

IN THE COURT OF SENIOR CIVIL JUDGE- 1 AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 79 OF 2010

Plaintiff:

Mr. Lalthhuanmawia
S/o Lalsangliana
Class – I Contractor
College Veng, Aizawl

By Advocates

: 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Versus

Defendants:

1. The State of Mizoram
Represented by the Chief Secretary to the
Govt. of Mizoram
Mizoram- Aizawl
2. The Secretary to the Govt. of Mizoram
Health and Family Welfare Department
Mizoram- Aizawl
3. The Mission Director
Mizoram State Health Society
Mizoram- Aizawl

By Advocates

: 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 18-07-2012

Date of Judgment & Order : 20-07-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGEMENT & ORDER

GENESIS OF THE CASE

This is a suit for cancellation of the Work Order No. D. 11011/13-HNAHTHIAL/07- NRHM/SPMSU/5 Dt. 26th August, 2008 and for recovery

of Rs. 35,00,000/- for purchase of building materials, labour charges and execution of works for upgradation and strengthening of Community Health Centre at Hnahthial. The plaintiff being a first class contractor was selected to bid Restricted Tender for bid invited by the office of the defendant no. 3 on 23rd July/2008 and also accepted the reply of the plaintiff by the defendant no. 3 on 20th Aug., 2008 for the contract price of Rs. 134,57,740.85. The defendants later precluded the plaintiff from continuation of his execution of his contract works. The plaintiff therefore prays that (a) a decree be passed for setting aside and quashed the impugned cancellation order No. D. 11011/13- HNAHTHIAL/07-NRHM/SPMSU Dt. 19th January, 2010 (b) a decree be passed for compensation amounting to Rs. 24,51,066/- as compensation for the volume of works already done and materials stocked by him for the said purpose (c) a decree be passed for compensation amounting to Rs. 5,00,000/- as mental agony and suffering for the impugned cancellation of his work order without having any fault (d) costs of the suit in favour of the plaintiff (e) any other relief which this court deems fit and proper.

The defendant no. 3 by contesting in the suit filed written statements stating that the suit is bad for non-joinder of necessary parties. Although the work was awarded to the plaintiff, Mr. R. Lalrinliana, Upper Republic, Aizawl started execution of the work and the plaintiff was not actually executed the work. The amount of work already executed by Mr. R. Lalrinliana was estimated only casting of 7 (seven) columns upto the plinth level by 9.2.2009 (After lapse of 5 months and 13 days) which cannot be termed as full swing. The amount of works executed by Pu R. Lalrinliana including the stock materials is Rs. 6,67,000/-. Meanwhile, Rs. 8 lakhs was paid to the said Mr. R. Lalrinliana on 5.3.2010 and he received the same thankfully for compensation to him. Thus, prayed to dismiss the suit.

The other defendants did not contest in the suit.

ISSUES

Issues were framed on 18-01-2011 and amended towards correct findings as follows-

1. Whether the suit is maintainable or not in its present form and style.
2. Whether cancellation order of the contract work already assigned to the plaintiff before completion is liable to set aside or not.
3. What exact amount will be expensed by the plaintiff for his construction of upgradation and strengthening of Community Health Centre at Hnahthial before he left the work due to cancellation of his work order.
4. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely

1. Mr. Lalchhuanmawia S/o Lalsangliana, College Veng, Aizawl (Hereinafter referred to as PW- 1)
2. Mr. R. Lalrinliana, Upper Republic, Aizawl (Hereinafter referred to as PW- 2)
3. Er. R. Rohmingliana, B.E. Manager (Hereinafter referred to as PW- 3)

The **PW-1** in his examination in chief mainly affirmed averments and submission in the plaint being the plaintiff. He further deposed that –

Ext. P-1 is his plaint
 Ext. P-1 (a) (b) and (c) are his signatures
 Ext. P-2 is a copy of letter Dt. 23.7.2008
 Ext. P-3 is a copy of letter of acceptance Dt. 20/8/2008
 Ext. P-4 is a copy of letter Dt. 26/8/2008
 Ext. P-5 is a copy of Contract Form
 Ext. P-5 (a) is his signature
 Ext. P-6 is a copy of Representation Dt. 9/2/2009
 Ext. P-7 is a copy of meeting minute Dt. 9/3/2009
 Ext. P-8 is a copy of Representation Dt. 27/6/2009
 Ext. P-8(a) is his signature
 Ext. P-9 is a copy of Assessment made by A.E. Dt. 16/9/2009
 Ext. P-10 is a copy of Representation Dt. 14/9/2009
 Ext. P-10 (a) is his signature
 Ext. P-11 is a copy of detail assessment of quantity of work executed for the work
 Ext. P-12 is a photographs of materials stocked by him

During his cross examination, he admitted that only once or twice, he visited the place of his execution work. Mr. R. Lalrinliana was employed as Manager in the work. He denied that he did not yet to dig 22 numbers of foundation trenches. He admitted that he received Rs. 8 lakhs from the Department. He also admitted that duration of his work was about 5 months.

The **PW-2** in his examination in chief deposed that Mr. Lalchhuanmawia was allotted the work for upgradation and strengthening of Community Health Centre at Hnahthial and he was employed as Work Manager being well acquainted with the plaintiff. The plaintiff assigned the work to him since *ab initio*. They started the work since October, 2008 and thereby stocked Cement, balu and stone chips etc. The Senior Executive Engineer, Health Department verbally told them to stop the work as Hnahthial was elevated into District capital by translating the work from Community Health Centre to District Hospital. As mandate, they left all materials which they stocked on the spot. Although the Engineer accurately assessed that their expenditure for the work was Rs. 24,56,419.80, the Engineer of Health Department recklessly assessed the said expenditure at about Rs. 8 lakhs by ignoring their actual work like ignoring 22 foundation

trenches by miscalculating only about 7 foundation trenches. The said assessment of Department Engineer is therefore baseless.

In his cross examination, he admitted Rs. 8 lakhs was already received from the defendants. He denied that the work was again purchased from the plaintiff but he was merely engaged as Work Manager. Although the Assistant Engineer called him for assessment, he did not attend to assist him. He admitted that they failed to produce photograph showing digging of 22 foundation trenches in the court. In the said 22 foundation trenches, it includes their wrong foundation trenches and their new foundation trenches for making correction. Assessment which they mentioned is assessment of the work already executed by them.

In his re examination, he further deposed that their colleagues at Lunglei employed an Engineer for making assessment of the work already executed by them.

The **PW-3** deposed in his examination in chief that being an Engineer, the plaintiff engaged him as Manager in the work for upgradation and strengthening of Community Health Centre at Hnahthial. They started the work since October, 2008 and thereby stocked Cement, balu and stone chips etc. The Senior Executive Engineer, Health Department verbally told them to stop the work as Hnahthial was elevated into District capital by translating the work from Community Health Centre to District Hospital. As mandate, they left all materials which they stocked on the spot. Although the Engineer accurately assessed that their expenditure for the collection of building materials was Rs. 24,56,419.80 as he estimated being an Engineer, the Engineer of Health Department recklessly assessed the said expenditure at about Rs. 8 lakhs by ignoring their actual work like ignoring 22 foundation trenches by miscalculating only about 7 foundation trenches. The said assessment of Department Engineer is therefore baseless. Ext. P-11 (a) is his signature

In his cross examination, he further deposed that no documents were exhibited showing his engagement with the plaintiff. Cash memo and receipt for realizing purchase of building materials of the plaintiff was not produced in the court. On perusal of exhibited photographs, it cannot be estimated the expenditure of Rs. 24 lakhs in the said work. He also admitted that all required building materials like cement, stone dust, stone chips etc. were not already collected at that particular stage. There is no photograph showing that the materials like cement, stone chips and stone dust etc stocked by the plaintiff. No written record of the wages of Mistiry, helper and Manager is found.

For the defendants:

On the otherhand, the defendants had produced the following witnesses namely-

1. Smt. Vanlalauvi, Cashier, NRHM (Hereinafter referred to as DW-1)

2. Dr. Pachuau Lalmalsawma, Consultant, NRHM (Hereinafter referred to as DW-2)
3. Mr. Jonathan K. Lalmawizuala, Assistant Engineer, PWD (Hereinafter referred to as DW-3)

The **DW-1** in his examination in chief deposed that Ext. D-1 is a Cheque bearing Rs. 8 lakhs in favour of the plaintiff and it was handed over to Mr. R. Lalrinliana on 5/3/2010.

The **DW-2** in his examination in chief deposed mainly affirmed and epitomize the averments and submissions in the written statements of defendant no. 3. Ext. D-3 is a written statement submitted by defendant no. 3.

During his cross examination, he admitted that since 2008, he is deployed at NRHM and he has been never posted at Hnahthial but he sometimes visited Hnahthial. He did not know Mr. R. Lalrinliana and also does not know the plaintiff whether he already met or not. After the instant cause of action, he did not visit the disputed site and he also never saw the instant construction work and he did not know the engagement of the plaintiff in the instant case. On the basis of their office documents, he simply stated that the claimed of the plaintiff is exorbitant.

The **DW-3** in his examination in chief deposed that although he informed Mr. R. Lalrinliana to make assessment of the work which they already executed but Mr. R. Lalrinliana failed to assist him. On his estimation, there is no chance to accrue the expenditure of the plaintiff on the work is Rs. 24,56,419.80 and his estimate at Rs. 6,67,000/- is correct and accurate. Their assessment with the Sr. Executive Engineer, Health Department was accurate on the basis of physical measurement in the presence of the department staff of Hnahthial CHC. Although they assessed at Rs. 6,67,000/-, Rs. 8 lakhs was paid to Mr. R. Lalrinliana, Republic Veng, Aizawl on 5.3.2010. Ext. D-2 is the Detail Assessment of quality of works executed. Ext. D-2 (a) is his signature.

In his cross examination, he deposed that in 2002, he completed his B.E. (Civil) from Bangalore. He admitted that without written notice/record, he informed Mr. R. Lalrinliana to make assessment of their work. He admitted neither the plaintiff nor his representative present on the spot at the time of making assessment of their work by them. He also admitted that at the time of spot assessment, Mr. Thanchunga, Sr. Executive Engineer was not present on the spot. He also admitted that the work order of the plaintiff was cancelled due to intention to elevate Community Health Centre building into District Hospital but it is beyond his knowledge about continuation of construction of District Hospital building at Hnahthial.

ARGUMENTS

At the time of written and oral arguments, learned counsel for the plaintiff argued that there is no dispute on the cancellation of the work order which was issued in favour of the plaintiff before completion of his work as also admitted by oral evidence of the defendants. Learned counsel

for the plaintiff thereby concluded that the impugned cancellation order is therefore liable to set aside.

On the other hand, Mr. R. Lalremruata, learned AGA for the defendants after reiterating their averments in written statements and appreciating oral evidences remain stood in their own grounds in their written statements.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not in its present form and style.

The plaintiff paid requisite court fees and the plaint is duly accompanied by paragraph wise affidavit, although there is no specific valuation of the suit in the plaint, the suit is adjudicated as maintainable in its present form and style.

Issue No. 2

Whether cancellation order of the contract work already assigned to the plaintiff before completion is liable to set aside or not.

Till arguments, the plaintiff hazy on the impugned cancellation order, in the introductory part of the plaint, the plaintiff craves to cancel Work Order No. D. 11011/13- HNAHTHIAL/07- NRHM/SPMSU/5 Dt. 26th August, 2008. In the last part of the plaint, the plaintiff prayed for setting aside and quashed the impugned cancellation order No. D. 11011/13- HNAHTHIAL/07- NRHM/SPMSU Dt. 19th January, 2010. How to adjudicate the crux properly is the moot point. Moreover, the plaintiff fails to produce and exhibit the impugned order. Although undisputed that the contract work order of the plaintiff was cancelled before his completion in anticipation of elevation of District Hospital from Community Health Centre as deposed by DWs which is unchallenged by the plaintiff.

For that purpose, law is well settled that unless proving arbitrariness and capricious of executive/government order, interference of court is not called for. More over, as revealed by Ext. P-7 viz. 4th Meeting minutes of the Governing Body of Mizoram State Health Society held on 9th March, 2009, it was fairly resolved to upgrade Hnahthial Community Health Centre into District Hospital status which is public good and rather appreciated to meet public health which is now incorporated as a part of fundamental rights of the citizenry. As the plaintiff failed to prove the arbitrary and capricious act of the defendants, no grounds for setting aside of the impugned cancellation order can be arisen.

Issue No. 3

What exact amount will be expensed by the plaintiff for his construction of upgradation and strengthening of Community Health Centre at Hnahthial before he left the work due to cancellation of his work order.

Ext. P-11 viz. assessment made by the PW-3 and Ext. P- 9 viz. assessment made by the DW-3 is different although technical accuracy was found in both exhibits. Ext. P-9 embodied the expenditure of the plaintiff falls at Rs. 6,67,000/- whilst Ext. P-11 estimated that the expenditure on the work of the plaintiff is at Rs. 24,56,419.80. Undisputedly, the plaintiff engaged Mr. R. Lalrinliana Republic veng, Aizawl to carry out the physical work on the spot as the PW-1 also deposed being the plaintiff, whilst the said Mr. R. Lalrinliana stood as PW-2 admitted during his cross examination that he was called upon by the Assistant Engineer of the defendants for making spot assessment of their expenditure and further admitted that he did not assist the said Assistant Engineer which is in tune with the deposition of DW- 3 viz. Assistant Engineer, PWD. However, Ext. P- 11 viz. assessment made by the PW-3 and Ext. P- 9 viz. assessment made by the DW-3 was separately done without the presence of concerned parties in the dispute.

In this catena, as the defendant fairly called upon the plaintiff for making assessment of his construction work through his agent Mr. R. Lalrinliana, refusal to attend on the spot can be estopped for making a separate claim on the own convenience and interest of the plaintiff. In excess of the said Ext. P- 9 viz. assessment made by the DW-3, compensation was already given to the plaintiff at Rs. 8 lakhs by the plaintiff. How rather accurate mode of assessment and exact quantum can be determined whilst the plaintiff betrayed to accurate the defendants for making assessment is not understandable. The PW-3 also He also admitted during his cross examination that all required building materials like cement, stone dust, stone chips etc. were not already collected at that particular stage. As the plaintiff therefore fails to proof exact quantum of expenditure involved in the disputed construction by betraying spot accurate assessment and whilst his exhibited photographs is also very limited as admitted by PW-3 in his cross examination, this issue is inevitable adjudicated affirmative to the defendants.

Issue No. 4

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

Since the plaintiff fails to proof his case as elaborated and found in the afore issues, no entitlement of relief claimed in the suit/plaint can be granted.

ORDER

As per the findings reached in the afore issues, the suit due to lack of merits is hereby dismissed but no order as to costs of the suit.

The case shall stand disposed of.

Give this copy and decree to both parties and all concerned.

Given under my hand and seal of this court on this 20th July, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. CS/79/2010, Sr. CJ (A)/

Dated Aizawl, the 20th July, 2012

Copy to:

1. Mr. Lalchhuanmawia S/o Lalsangliana, Class – I Contractor, College Veng, Aizawl through Mr. L.H. Lianhrima, Adv.
2. The State of Mizoram Represented by the Chief Secretary to the Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
3. The Secretary to the Govt. of Mizoram, Health and Family Welfare Department, Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
4. The Mission Director, Mizoram State Health Society, Mizoram- Aizawl through Mr. R. Lalremruata, Asst. Govt. Advocate, District Court- Aizawl
5. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
6. Case record

PESKAR