

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

CIVIL SUIT NO. 58 OF 2011

Plaintiff:

Mizoram Technocrats Company (P) Ltd.
Sikulpuikawn, Aizawl
Represented by its Chairman

By Advocates

: 1. Mr. Benjamin L.Z. Pautu
2. Mr. Robert L. Hnamte
3. Mr. S. Lalthanliana

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Trade & Commerce Department
Mizoram - Aizawl
3. The Director
Trade & Commerce Department
Govt. of Mizoram
Mizoram - Aizawl

By Advocates

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

Date of Arguments : 07-11-2012
Date of Judgment & Order : 08-11-2012

BEFORE

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

J U D G M E N T & O R D E R

FACTUAL SCENARIO

By entering into Contractual Agreement Dt. 7th May, 2008 for a period of two calendar years till 7th May, 2010, the plaintiff used to engaged with the defendant Government for preparation of Drawing and Estimate of all

buildings, road etc including execution and internal electrification of all buildings proposed and constructed by the Trade and Commerce Department at Zokhawthar and Melbuk. After lapse of period of agreement, the defendant no. 3 asked the plaintiff to prepare some works at Melbuk and Zokhawthar under his letter Dt. 27th June, 2010. The defendant no. 3 later informed the plaintiff about ceased of the said Deed of Agreement under his letter Dt. 23rd July, 2010. However, the plaintiff submitted detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar on 20th Sept., 2010 to the defendant no. 3. The plaintiff therefore claimed 4% of the total estimated cost of the work as consultancy fees on the basis of their Contractual Agreement Dt. 7th May, 2008 amounting to Rs. 8,48,120/- (Rupees eight lakhs, forty eight thousand, one hundred and twenty) with interest rate @ 12% per annum against the defendants and a sum of Rs. 20,000/- as compensation and costs of the suit.

The defendants by denying the submissions of the plaintiff contended that after lapse of Contractual Agreement Dt. 7th May, 2008, the plaintiff has no cause of action and the said Contractual Agreement Dt. 7th May, 2008 is null and void and unregistered document. The plaintiff were also duly informed about expiry of their agreement as created Engineering Cell to prepare plan and estimate. More so, as per the minutes of the meeting of State Level Export Promotion Committee held on Dt. 4/8/2010, only Rs. 178 lakhs was sanctioned by the Ministry of Commerce and Industry as first installment and there is no question of allotment of work order for a sum of Rs. 234 lakhs. Thus, prayed to dismiss of the suit.

ISSUES

Issues were framed on 14/12/2011 and amended towards correct findings as follows

1. Whether the suit is maintainable in its present form and style.
2. Whether the plaintiff has cause of action and locus standi on the basis of the Deed of Agreement Dt. 7/5/2008 by and between the plaintiff and defendant no. 3 claiming 4% of the total estimated cost of the work as consultancy fees
3. Whether the plaintiff and the defendants executed any valid agreement apart from Deed of Agreement Dt. 7/5/2008 for detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted to the defendant no. 3
4. Whether the plaintiff is entitled to the reliefs 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. C. Lalsiama, Chairman, Mizoram Technocrats Company (P) Ltd.
(Hereinafter referred to as PW-1)
2. Mr. Jimmy Lalnunthara S/o Zaithantluanga, Chaltlang, Aizawl
(Hereinafter referred to as PW-2)

The **PW -1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint being the Attorney holder of the plaintiffs. He further exhibited the following documents-

- Ext. P- 1 is a copy of Deed of Agreement Dt. 7/5/2008
- Ext. P-2 is a copy of allotment of work Dt. 29th June, 2010
- Ext. P-3 is a copy of minute of meeting of State Level Export Promotion Committee held on Dt. 4/8/2010
- Ext. P-4 is a copy of detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted to the defendant no. 3
- Ext. P-5 is a copy of forwarding letter along with detailed bill Dt. 20th Sept., 2010
- Ext. P-6 is a copy of forwarding letter along with detailed bill Dt. 24th Sept., 2010
- Ext. P-7 is a copy of Legal Notice Dt. 13/3/2011

In his cross examination by learned AGA for state defendants, he admitted that their contractual agreement with the defendants was ceased on 7/5/2010 and no other agreements except work order was entered again. He also admitted that they failed to prepare estimate in line with work order Dt. 29th June, 2010 and also not feasible to prepare bill coping with the said work order as verbal instruction to modify the same was received. Although they submitted their detailed estimate, he did not know whether the Department used the same or not.

The **PW -2** in his examination in chief deposed that he used to work under the plaintiff company till July, 2008 as Engineering by profession. He was present for execution of Deed of Agreement Dt. 7/5/2008 and also involved in the preparation of plan, estimate and drawing made by the plaintiff company.

In his cross examination, he admitted that he have seen the letter of the defendant Dt. 25/7/2010 addressed to the chairman of the plaintiff company. He left the plaintiff company in July, 2008.

For the defendants:

The defendants had produced the following witnesses namely-

1. Mr. H.D. Lalrintluanga, Jt. Director, Trade and Commerce Department (Hereinafter referred to as DW-1)
2. Mr. Vanrothanga, Khawhai, Champhai District (Hereinafter referred to as DW-2)

The **DW-1** in his examination in chief mainly affirmed their written statements. He exhibited that Ext. D-1 is their written statement, Ext. D-1 (a) is the signature of Mr. Biaktluanga. Ext. D-2 is the letter Dt. 23rd July, 2010 for information to ceasing Deed of Agreement.

In his cross examination he admitted that their Director assigned the plaintiff company for the instant work under his letter Dt. 29th June, 2010. The Director also went to Zokhawthar and propose changes to the original draft preparation of plan, estimate and drawing done by the plaintiff company. He also admitted that the draft plan, estimate and drawing submitted by the plaintiff company was accepted by the meeting of State Level Export Promotion Committee held on Dt. 4/8/2010.

The **DW-2** in his examination in chief deposed that he used to work at Melbuk and did not find the involvement of the plaintiff company for execution of the work.

In his cross examination, he admitted that he did not know about the works done by and between the plaintiff company and the defendants.

ARGUMENTS

At the time of arguments, the following facts were undisputed namely-

1. After lapse of the validity of Deed of Agreement Dt. 7/5/2008, the defendant no. 3 assigned the disputed work to the plaintiff company
2. After assignment made to the plaintiff company, they were informed only about ceasing their Deed of Agreement Dt. 7/5/2008
3. Detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted to the defendant no. 3 by the plaintiff company was used by the defendants in a modified form for the work.
4. The defendants letter/notice Dt. 25/7/2010 addressed to the chairman of the plaintiff company also embodied about lapse of their tenure of agreement but not specify the on going work assigned to the plaintiff company whether it should be continued or not.

FINDINGS

Issue No. 1

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

Ad valorem court fees at Rs. 12,878/- is paid with the plaint in terms of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997).

Annexure VII also reveals that legal notice as mandate u/s 80 of CPC was also duly served to the defendants state agencies. The plaint was supported by verification with affidavit. Thus, there is no irregularities which vitiate the proceedings in regards to maintainability of the plaint.

Issue No. 2

Whether the plaintiff has cause of action and locus standi on the basis of the Deed of Agreement Dt. 7/5/2008 by and between the plaintiff and defendant no. 3 claiming 4% of the total estimated cost of the work as consultancy fees

Although the plaintiff company aware of the invalidity of their Deed of Agreement Dt. 7/5/2008, they claimed 4% of the total estimated cost of the work as consultancy fees even after serving notice by the defendant no. 3 marked as Ext. D-2. Which is their own risk of the plaintiff company and could not be able to claim any benefits on the basis of the obsolete Deed of Agreement Dt. 7/5/2008. The plaintiff therefore have no cause of action and locus standi on this issue.

Issue No. 3

Whether the plaintiff and the defendants executed any valid agreement apart from Deed of Agreement Dt. 7/5/2008 for detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted to the defendant no. 3.

Undisputedly, the plaintiff and the defendants did not execute any valid agreement apart from Deed of Agreement Dt. 7/5/2008 for detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 except the assignment letter Dt. 29th June, 2010 issued by the defendant no. 3 to the plaintiff company whilst the plaintiff also aware as admitted by PW-2 that the defendants were not intended to engage the plaintiff company for development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar by issuing letter marked as Ext. D-2.

Issue No. 4

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

To overcome all the above impediments like no cause of action/locus standi on the quantum of claimed consultancy fees without any specific agreement, aware of cease of the period of Deed of Agreement Dt. 7/5/2008, no grounds to decreed the plaintiff company as prayed is found. In a nutshell, it was the obligatory of the plaintiff company to prudent on the assignment made to them by the defendant no. 3 after receiving notice for lapse of the period of Deed of Agreement Dt. 7/5/2008 and rather continued the work and submitted to the defendants in their own risk.

Meanwhile, as the defendants also received detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at

Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted by the plaintiff company but fails to return the same in pursuance to their notice Dt. 25/7/2010 addressed to the chairman of the plaintiff company and further admittedly they partially utilised the hard work of the plaintiff company for their realisation of the work, they will be liable to pay compensation for utilising the hard work of the plaintiff company. Pertinently, even on plain reading of notice Dt. 25/7/2010 issued by the defendants addressed to the chairman of the plaintiff company stating lapse of tenure of agreement, it was vague and ambiguous difficult to understand for the plaintiff company whether the on going work assigned to them will be continued and carried out or not which also embark compensatory liability to the defendants in favour of the plaintiff company.

For the said compensation, bulky preparation of plan, estimate and drawings, Rs. 1,00,000/- (Rupees one lakh) will meet justice to compensate the plaintiff company by the defendants.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the defendants are directed to pay compensation amounting to Rs. 1,00,000/- (Rupees one lakh) in respect of preparation of detailed estimate and drawing for the development of Indo-Myanmar Border Trade Centre at Melbuk and Zokhawthar Dt 20th Sept., 2010 submitted by the plaintiff company to them with an interest rate @ 6% per annum with effect from 18th July, 2011 (the date of institution of the suit) till realisation. No order as to costs.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 8th Nov., 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/58/2011, Sr. CJ (A)/

Dated Aizawl, the 8th Nov., 2012

Copy to:

1. Mizoram Technocrats Company (P) Ltd., Sikulpuikawn, Aizawl
Represented by it Chairman through Mr. Benjamin L.Z. Pautu, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of

Mizoram through Mr. R. Lalremruata, Addl. GA

3. The Secretary to the Govt. of Mizoram, Trade & Commerce Department, Mizoram- Aizawl through Mr. R. Lalremruata, Addl. GA
4. The Director, Trade & Commerce Department, Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, Addl. GA
5. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Case record

PESKAR