

Hyderabad Municipal Corporation

Vs

M. Krishnaswami Mudaliar and Mudaliar and Another

Civil Appeal No. 316 (N) of 1971

(V. D. Tulzapurkar, V. Khalid JJ)

06.02.1985

ORDER

1. The only question vehemently by counsel for the appellant in this appeal was that the respondent-plaintiff was not entitled to claim 20 per cent. extra over and agreed upon between the parties under the suit contract Ex. A-1.

2. Under Ex. A-1 drainage works for CSIR Laboratory at Uppal was entrusted to the respondent-plaintiff and under the terms of the contract the work was to be completed by the plaintiff within a period of one year, i.e., from March 26, 1951 to March 25, 1952. Admittedly at the instance of the Executive Engineer, PWD due to financial difficulties - less budget having been provided for in the year 1951-52 - the plaintiff was requested to spread over the work for two years more, that is to say to complete the same in three years but the respondent-plaintiff was agreeable to spread over the work for two years more as suggested on condition that extra payment will have to be made to him in view of increased rates of either material or wages. The Government did not intimate to the respondent-plaintiff that no extra payment on account of increased rates would be paid to him or that he will have to complete the work on the basis of original rates. In fact no reply was sent by the Government and a studied silence was maintained by the Government in regard to the respondent-plaintiff's demand for extra payment, in spite of several reminders in that behalf, till the plaintiff actually completed the work during the spread over period and only when after completion of work the plaintiff-respondent submitted his final bill claiming 20 per cent. extra over and above the rates originally agreed upon between the parties the Government stated that he was not entitled to increased rates. After considering the correspondence exchanged between the parties and the other material on record the High Court has taken the view that the Government was liable to make extra payment for the work done as there was no dispute that the rates of material, etc. had increased during the extended period of two years and plaintiff was entitled to such extra payment. After considering the relevant material on record we are of the view that both in equity and in law the plaintiff contractor is entitled to receive extra payment and the High Court was right in deciding the question in respondent-plaintiff's favour. Since subsequent to the entering into the agreement Ex. A-1 the Drainage Division was transferred from PWD to Hyderabad Municipal Corporation the liability to make this extra payment in our view has been properly saddled on the appellant Corporation.

3. The other point which was faintly urged by counsel for the appellant was in regard to interest claimed by the respondent-plaintiff on the balance of the amount due to him but which had wrongly been retained by the Department. Counsel urged that under Clause 27 of the contract it was provided that "the contractor shall not be entitled to interest upon any payments in arrears on upon any balance which may on final settlement of his accounts be found due to him". In our view the

reliance on this clause is of no avail to the appellant for the simple reason that this clause will be applicable provided the work was completed according to the specifications and the time schedule fixed in the original contract. Moreover in the instant case plaintiff had issued notice claiming interest under the Interest Act and the High Court has, in modification of trial court's decree, awarded interest from the date of notice till payment. The claim for interest, therefore, was rightly allowed.

4. In the result the appeal is dismissed but there will be no order as to costs.

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