(1979) 09 KL CK 0023

High Court Of Kerala

Case No: A.S. No. 133 of 1975

P.J. Mathai		APPELLANT
	Vs	
The State of Kerala		RESPONDENT

Date of Decision: Sept. 14, 1979

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: V. Balakrishna Eradi, J; K.K. Narendran, J

Bench: Division Bench

Advocate: S. Narayanan Poti, S. Sankara Subban and Mathew Kalappurakkal, for the Appellant; T.C.N. Menon, A.A.G., for the Respondent

Judgement

Balakrishna Eradi, J.

The Plaintiff in O.S. No. 22 of 1972 on the file of the Subordinate Judge''s Court, Trichur is the Appellant before us. That is a suit instituted by him against the State of Kerala for recovery of the balance amount said to be due to him in respect of the execution of a contract work with interest and costs. The Plaintiff was the successful tenderer for the construction of an earthen dam, well sluice, surplus sluice and surplus channel at Pathazhakundu, Talappilly Taluk as part of the Trichur Minor Irrigation Project. The tender submitted by the Plaintiff was accepted by the Department as per a communication dated 26th August 1964. But the proceedings for the acquisition of an important part of the work site, where from earth was to be quarried for the dam work, seems to have taken an inordinate length of time with the result that the site was handed over to the Plaintiff for commencement of the contract work only on 3rd February 1967. In the meantime, there had been a steep escalation in the labour charges, cost of materials, the cost of food to be supplied to the labourers, etc., and hence the Plaintiff put in representations as per Exts. P-2 and P-3 requesting that at least in respect of such portion of the work as he had been called upon to do in excess of the 110 per cent of the originally estimated quantity he should be sanctioned enhanced rates in accordance with the revised departmental scale of rates which was in force in 1967 and 1968. The work of construction of the dam,

etc., was completed by the Plaintiff according to schedule and the site was handed over by him on 8th February 1969. Immediately thereafter the Plaintiff applied for the issuance of the requisite certificate for final payment under Clause 68 of the Madras Detailed Standard Specifications. Check measurement of the whole work was thereafter conducted by the Junior Engineer and the said process was completed on 23rd April 1969 and a final bill evidenced by Ext. B-17(a) was prepared by the Junior Engineer on 5th July 1969. As per that final bill the Junior Engineer recommended that Rs. 3,92,657 should be paid to the Plaintiff as balance amount due to him for the construction work. However, the matters did not move and the payment of the balance amount due to the Plaintiff as per the final bill prepared by the Junior Engineer was being indefinitely delayed. The Plaintiff thereupon issued a suit notice to the State Government as per Ext. B-6 dated 27th August 1969 demanding payment of the amount of Rs. 3,92,657 with interest at 12 per cent per annum from the date of completion of the work. In reply thereto the Plaintiff was informed as per Ext. A-2 dated 11th May 1970 that the Superintending Engineer, Minor Irrigation Circle had been directed to settle his claims and that the Plaintiff may therefore contact the Superintending Engineer, Minor Irrigation Circle, Trichur. Notwithstanding the said assurance held out in Ext. A-2, the Plaintiff was not paid the balance amount due to him, even after the lapse of several months subsequent to the despatch of Ext. A-2. The Plaintiff was therefore, forced to approach this Court by filing OP. No. 1560 of 1971 seeking the issuance of a writ of mandamus under Article 226 of the Constitution. It is only after receipt of the notice in the said writ petition that technical sanction for the revised estimate for the dam work was granted by the Chief Engineer as per Ext. B-12 dated 5th November 1971 and a certificate for payment of the final bill was issued by the Executive Engineer under Clause 68 of the Madras Detailed Standard Specifications as per Ext. B-7 dated 11th November 1971. Under the said certificate a sum of Rs. 3,90,720.24 was sanctioned to be paid to the Plaintiff subject to any legitimate deductions or retentions. On 11th November 1971 itself an amount of Rs. 3,68,730.41 was disbursed to the Plaintiff by the concerned Executive Engineer. That amount was arrived at after deducting from Rs. 3,90,720.24 a sum of Rs. 17,500 representing the security amount that had been originally refunded to the Plaintiff and a further sum of Rs. 4,489.83 representing the cost of some materials inclusive of sales tax, etc. While receiving the aforesaid amount the Plaintiff protested as per Ext. B-8 against the withholding of Rs. 17,500 being the security deposit which he was entitled to get back and also against the non-payment of interest of the final bill amount for the period subsequent to the date of completion of the work. Since the said protest was not heeded by the State Government the Plaintiff instituted the present suit for recovery of the balance amount due to him by way of refund of the security deposit as well as by way of interest. The lower court found that there had been inordinate delay on the part of the Defendant in effecting payment to the Plaintiff and that the Plaintiff has sustained consequential monetary loss on account of the same. But, it took the view that the Plaintiff is precluded from claiming interest from the Defendant in respect of the balance amount due for the execution of the contract work by reason of the provisions contained in Clause 69 of the Madras Detailed Standard Specifications. On this ground the

Plaintiff''s claim for recovery of interest was disallowed by the lower court. The court below, however, granted the Plaintiff a decree for recovery of a sum of Rs. 17,500 representing the amount of security deposit which had been withheld while disbursing the final bill amount and allowed the Plaintiff 6 per cent interest thereon from the date of suit till the date of realisation. In other respects the suit was dismissed without costs. It is against the said judgment and decree of the court below that the Plaintiff has filed this appeal.

2. The main point urged before us on behalf of the Plaintiff concerns the claim for interest put forward in respect of the final bill amount of Rs. 3,68,730.41. It is contended by the learned Advocate for the Appellant that the view taken by the court below that Clause 69 of the Madras Detailed Standard Specifications imposes an absolute bar against any claim by the contractor for such interest is erroneous and unsustainable. It is also submitted that the Plaintiff is entitled to be awarded interest on the final bill amount inasmuch as he had made a specific demand for payment of interest as per Ext. B-6, dated 27th August 1969.

3. After giving our anxious consideration to the arguments advanced on both sides, we have unhesitatingly come to the conclusion that the aforesaid contentions put forward by the Appellant have to be upheld. The first question to be considered is whether Clause 68 of the Madras Detailed Standard Specifications imposes an absolute bar against claims for interest being put forward by contractors in circumstances such as those obtaining in the present case. In our opinion Clauses 68 and 69 of the Madras Detailed Standard Specifications have to be read together. Under Clause 68 it is laid down that payment will be made to the contractor under the certificates to be issued at reasonably frequent intervals by the Executive Engineer or the Sub-Divisional Officer during the course of the progress of the work. On the completion of the entire work a certificate will be issued by the Executive Engineer or the Sub-Divisional Officer on the basis of which the contractor will receive the final payment of the monies due or payable to him under or by virtue of the contract except the security deposit and a sum equal to 2 1/2 per cent of the total value of the work done, provided there is no recovery from the deposit by the contractor to be made under Clause 60. The amount so withheld from the final bill will also be paid to the contractor together with security deposit within a period of six months. It is further specifically enjoined by Clause 68 that on an application being made by the contractor for the certificate referred to above after completion of the work, the Executive Engineer or the Sub-Divisional Officer shall issue such certificate within 14 days of the application.

4. Clause 69 then lays down that no omission by the Executive Engineer or the Sub-Divisional Officer to pay the amount due upon the certificate shall vitiate or make void the contract nor shall the contractor be entitled to interest upon any guarantee bond or payment in arrear, nor upon any balance which may, on the final submission of his accounts, be found to be due to him.

5. On a combined reading of Clauses 68 and 69 we think it will be reasonable to hold that the bar imposed by Clause 69 against a claim for interest being put forward by the contractor will get attracted only in cases where a certificate has been issued by the Executive Engineer/Sub-Divisional Officer in strict accord with the provisions obtained in Clause 68. It is mandatory under that clause that such certificate should be issued by the Executive Engineer or Sub-Divisional Officer within 14 days of the date on which the application for certificate is put in by the contractor after completion of the work. It is not contemplated by the scheme underlying Clauses 68 and 69 that after completion of the work the issuance of the certificate should be indefinitely delayed and the contractor be made to wait for the payment due to him without even any entitlement for interest for the period of such delay occasioned by no fault of his. The opening words of Clause 69 clearly indicate that the bar imposed under the said clause will be attracted only in case where the certificates have been duly issued by the Executive Engineer/Sub-Divisional Officer in strict conformity with the provisions contained in Clause 68.

6. In the present case the work was completed on 8th February 1969 and immediately thereafter the Plaintiff had applied for the grant of a certificate as required under Clause 68. The final taking of measurement was completed on 23rd April 1969 and a final bill was also prepared by the Junior Engineer shortly thereafter. But the certificate under Clause 68 was issued only on 11th November 1971 after a lapse of more than 2 years and 9 months from the date of the application filed by the Plaintiff under Clause 68. Such being the facts, we are clearly of opinion that the bar imposed by Clause 69 against payment of interest on money due to the contractor is not attracted to the present case.

7. In the light of the foregoing discussion it is manifest that the sole ground upon which the lower court has disallowed interest to the Plaintiff in respect of the amount of Rs. 3,68,730.41 sanctioned to be paid under the final bill evidenced by Ext. B-7 is not correct or sustainable in law. The Plaintiff had made a specific demand for payment of interest as per the suit notice evidenced by Ext. B-6 and hence under the general law he is entitled to claim interest from the Defendant with interest from the date of suit notice. We accordingly hold that the Plaintiff is entitled to recover from the Defendant interest at 12 per cent per annum on the sum of Rs. 3,68,730.41 for the period between 27th August 1969 (the date of Ext. B-6) and 11th November 1971 (the date of actual payment of the amount of final bill).

8. While granting the Plaintiff the decree for recovery of the sum of Rs. 17,500, which had been withheld by the Defendant at the time of effecting payment of the final bill on the ground that it represented the security amount, the lower court has allowed the Plaintiff interest on the said amount only from the date of the suit. We find no justification whatever for denying interest to the Plaintiff in respect of the aforesaid amount of Rs. 17,500 for the period between 11th November 1971 and 4th February 1972 (the date of institution of the suit). It is not contended before us by the learned Government Pleader that there was any valid ground justifying retention of the aforesaid sum of Rs. 17,500 while effecting payment of the final bill amount. Admittedly the work executed by the

Plaintiff had been found to be free from any defect and much more than 6 months had elapsed from the date of completion and check measurements of the work by the time the final bill amount was disbursed to the Plaintiff. There was, therefore, no warrant whatever for keeping back the amount of Rs. 17,500 representing the security deposit while effecting payment of the final bill amount. The Plaintiff is, therefore, entitled to be paid interest on the sum of Rs. 17,500 also, for the period between 11th November 1971 and 4th February 1972. In the circumstances we consider that the rate of interest in respect of this amount may be fixed at 6 per cent per annum for the aforesaid period.

9. In the result, we modify the decree of the court below by allowing the Plaintiff to recover from the Defendant interest at 12 per cent per annum on the sum of Rs. 3,68,730.41 for the period between 27th August 1969 and 11th November 1971. On the amount so due to the Plaintiff by way of interest as on the date of institution of the suit, the Plaintiff will also get 6 per cent interest per annum from the date of the suit till the date of realisation. The Plaintiff is also allowed to recover from the Defendant interest on the sum of Rs. 17,500 at 6 per cent per annum for the period between 11th November 1971 and 4th February 1972. In other respects the decree of the court below will stand confirmed. The Plaintiff Appellant is allowed to recover from the Defendant-Respondent one half of the costs incurred by him in this Court as well as in the court below.