

T.N. Electricity Board and Another

Vs

N. Raju Reddiar and Another

Civil Appeal No. 7496 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

24.04.1996

JUDGEMENT

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PATTANAİK, J. :-

1. Leave granted.

2. This appeal by special leave is directed against the judgment of the Division Bench of the Madras High Court dated 6-9-1995 in O. S. A. No. 112 of 1987. The plaintiffs who are the respondents in this appeal filed the suit on the original side of the High Court for recovery of a sum of Rs. 46,08,820/- together with interest at 18% per annum. It was alleged in the plaint that the defendants who are appellants in this appeal invited tenders for transportation of iron and steel materials including unloading, weighing and stocking from various stock yards of the suppliers to the destination stores during the period 1-9-1978 to 31-8-1979. In pursuance of the aforesaid advertisement the Plaintiff No. 1 submitted this tender on 12-7-1978 and along with tender submitted, a letter was also enclosed. This offer of the plaintiff was accepted and an agreement was entered into. In accordance with the agreement the plaintiff furnished a bank guarantee and deposited the necessary earnest money and commenced the work of transport of materials. It was further alleged that the plaintiffs carried the material and delivered the same at various destinations as per the direction given from time to time by the defendants. In all a total quantity of 1,73,78,821 metric tonnes of iron and steel were transported and the necessary bills were submitted in November, 1979. But the defendant instead of making the payments in accordance with the terms of the contract postponed the payment of the bills. It was averred in the plaint that the defendant agreed to pay on multi slab basis which is apparent from letter of the plaintiff attached to the tender submitted by him and that was also the trade practice. The plaintiff finally issued a notice on 28-3-1980 calling upon the defendants to settle the bills but the defendants replied on 7-5-1980 making several misleading averments. As the plaintiffs' bills were not settled, the suit was filed for recovery of the amount as already stated.

3. The defendants in their written statement denied the allegations made in the plaint. The specific stand taken in the written statements was that the plaintiffs are not entitled to claim multi slab basis and on the other hand they are entitled to single slab basis. It was stated that the multi slab rates had never been accepted and not covered by the agreement executed by the parties. It was also stated that on the basis of instructions from headquarters the Superintending Engineers have been passing the bills on single slab basis on the plaintiffs remained silent during the entire tenure of the contract period but raised this issue after the contract period was over. The defendant further averred that the

plaintiffs have not delivered the materials correctly at some destinations. In reply to the aforesaid written statement the plaintiffs also filed a reply statement denying the allegations made in the written statement and reiterated the stand taken in the plaint. On these pleadings the learned single Judge framed three issues and on Issue No. 1 came to hold that the rates mentioned in Exhibit D-8 will have to be calculated on single slab basis and not on multi slab basis as contended by the plaintiffs. So far as the letter Exhibit P-1 dated 11-7-1978 which was enclosed to the tender from Exhibit P-2, the learned single Judge negatived the contention of the defendant and came to hold that the words written in ink in Exhibit P-1 were there at the time of submission of the tender. The words were "I have quoted my rates for each slab and add for every extra one and part thereof". The plaintiffs' case is essentially based on the aforesaid expression in the letter which was enclosed to the tender and which according to the plaintiffs was ultimately accepted. The learned single Judge, however, construed the expression "for each slab" mentioned in Exhibit D-6 and came to hold that the tender was not on multi slab basis. The learned Judge also held that merely because the tender conditions are not clear one cannot accept the contention of the plaintiff that the rates agreed upon is on multi slab basis. Further taking into account the terms and conditions of Exhibit D-1 the learned Judge came to hold that the irresistible conclusion is that what was intended is only a single slab basis. The learned Judge also examined several other tenders and then negatived the plaintiffs' contention that the agreement was on multi slab basis. On an analysis of the pattern of the working of the rates in several tenders the learned Judge rejected the plaintiffs' contention that the contract was on multi slab basis. Though the plaintiffs relied upon several recommendations of the Superintending Engineer but the learned Judge on consideration of the same came to hold that those recommendations will have to be rejected. It was also held that the terms and conditions of a contract have to be decided on its own and production of other contracts will not be of any help in deciding what are the terms of the present contract. He also held that defendants failed to produce any other contemporaneous contract which has been granted on multi slab basis. On issue No. 2 the learned single Judge on consideration of entire evidence on record came to hold that the shortages alleged by the defendants had not been established. On Issue No. 3 the learned single Judge came to hold that there is considerable delay in the matter of payment of bills though such delay had occasioned on account of difference in the interpretation of the terms of the contract and the delay is on the part of the defendants on settling the bills. With these conclusion and on calculating on single slab basis the learned single Judge passed a decree for Rs. 9,31,157. 63 with interest at 12% per annum from 1-1-1980 till the date of decree and thereafter at 6% per annum. The suit was thus decreed in part. The plaintiffs challenged the decree by filing an appeal and the defendants also filed a cross-objection challenging that part of the decree in favour of the plaintiffs. The Division Bench of the High Court relying upon the hand written portion of Exhibit P-1 and the conduct of the Superintending Engineer in passing the plaintiffs' bills on multi slab basis as well as relying upon some other contracts came to hold that the plaintiffs are entitled to freight charges on multi slab basis. The Division Bench also held that the interpretation of the learned single Judge of the expression 'for each slab' is wholly erroneous and it could only mean that the rate was on multi slab basis. With these conclusion the Division Bench allowed the plaintiffs appeal and dismissed the defendants' corss-objection and hence the present appeal by special leave.

4. Mr. V. R. Reddy, the learned Additional Solicitor General appearing for the appellants contended that the hand written portion in the plaintiff's letter Exhibit P-1 dated 11-7-1978 which was enclosed to the tender form Exhibit P-2 is nothing but a subsequent interpolation inasmuch as neither there is any signature either of the plaintiff or of the receiving officer on the same and further it was really astonishing that though the tender was submitted on 12-7-1978 but according to the plaintiff an attested copy of the letter could be obtained from the departmental officer on 11-7-1978. Mr. Reddy

further argued that the acceptance of the tender by the contractor clearly indicates that it was on single slab basis as the note to the same states "only one rate should be quoted for various lengths and sizes and not different rates for different lengths". Mr. Reddy further urged that the very fact that the plaintiffs did not submit any bills till the end of the contract period and started to submit the bills during the extended period of the contract would indicate that with an obvious illegal design the bills were not being submitted in time. Repelling the reasoning advanced by the Division Bench of the High Court Mr. Reddy urged that passing of some bills by some of the Superintending Engineers on multi slab basis is not determinative of the terms and conditions of the contract particularly when the contract is a written one and consequently the Division Bench erred in law that the contract was on multi slab basis.

5. We find sufficient force in each of the contentions advanced by the learned counsel for the appellants.

6. Mr. Sivasurbramaniam, the learned senior counsel appearing for the respondents, repelling the contentions advanced by Mr. Reddy urged that there was no issue at all on the question as to whether hand written portion was subsequently inserted with the connivance of the officers of the Board and therefore it would not be appropriate for this Court to interfere with the same at this stage. The learned counsel also contended that the very admission of DW-1, one of the witnesses of the defendants to the effect that after submission of the tender, discussion were made with the contractor and the contractor explicitly expressed to have the work done on multi slab basis, clinches the matter and it is not open for the defendants to give a go bye to the said admission of the witness. The learned counsel also urged that the defendants in fact accepted and acted on multi slab basis as is apparent from the letter Exhibit P-39 dated 18-4-80 from the Superintending Engineer, General Construction Circle/South, Tirunelvalli to the Chief Engineer, Materials Management, whereunder not only the Superintending Engineer has candidly admitted that the system of payment of multi slab basis has been in vogue in several circles but also stated that the single slab system will not give a workable practical solution. Learned counsel lastly urged that the single slab system is on the face of it wholly unreasonable and to sustain the said argument placed before us certain calculations made in different documents. We are unable to persuade ourselves to agree with the contentions advanced by the learned counsel for the respondents.

7. At the outset it must be borne in mind that the agreement between the parties was a written agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a contract is reduced to writing, by operation of Section 91 of the Evidence Act it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead by oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract. The case in hand has to be adjudged bearing in mind the aforesaid principles and the plaintiffs being conscious of this position along with the tender appended a letter and in that letter inserted certain terms by writing in ink to establish the case that the acceptance of the plaintiffs tender would tantamount to the acceptance to the terms contained in the letter in which there was insertion in writing to the effect that it was on multi slab basis. It is in this context the question whether such hand written portion was originally there or was subsequently inserted assumes great significance. We are unable to accept the stand taken by the learned counsel for the respondent that there was no such issue on this question inasmuch as this question was

considered by the learned Trial Judge while discussing Issue No. 1 on the basis of evidence laid and the Trial Judge had given a finding in favour of this plaintiffs. The said finding, however, on the face of it appears to us to be wholly unsustainable. As has been stated earlier there was no signature either by the persons submitting the tender or by the persons receiving the same on the hand written portion of the letter. The learned Trial Judge had noticed that the certified copy which was issued by the Board on 11-7-1978 of the aforesaid letter clearly contains the hand written portion and therefore he came to the conclusion that the hand written portion was there at the time of submission of the tender. The tender itself was submitted on 12-7-1978 and we fail to understand how the Board could grant a certified copy of the letter on 11-7-1978 when the plaintiffs' case itself is that along with the tender he had appended the letter in question. On this ground alone it can be safely held that hand written portion in Exhibit P-1 was not there at the time of submission of the tender but was subsequently inserted obviously with the connivance of the officers of the Board. The Board in its rejoinder affidavit filed in this Court has stated that the attested copy was actually received on 28-12-1978, much later than the finalisation of the tenders and agreement and in order to build up a case the aforesaid interpolation has been made. In the facts and circumstances of the present case the aforesaid stand of the Board appears to us to be wholly justified and at any rate we have no hesitation to come to the conclusion that the hand written portion in Exhibit P-1 was not there initially and has been inserted subsequently. The main basis of the plaintiffs' case on which a multi slab rate was claimed therefore fails. The written agreement between the parties nowhere indicates that the rate to be paid to the plaintiffs was on multi slab basis and the terms and conditions of the written contract is not susceptible of such a construction.

8. It is no doubt true that DW-1 a witness of the defendants in his evidence had admitted that after submission of tender there was certain discussions between the contractor and the authorities and in that discussion contractor had expressed to charge for the job on multi slab basis and same was accepted by the authorities. We are afraid a decree cannot be granted in favour of the plaintiffs on the aforesaid statement since the contract in hand was a written one. There is no document whatsoever in support of the aforesaid so called after tender discussion and the acceptance of the terms in the said discussion to the effect that rate would be charged on multi slab basis. Then again if the plaintiff had appended the letter to the tender indicating that he would be charging on multi slab basis there was no occasion to have any after tender discussion or to raise the issue of rate being accepted on multi slab basis. The so called statement of DW-1 therefore is wholly unacceptable and in the eye of law also cannot be taken into account to vary the terms of the written contract. The Division Bench of the High Court committed obvious error in allowing variance of the terms of the written contract relying upon such statement of DW-1 and granted the decree on multi slab basis.

9. The only other question which survives for consideration is whether the conduct of some of Superintending Engineers in passing some of the bills on multi slab basis can be pleaded as an estoppel against the defendants and can form the basis of plaintiffs' case. The answer to this question must be in the negative. It transpires that some of the Superintending Engineers passed some of the bills on multi slab basis and further when complaints were received and the matter was investigated into by vigilance to absolve the concerned officers from liability, a recommendation has been made to grant the rate on multi slab basis. But such a recommendation or such passing of bills on one count or multi slab basis cannot be construed to have conferred a right on the plaintiffs to get the payments on multi slab basis, until and unless it is proved by the plaintiff that the defendants agreed under the written contract to pay on multi slab basis. The plaintiffs have utterly failed to establish the same. A particular officer for various reasons may pass a bill on multi slab basis or a contractor may be able to get one of his bills passed at a rate other than the rate given in written contract in connivance with the passing authority. But when a dispute arises and the matter comes to Court for

adjudication no decree can be granted to the plaintiffs on that basis and the plaintiffs would be required to establish that the defendants in written contract agreed to grant the rate on multi slab basis. That has not been established in the case in hand. Therefore, in our considered opinion the Division Bench of the High Court wholly erred in law in allowing the plaintiffs' appeal and granting the decree accepting plaintiffs' claim that the rate has to be paid on multi slab basis. In the aforesaid premises the impugned judgment and decree of the Division Bench is set aside and that of the learned single Judge is affirmed. This appeal is allowed, but in the circumstance there will be no order as to costs. Appeal allowed.