

Minutes of Meeting of Empowered Committee held on 09-06-2015

Meeting of Empowered Standing Committee constituted to resolve the dispute under clause- 23 of contract Agreement was held on dated 09.06.15 under the chairmanship of Secretary Water Resources Jaipur, to resolve the disputes in case of "Execution of Earth work, Pucca Structures, Pump Rooms, Sumpwells, Diggies and Supplying, Laying, Jointing Testing & Commissioning of Distribution Network of High Density Polyethylene (HDPE) Pipes with electrically operated motor with desired accessories on minor & sub minors Balera Distributary off taking from 16.00 of NMC & Basan Sub Minor of Vank Distributary offtaking from Km. 7.88 of NMC including designing and layout of mechanical work on turnkey basis" raised by M/s Banco Construction, Nehru Colony ,Thatipur, Gwalior. Agreement no.35/2011-12.

The following members of committee were present:-

1. Sh.Virendra Singh, Senior Jt. L.R.Representative of Principal Secy., (Law Department)
2. Sh. Zakir Hussain, Senior Joint Secretary, representative of Principal Secy., (Finance Department)
3. Sh. Sumnesh Mathur, Addl. Secretary & Chief Engineer,WR, Rajasthan, Jaipur
4. Sh. Rajeev Choudhary, Chief Engineer, Narmada Canal Project, Sanchore.

Sh. Mahesh Meena, Executive Engineer, NCP Div. I, Sanchore was present from the department & the contractor (Claimant) was self.

The Executive Engineer apprised the brief of work under dispute which is as under:-

The technical estimate of the above work was sanctioned by the Chief Engineer, Narmada Canal Project, Sanchore vide estimate No. 98 of year 2009-10 amounting to Rs. 157074833.00. Subsequently tender was floated by CE Narmada canal project Sanchore vide no 4745 dated 2.08.2011 and the tender was sanctioned in favour of M/s Banco Construction, Nehru Colony ,Thatipur, Gwalior vide Dy. Secy. & T.A. to The Chief Engineer, Water Resources, Rajasthan, Jaipur letter No. F2(35)AS//Cell/10/4934 dated 09.12.2011. Work order was given by the Executive Engineer, Narmada Canal project, Division I, Sanchore vide letter No.Acct/2724 dated 12.12.2011. The tendered amount of the work was Rs.124830979/- lacs @ 18.144% below. Time given for the execution of work was 12 months along with operation and maintenance of the system for 3 years from stipulated date of completion. The date of start of the work was 22.12.2011 and the stipulated date of completion was 21.12.2012 and thereafter O & M period for 36

months up to 22.12.2015. The agreement was executed by contractor vide no 35 of 2011-12.

The contractor failed to start the work as per the agreement. Notices were given to the contractor to start the work and to achieve spanwise progress as per agreement. Contractor did not start work till the end of 1st span. Despite of several notices the contractor had not started the work. Therefore, final notice was given to the contractor by the competent authority to start the work.

Having issued final notice to start the work contractor did not start the work. As the contractor did not start the work despite of issue of final notice, ultimately action under clause (2) and (3) of agreement had been taken on dated 16.08.2012.

An amount of Rs 12483098/- on account of compensation under Clause 2 and Rs. 30288821/- under clause 3 of the agreement was imposed. The total amount of Rs. 12483098 + 30288821 = 42771919 was to be recovered from the contractor, against which earnest money deposit a sum of Rs. 765000/- was recovered from the firm. To recover the balance amount of Rs. 42006919/- several request has been made to firm but firm had not deposited the balance amount.

Main issues submitted by the firm before empowered standing committee are as under:-

1. Issue No.A :- Release of SD/EMD Deposite with tender which is refundable: Rs. 7,65,000/-
2. Issue No. B:- Amount of Interest accrued on Rs. 7,65,000/- from 19.12.2011 till release of payment @18% P.A.
3. Issue No. C:- Claimants humbly prayed for Quashing of:
 - 1- Order No. 402 dated- 23.05.2014 by which EMD/SD was adjusted and compensation of Rs. 4,20,06,919.00 has been imposed upon claimant.
 - 2- Order No. 655 dated- 17.06.2014 thereby demand notice for recovery of Rs. 1,24,83,098.00 was issued against claimant.
4. Issue No. D :- Refund for fee deposited towards adjudication of the disputes.: Rs. 1,00,000.00
5. Issue No. E :- Exepenses & Cost of Arbitration: Rs. 2,00,000.00

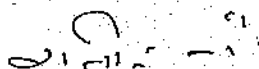
Committee heard each claim and argument of both parties. The contractor and his attorney was pressed only against issue no C (1) & (2) relating to compensation and submit detail arguments having citation of decision of Supreme Court. The


decision of Hon"ble Supreme Court in the case of Hind Construction Contractors v/s State of Maharashtra in which he pleaded that this case of "Execution of Earth work, Pucca Structures, Pump Rooms, Sumpwells, Diggies and Supplying, Laying, Jointing Testing & Commissioning of Distribution Network of High Density Polyethylene (HDPE) Pipes with electrically operated motor with desired accessories on minor & sub minors Balera Distributary offtaking from 16.00 of NMC & Basan Sub Minor of Vank Distributary offtaking from Km. 7.88 of NMC including designing and layout of mechanical work on turnkey basis is similar in nature and committee should follow the decision given by of Hon"ble Supreme Court.

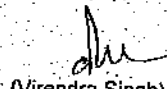
The Executive Engineer Narmada pleaded this case of Hind Construction Contractors v/s State of Maharashtra is not of similar nature. As in the case of Hind Construction Contractors v/s State of Maharashtra the contractor has started the work and after expiry of time span given to the firm to complete the work Govt. of Maharashtra imposed compensation and rescinded the contract. Where as in the case of M/s Banco Construction Pvt. Ltd. Nehru Colony, Thatipur, Gwalior (M P) has never started the work after signing the agreement despite of repeated notices given to the firm by the competent authority. When work was not started and the firm wrote a letter dated 21.05.2012 to the department and intimated that they can not execute the work. Then only department took action under clause 2& 3 which is justified and is in sprit of agreement. There fore compensation imposed, on the firm is recoverable from the firm and they should deposit remaining amount Rs 42006919/- to the department .

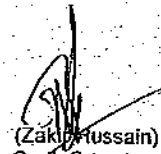
Committee discussed in detail in view of Hon"ble Supreme Court. After discussions committee is of the view that the decision has no relevance in the present case.

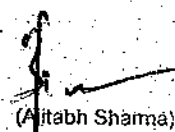
Committee examined facts and record relating to each claim and come to conclusion that no claim is tenable. After detail discussion committee decided to reject all the claims.


(Rajeev Choudhary)
Chief Engineer,
Narmada Canal Project,
Sanchore


(Sumnesh Lal Mathur)
Addl. Secretary cum
Chief Engineer W.R. Raj.
Jaipur


(Virendra Singh)
Senior Joint L.R.
Law Deptt.
Raj. Jaipur


(Zakir Hussain)
Sp. Secy.
Finance Deptt.
Raj. Jaipur


(Aritabh Sharma)
Secretary
W.R. Deptt.
Raj. Jaipur