standard quality. Inspection report dated 4.1.2006

clearly points out lapses on the part of applicant firm regarding which applicant was given reminders by the department from time to time, but

applicant firm did not make any effort to remove lapses present in construction work. It is submitted that in Clause-2 of the general conditions of

contract there is a clear provision of consequences of delay in completion of contract work. Respondents under their authority had passed orders of

rescission of contract and finally termination of contract and also for making recovery from the applicant firm. Clause-3 of the general conditions of

contract empowers the respondents for action to be taken in case of work left incomplete, abandoned and delayed which has been lawfully exercised

by the respondents. The construction work was already delayed by the applicant firm because of which by letter dated 17.4.2007 the applicant was

advised to file application for extension of time but applicant did not file any such application. It is submitted that under Section 55 of the Contract Act

there is provision of consequences in case of failure to perform under a contract. The work order granted to the applicant was never completed and

respondent department had to get the said work done through other agency, therefore, finding of the learned Tribunal that applicant was not entitled

for any kind of relief of compensation is correct finding which needs no interference. It is further submitted that in this particular case time was

essence of contract and applicant firm failed to complete the work within the time fixed. Hence, impugned order is sustainable and civil revision filed

by the applicant is liable to be dismissed.

6. Learned counsel for the applicant submits in rebuttal, that in this particular case, time was not essence of contract looking to the events that have

occurred in between. It is submitted that the petitioner has brought evidence to prove correctness of his claims. Reliance has been placed on the

judgment of Supreme Court in case of Vincent Panikurlangara Vs. Union of India & Ors., reported in (1987) 2 SCC 165, Macadum Makers Vs. State

of Chhattisgarh & Ors., reported in 2012 SCC OnLine Chh 363, State of Rajasthan Vs. Nav Bharat Construction Co., reported in (2006) 1 SCC 86,

Manalal Prabhudayal Vs. Oriental Insurance Company Limited, reported in (2009) 17 SCC 296, South East Asia Marine Engineering and Construction

Limited Vs. Oil India Limited with Oil India Limited Vs. South East Asia Marine Engineering and Construction Limited, reported in (2020) 5 SCC 164,

J.G. Engineers Private Limited Vs. Union of India and another, reported in (2011) 5 SCC 758 & Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes

Ltd., reported in (2003) 5 SCC 705.

7. I have heard both the parties and perused the documents on record. Also perused the record of the C.G. Arbitration Tribunal.

8. Question for consideration framed by learned Tribunal in Paragraph No.7 of the impugned order is whether on account of illegal and unwanted acts

of the respondents, the applicant failed to complete the work under the contract in time? In Paragraph No.13 of the impugned order the learned

Tribunal has held that applicant commenced the work and upto 80% work was completed before rescission of contract on 13.4.2006. It is also

observed that the applicant firm had received 80% of cost of the work from running bills which goes to show that there was no substantial hindrance

in execution of work and therefore about 80% of the total work was completed within seven months. Later on, the applicant firm did not comply with

direction of the respondent because of which the contract was rescinded and applicant firm was blacklisted. It is also observed in paragraph-14 that

despite direction of the respondents, the applicant firm neither filed application for revival of contract nor filed application for extension of time for

completion of work. Reference of clause-3 (v) of agreement has been made which appears to be a clerical mistake, infact it is clause-3(c) of

agreement which dis-entitles a contractor to claim for any cost of work done in case the work contract is terminated.

9. Before the learned Arbitration Tribunal, both the parties have led evidence and exhibited documents in support of their respective cases and the

same have been appreciated by the learned Tribunal before passing the impugned order. The applicant was given letter of acceptance dated 29.8.2005

(Ex.P/4). Subsequent to which, after execution of agreement, the applicant started construction work. Applicant firm made complaint vide letter dated

10.3.2006 (Ex.P/6) to the Executive Engineer that the SDO and Sub-Engineer are not cooperating as they are not taking measurement of the collected

material. The SDO has verbally directed to stop work on 10.3.2006. There is no reply to this letter, however, on 5.4.2006 the Executive Engineer

issued a show-cause notice to the applicant mentioning about slow pace of work and delay and called upon applicant to show-cause as to why

proceedings in accordance with clause-3 of agreement be not initiated against the applicant. Vide order dated 5.4.2006 (Ex.P/7) the Chief Engineer

mentioning that construction was delayed by the applicant firm; applicant did not submit any reply to show-cause notice thereafter vide order dated

13.4.2006(Ex.P/8) Chief Engineer (PWD), has ordered for blacklisting of applicant firm. Subsequent to that the applicant was informed by letter dated

22.4.2006 Ex.P/9 regarding the rescission of contract.

10. The applicant then challenged the order dated 13.4.2006 by which the applicant firm was blacklisted in WPC No.1469/2007. A Division Bench of

this Court vide order dated 13.3.2007 held that the orders of blacklisting applicant firm was contrary to the terms and conditions of the contract and

accordingly order dated 13.4.2006 was quashed. It is relevant to mention here that rescission of contract was not ordered in the order dated 13.4.2006

(Ex.P/8), decision of rescission of contract was taken separately and applicant firm was intimated about the same by order dated 22.4.06(Ex.P/9),

therefore, decision of the respondents rescinding the contract was not under challenge in WPC No.1469/2007. The applicant firm made

correspondence with the respondent vide letters dated 1.2.2007 (Ex.P/12) and dated 22.2.2007 requesting that intermediate period be regarded as

suspended period. The applicant refused to make any prayer for revival of the contract on the ground that it is the duty of the department to revive the

contract. Although there is no specific order for revival of contract but it appears that applicant firm was allowed to resume contract work, hence, it

can be considered as deemed revival of contract and this is confirmed by letter dated 3.1.2008 issued by the Superintending Engineer to the applicant

firm mentioning the slow progress of work. Ex.P/16 is the application dated 12.6.2008 of the applicant firm to the Chief Engineer PWD, Raipur

praying for reference under clause-29 of the agreement for settlement of claims. A negative response was given by the Chief Engineer PWD vide

letter dated 17.6.2008 (Ex.P/17). Subsequent to which Reference Petition was filed before the learned Tribunal.

11. The work order was issued to the applicant by a communication dated 6.9.2005 ExD/5. The Executive Engineer issued memo dated 16.12.2005

ExD/6 that after lapse of 3 months from the date of work order the applicant was expected to complete 17% of the work, but so far only 0.33% work

was completed. Another memo dated 16.1.2006 ExD/7 was issued to the applicant informing that it was found in the inspection that sufficient

machineries are not present on the site of construction regarding which the applicant was instructed to arrange for new machineries and start

construction work. Another memo dated 18.1.2006 ExD/8 was issued to the applicant informing that proper compaction work was not being done,

regarding which instruction was given for compliance. It is subsequent to that the applicant was given show-cause notice Ex.D/9 dated 5.4.2006 as to

why the contract should not be rescinded and then the contract was rescinded by order dated 22.4.2006. The order of blacklisting of the applicant firm

was separately passed.

12. Vide Ex.D/12 the memo dated 17.2.2017 the applicant was asked to move an application for revival of contract regarding which it has been held

earlier that revival of the contract can be deemed. Ex.D/14 is the letter 20.3.2007 issued by the Executive Engineer to the Chief Engineer informing

that construction work has been resumed by applicant firm and the same is in progress. It further confirms deemed revival of the contract.

13. Considered on the submissions. After taking into consideration the evidence present in the record of learned Tribunal, the only question for

consideration, which appears to be present in this case, is whether the respondents had entitlement to proceed against the applicant as per condition

contained in clause-3 of the agreement.

14. Clause-3 of agreement reads as under:-

Ã¢â‚¬Å“In any case in which under any clause of this contract the contractor shall have rendered himself liable to pay compensation amounting to the

whole of his security deposit(whether paid in one sum or deducted by installments) or committed a breach of any of the rules contained in clause-24 or

in the case of abandonment of the work, except due to permanent disability or death of the contractor or any other cause, the Divisional Officer on

behalf of the Governor of Chhattisgarh, shall give a notice before 15 days for work costing up to -Rs.10.00 lacs and before 30 days for works costing

above 10.00 lacs, and in the event of the contractor failing to comply with the direction contained in the said notice, shall have power to adopt any of

the following courses, as he may deem best in the interests of the Government.

(a) To rescind the contract(of which rescission notice in writing to the contractor under the hand of the Divisional Officer shall be conclusive

evidence) and in which case the security deposit of the contractor shall stand forfeited and be absolutely at the disposal of Government.

(b) To employ labor paid by the Works Department and to supply material to carry out the work or any part of the work, debiting the contractor with

the cost of the labor and the price of materials(of the amount of which cost and price certificate of the Divisional Officer shell be final and conclusive

against the contractor) and crediting him with the value of the work done in all respects in the same manner and the same rates as if it had been

carried out by the contractor under the terms of his contract or the cost of the labour and the price of the materials as certified by the Divisional

Officer, whichever is less. The certificate of the Divisional Officer as to the value of the work done shall be final and conclusive against the

contractor.

(c) To measure up the work of the contractor and to take such part thereof as shall be unexecuted out of the hands, and to give it to another

contractor to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original

contractor, if the whole work had been executed by his (of the amount of which excess certificate in writing of the Divisional Officer shall be final and

conclusive) shall be born and paid by the original contractor and may be deducted from any money due to him by Government under the contract or

otherwise or from his security deposit or the proceeds of sale thereof or a sufficient part thereof.

In the event of any of the above courses being adopted by the Divisional Officer the Contractor shall have no claim to compensation for loss sustained

by him by reason of his having purchased or procured any materials or entered into any agreements or made any advances on account of, or with a

view to the execution of the work or the performance of the contract. And in case the contract shall be rescinded under the provision aforesaid the

contractor shall not be entitled to recover or be paid any sum for any work thereto for actually performed under the contract unless and until the Sub-

Divisional/Divisional officer will have certified in writing the performance of such work and the value payable in respect thereof, and he shall only

entitled to be paid the value so certified.

Whenever action is taken under clause 3a the contractors bill shall be finalised up within three months from the date of rescission both in the case of

building works and road and bridge work.Ã¢â‚¬‹

15. As per observations made herein-above, allegation against the applicant firm that was made by the respondents was with respect to the delay in

completion of work and sub-standard construction. In opening paragraph of clause-3, the grounds for action against contractor mentioned are these,

that in case the contractor has committed any breach of any rules contained in clause-24 of the agreement action shall be taken under clause-3.

Clause-24 of the agreement provides for payment of fair wages to the labourers employed by the contractor and there is nothing else apart from that.

Other ground for action against the contractor is abandonment of work. There is no such instance present in the case in hand that applicant firm at

any point of time abandoned the work. During continuation of work the applicant was blacklisted by the respondent vide order dated 13.4.2006.

Subsequent to which the contract was rescinded by order dated 22.4.2006. Because of rescission of contract on 22.4.2006, the applicant could not

proceed with the work, for which fault cannot be laid on his part. As per evidence, oral and documentary, there is proof that the applicant resumed

work despite there being order regarding revival of the contract but the facts show that there was deemed revival of the contract. The letter dated

16.2.2007, Chief Engineer to the Superintending Engineer directing that the contractor should be allowed to resume the work and that he should be

granted extension of time for the same. It is subsequent to that the work was resumed and the applicant was again served with notice of rescission on

17.12.2007 vide Ex.D/16 on the ground that the work has not been completed within stipulated/extended date of completion, on which no reply was

submitted by the applicant and the order of termination of agreement was passed on 1.3.2008.

16. Notice for rescission was given to the applicant after about 10 months from the date the applicant firm was asked to resume the work. Despite

having time about 10 months after resumption, the applicant firm could not complete construction work, which was remaining to be completed after

the work was stopped on 22.4.2006. The respondents were willing to extend duration for the targeted completion of work even then the applicant did

not file any application for extension of time. Show-cause notice was issued to the applicant on 17.12.2007 but no satisfactory reply was submitted by

applicant firm, explaining reasons for delay. It is for technical persons to appreciate and consider causes of delay and draw conclusion, this Court

cannot raise any question as to whether dissatisfaction expressed by the Executive Engineer and the order of termination of contract dated 1.3.2008

suffer from any infirmity. The logic is also applicable that after issuance of work order on 6.9.2005 according applicant contention the applicant had

completed 80% of work before rescission of contract on 13.4.2006, which has been disputed by respondent. The applicant had time of 10 months to

complete remaining work, but the applicant utterly failed to complete the same. Therefore, under these circumstances, clearly there were grounds

available to the respondents to proceed under clause-3 of the contract and accordingly the respondents have proceeded against the applicant. Hence,

the learned Tribunal has not committed any error in holding that the applicant has no entitlement for making any claim for any compensation, damages

or cost. There is no illegality, impropriety, incorrectness in the impugned order which warrants interference of this Court in exercise of revisional

jurisdiction and this revision being sans merit is liable to be dismissed.

17. The revision petition is accordingly dismissed.