

SUPREME COURT OF INDIA

U.P. State Electricity Board

Vs.

Om Metals & Minerals (P) Ltd.

(M.Jagannadha Rao and M.B. Shah JJ.)

08.08.2000

ORDER

1. These appeals are preferred by the U.P. State Electricity Board against the judgment of the High Court of Allahabad, dated 20.5.1994 in F.A.F.O. Nos. 8 and 9 of 1993. By the said judgment, the High Court confirmed the judgment of the trial court dated 4.9.92. It rejected the objections filed by the appellants and made the Award, dated 26.3.1991, a rule of Court, for Rs. 25,00,000/- and interest thereon.

2. The main point urged before the trial court and the High Court and again before this Court on behalf of the appellants-State is that, according to the additional conditions of the contract, no compensation was payable for delayed work and it was also specified there that these additional conditions prevail over all other conditions. Learned Counsel for the appellants submitted that the claims for delayed work made by the contractor would fall within the scope of the additional conditions and, therefore, no extra compensation was payable. This contention was not accepted by the civil court and the High Court. The High Court referred to Clause 16 of the additional conditions. It reads as follows:

No delay in completion of civil works is anticipated. If there is any delay in completion of civil works, the contractor shall execute work on same rates/conditions upto a maximum period of 16 months from the date of award of contract which is inclusive of four months as stated against SI. No. 12 of this order.

The High Court held that the case, in fact, fell within the exception provided in this Clause and, therefore, compensation for delayed work was payable.

3. It will be noticed that this Clause does not make an absolute prohibition in regard to the payment of compensation for delayed work. On the other hand, it provides for payment of compensation for delayed work, provided the work is delayed beyond 16 months from the date of the award of the contract, which is inclusive of the 4 months as stated in para 12 of the Order. Admittedly, in these cases, the period of the work was 21 months and 28 days and it is not disputed before us that this period is in excess of the limitation imposed in Clause 16.

4. It is true that various other Clauses in the contract such as 7.06, 39 and 49.10 give an indication that certain extra amounts are not payable to the contractor, such as on account of delay in drawings etc. While it is true that these Clauses do not provide for payment of extra amounts, in our opinion,

even these Clauses are governed by Clause 16 which covers the entire "civil works" referred to in Clause, 7.06, 39 and 49.10. Clause 16, in our view, governs all these Clauses. In other words, in spite of the prohibition in the said Clauses, the position-is that if the delay factually exceeds 16 months as stated in Clause 16, it is permissible to award compensation for the delayed work, and Clauses 7.06, 39 and 49.10 cannot come in the way.

5. It is then contended further for the appellant as follows:

In the present cases, the contractor had made various claims towards delayed work. Claim No. 1 was for Rs. 33.97 lakhs and other claims, namely, Claims 2 to 9 which altogether roughly amount to Rs. 16,00,000/-. Claim 10 was interest. The amount awarded by the arbitrator namely, Rs. 25,00,000/- was a lump sum award and it is not possible to find out how much amount was allocated towards each of these claims for delayed work. Be it may, if the period of work admittedly exceeded 16 months as specified in Clause 16, the prohibition against grant of compensation disappears and therefore, the appellants would not be able to rely on the prohibition in Clauses 7.06, 39 and 49.10. This was precisely what the trial court and High Court held in the present case. They therefore, held that the arbitrator had not exceeded his jurisdiction in awarding compensation for the delayed work.

6. In our view, the reasoning of the High Court cannot be faulted, particularly in view of the language of Clause 16. The appeals are accordingly dismissed. There will be no order as to costs.

7. The bank guarantee/security, if any, furnished by the respondent for receiving the amounts covered by the decree will now stand discharged.