

Ghasi Ram Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-05-1977

Reported in : 1977WLN(UC)235

Judge : V.P. Tyagi, C.J. and; R.L. Gupta, J.

Appeal No. : D.B. Civil Special Appeal No. 306 of 1971

Appellant : Ghasi Ram

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, C.J.

1. This appeal has been filed under Section 18 of the Rajasthan High Court Ordinance and is directed against the judgment of the Single Judge dated October 27, 1970.

2. Learned Counsel for the plaintiff-appellant has limited his argument only to one point, namely, that his client was entitled to get 7% over and above the rate quoted by him for using the river shingle chips and, therefore, we propose to discuss this question alone.

3. The plaintiff had taken a contract for providing 3/4' bitumen carpet on road from Sirohi to Kalandari from mile of to 18 and for that purpose a tender was given by him quoting that he would charge 7% above the rates mentioned in Schedule 'G' In that tender he had to use hand broken chips but later on by his letter Ex. 6 the plaintiff withdrew condition mentioned in the tender and further stated that he would use the same kind of chips which had been used on Sumerpur-Sirohi road on miles 18 to 23, that is, river shingle chips, and would charge Rs. 20/- per 100 cubic feet plus the actual carriage charge and also the same percentage above the scheduled rates. The Super intending Engineer vide his letter Ex. 4 accepted this change offered by the plaintiff-contractor and also accepted the charge of Rs. 20/ per 100/- cubic feet plus the actual carriage charges, but he did not specifically mention anything about the payment of 7% above the rates as mentioned be the plaintiff in his letter Ex. 6. It is not a disputed matter that the Superintending Engineer neither accepted nor rejected the latter's condition of charging 7 percent over and above the quoted rates for river shingle chips. Learned course 1 for the appellant, however, urged that the subsequent conduct of the employees of the P.W.D. shows that the condition of the payment of 7% above the quoted rates was accepted In them as is manifested by making payment of the running bill and also by a document marked as Ex 5, with deals with the extra items and known as extra item slip prepared by Shri R.C. Shri Assistant Engineer, and accepted by Shri v. Section Gupta, Executive Engineer. This document shows that over and above the amount to be calculated at the rate quoted by the appellant 7% charges were added to the said amount which cores to Rs. 2,894.32 p. The plaintiff-appellant at this stage claims only this, amount, as, according to him, it was accepted by the P.W.D. though the Superintending Engineer has not specifically accepted the term of charging 7% above the rates quoted by the appellant. The schedule of powers of the different hierarchy in the Public Works Department shows that the Super intending Engineer is a competent person to sanction payment without schedule of rates for additional items not provided for in sanctioned estimate if the amount exceeds Rs. 5,000/-. This schedule of powers shows that it was only the Super intending Engineer who was the competent authority to accept the payment of the items not mentioned in the schedule of rates if the amount exceeds Rs. 5,000/-. Ex. 5 shows that the change

suggested by the plaintiff-appellant for the use of the material entailed the payment of over a sum of Rs. 41.000/- which means that this could be sanctioned only by the Superintending Engineer.

4. These circumstances raise a question whether the proposal made by the appellant for the use of river shingle chips in place of hands broken chips required to be sanctioned by the Superintending Engineer and whether the Superintending Engineer while exercising his authority under the schedule of powers accepted the terms offered by the appellant to pay over and above the quoted rates 7% extra. It is not disputed that the Superintending Engineer had accepted in unequivocal terms the use of the river shoe chips and he also agreed to pay to the appellant Rs. 20/- per 100 cubic feet plus the actual carriage charges, but he did not make it in his letter Ex. 4 any thing about the acceptance of the offer made by the appellant for the payment of 7% extra over the said charges. The question is whether the silence on the part of the Superintending Engineer can be said to be tantamount to the acceptance of the offer made by the plaintiff-appellant. The learned Single Judge had counsel for the appellant could not show any law on the point whether the term which was offered and is partly accepted and no specific acceptance is given for the rest, can be said to have been accepted in toto. Silence on the part of the Superintending Engineer cannot be taken as his acceptance. The learned Single Judge has dealt with this question elaborately in his judgment and we find that the reasoning given by him for rejecting the appellant's appeal for the grant of 7% above the price quoted by him, cannot be said to be erroneous.

5. We do not find any merit in this appeal & it is hereby dismissed. Since the appellant was labouring under the impression due to the conduct of the employee of the P.W.D. that his offer of 7% above the rates quoted by him was accepted, we feel that the justice would be met if the costs are made easy throughout. Accordingly the costs are made easy only on the amount claimed by the appellant in this appeal relating to the payment @ 7 percent above the rates quoted by him.