

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: HON'BLE MR. SHANTANU KEMKAR AND
HON'BLE MR. S. C. SHARMA, JJ

WRIT PETITION NO. 4004 / 2011
RAJENDRA KUMAR S/O KALYANMAL

Vs.

STATE OF MP & THREE OTHERS

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ORDER
(29/6/2011)

PER S. C. SHARMA, J :-

The petitioner before this Court has filed this present writ petition being aggrieved by the action of the respondents in cancelling the contract in respect of construction of Lakhpura Tank Project etc., The contention of the petitioner is that an agreement was executed between the petitioner and respondent No.4 for construction of Lakhpura Tank Project, excavation of puddle trench, cut off trench and filter and boulder toe, approach and spill channel etc., and earth work including watering construction of head sluice, flush bar cum guidwall and chute fall. The petitioner has further stated that a work order was issued on 15/2/08

and the period for conclusion of the contract was 15 months including rainy season. The petitioner has further stated that on account of an agitation by land owners the work was not completed in time and the respondents were informed vide letter dt. 7/7/10. The petitioner has further stated that he was not even provided with police protection and the executive engineer wrote a letter to the Chief Engineer for foreclosure of the contract on 30/7/10. The petitioner has further stated that the matter was forwarded to the Chief Engineer and the Chief Engineer granted permission on 15/9/10 and finally the Superintending Engineer has passed an order on 13/12/10 to foreclose the agreement. The petitioner has further stated that a Committee was constituted for making final measurements on 12/8/10 and the petitioner was also paid a final bill on 15/12/10. However, by the impugned order dt. 18/4/11 the petitioner has been directed to be present at the site enabling the department to attend the joint measurement and he has also been informed that the contract in question has been terminated. Learned counsel for the petitioner has vehemently argued before this court

that the question of fresh measurement in the present case, does not arise and the amount for completing the incomplete work cannot be charged from him. He has prayed for quashing of the letter dt. 18/4/11.

Learned Government Advocate appearing on behalf of respondents, at the outset, has argued before this court that as per the terms and conditions of the agreement executed between the parties, the petitioner, in case is aggrieved and in case there is a dispute between the parties, he has to resort to the arbitration proceedings. He has drawn the attention of this Court towards clause 4.3.29.2 of the agreement and his contention is that the petitioner has to approach the Superintending Engineer at the first instance and in case he is dissatisfied with the final decision of the Superintending Engineer, a remedy is available to refer such dispute to the arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran, 1982 (Act No. 2 of 1983).

Heard learned counsel for the parties at admission stage.

In the present case, it is certainly not in dispute that a

NIT was issued on 17/10/07 and the tenders were opened on 23/11/07. The agreement was executed between the parties which is also on record and clause 4.3.29.2 reads as under :

4.3.29.2 : Except where otherwise specified in the contract, for claims valued at Rs.50,000/- or more the decision of the S.E. Of the circle for the time being in respect of all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereto before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings, specifications, estimates, instructions, orders, or those conditions or otherwise concerning the work of execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be final provided that the Superintending Engineer shall before giving his decision in writing in the matter give an opportunity of being heard, to the parties in contract.

If any party to the contract is dissatisfied with the final decision of the SE in respect of any matter, he may within 28 days after receiving notice of such decision may refer such dispute to the Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam

1982 (No. 2 of 1983).

The aforesaid clause under the agreement makes it very clear that in case of any dispute of whatsoever kind, the matter has to be referred to the Superintending Engineer and in case any party is dissatisfied with the final decision of the Superintending Engineer has to refer such dispute for Arbitration.

Resultantly, as the petitioner is having an alternative remedy to approach the Superintending Engineer and thereafter for Arbitration, no case for admission is made out in the peculiar facts and circumstances of the case and the writ petition is disposed of with a liberty to the petitioner to avail the remedy as provided under clause 4.3.29.2 of the agreement. The petition is accordingly disposed of.

(SHANTANU KEMKAR)
J U D G E

(S. C. SHARMA)
J U D G E