

S.C. Co. Ltd. Vs. United Constructions Co. Engineers and Contractors

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Court : Andhra Pradesh

Decided On : Oct-26-2004

Reported in : 2005(1)ALD46

Judge : L. Narasimha Reddy, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 34; Minimum Wages Act; Workmen's Compensation Act; Industrial Disputes Act; Code of Civil Procedure (CPC) - Sections 34

Appeal No. : Civil Miscellaneous Appeal No. 3322 of 2000

Appellant : S.C. Co. Ltd.

Respondent : United Constructions Co. Engineers and Contractors

Advocate for Def. : H. Venugopal, Adv.

Advocate for Pet/Ap. : K. Sreenivasa Murthy, Adv.

Judgement :

L. Narasimha Reddy, J.

1. This Civil Miscellaneous Appeal is filed against the judgment, dated 20.01.2000, of the District Judge, Karimnagar, in O.P. No. 62 of 1997.

2. The appellant invited tenders for the work of 'construction of 2000 MT Capacity G.L.Bunkers' at 10A Incline Govdavarikhani, Karimnagar District, through a tender notice, dated 23.12.1991. The value of the work was estimated at Rs.42,85,343.71 ps. The respondent emerged as the successful tenderer and was assigned the work. After completion of the work, the respondent submitted a claim for a sum of Rs.7,91,763.66 ps. alleging that the Government of Andhra Pradesh issued G.O.Ms. No. 34, dated 24.02.1992, enhancing the minimum wages for un-skilled, semi-skilled and skilled labourers and thereby, he had to incur the additional expenditure.

2. The appellant did not accede to the request of the respondent. It pleaded that under Clause 24 of the General Conditions, it is the obligation of the respondent to meet any expenditure, on account of amendment to the provisions of various legislations dealing with employees, and that it is not liable to pay the amount. On a request made by the respondent, the matter was referred for arbitration.

3. The Arbitrator, on a consideration of the conditions put forward before him by the parties, passed an award, dated 05.12.1996, rejecting the claim of the respondent. Aggrieved thereby, the respondent filed O.P. No. 62 of 1997 under Section 34 of the [Arbitration and Conciliation Act, 1996](#). Through the judgment under appeal, the trial Court had set aside the award and allowed the claim of the respondent in its entirety.

4. Sri.K.Sreenivasamurthy, learned counsel for the appellant, submits that it was the obligation of the respondent to meet any additional liability arising out of enhancement or modification of the wages, and Clause 24 of the General Conditions is very clear on this aspect. He submits that except making a claim flatly at 35% of the entire value, the respondent did not furnish the particulars as to how many workers of different categories were engaged by him or the quantum of wages paid to them. He submits that the trial Court was not justified in allowing the claim, as prayed for.

5. Sri.H.Venugopal, learned counsel for the respondent, on the other hand, submits that the estimate of the work, before inviting tenders was made duly taking into account the minimum wages prevalent at that point of time, and it is the duty

of the appellant to meet the additional liability resulting out of a statutory obligation. He places reliance upon the judgment of the Supreme Court in Tarapur and Company v. State of Madhya Pradesh, : [1994]1SCR1012 He submits that necessary material, in support of the claim, was placed before the Arbitrator.

6. The respondent emerged as the successful tenderer for the work, referred to above. There was no dispute as to the completion of the work or the payment of the amount, as per the agreed rates. The respondent submitted a claim for a sum of Rs. 7,91,763.66 ps. on the ground that during the work period, the minimum wages were enhanced in exercise of powers under the Minimum Wages Act (for short 'the Act'). It is a matter of record that the minimum wages for the un-skilled, semi-skilled and skilled workers were revised and the relevant figures as on the date of award of contract and with effect from 01.04.1992 are as under:

As on the date of award of contract With effect from 01.04.1992(per day)(per day)
Un-skilled Rs.19.25ps. Rs.30.00/- Semi-skilled Rs.25.00/- Rs.40.00/- Skilled
Rs.33.00/- Rs.55.00/-

7. The respondent claimed the enhancement on this account at the flat rate of 35% value of the entire work. This plea was resisted by the appellant by placing reliance upon Clause 24 of the General Conditions. The relevant clause is to the effect that it shall be the responsibility of the contractor to meet any liability arising out of any claims under the provisions of the Workmen's Compensation Act, Industrial Disputes Act etc,. If the present claim were to be the one under those enactments, it was liable to be rejected straight away in view of the said Clause. The claim is on the basis of revision of wages under the Act. It is a statutory obligation and nobody can plead any excuse for this. Further, it is not denied that the wages constitute an important component of the work and the wages prevalent as on the date of inviting tenders are certainly required to be taken into account. The revision of wages has its own impact on the entire cost of work. The question as to whether the liability arising out of such a situation is to be met by the agency, for whose benefit the work is undertaken, was dealt with by the Supreme Court in Tarapur and Company v. State of Madhya Pradesh's case (1 supra). It was clearly held therein that since the wages are required to be paid as an obligation arising

under the statute, the agency, for whose benefit the work is undertaken, is under obligation to meet the additional liability. The trial Court relied on this judgment and reversed the entire award passed by the Arbitrator. Therefore, no exception can be taken to the same.

8. One fact which however, needs attention is that unless the tender itself specified the quantum or the component of wages vis--vis the entire value, it is a matter of verification to ascertain as to how much additional liability was incurred by the respondent on account of enhancement of minimum wages. The evidence, in this regard, be it either before the Arbitrator or the trial Court is scanty and is in a way, not existent. Therefore, the trial Court was not justified in straight away allowing the claim without further verification. Strictly speaking, the matter needs to be remanded for fresh disposal and adjudication either by the Arbitrator or by the trial Court. However, learned counsel for the respondent submits that it is too difficult, at this stage, to produce the relevant record, having regard to the lapse of time, ever since the completion of work. Though the principle is in favour of the respondent, the facts are not clear to support his claim, in its entirety.

9. Taking the totality of the circumstances, this Court is of the view that ends of justice would be met, if the claim is restricted to Rs.5,00,000/-(Rupees Five Lakhs only). The trial Court granted interest with effect from 01.07.1993 under Section 34 of C.P.C. A Court is competent to grant interest from the date of the judgment and it is the prerogative of the Arbitrator to award interest for periods anterior to that.

10. In that view of the matter, the appeal is partly allowed and the decree passed by the trial Court is modified to the effect that the respondent shall be entitled for a sum of Rs.5,00,000/- with interest at the rate of 12% from 20.01.2000. There shall be no order as to costs.