
(2005) 01 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition No. 70 of 2004

Bafna Earth Movers Ltd.

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 14-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 1 CGLJ 94

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Hamida Siddique, for the Appellant; Sanjay S. Agrawal, Government Advocate for the State/Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—By the instant petition filed under Article 226/227 of the Constitution of India the Petitioner has questioned the legality, propriety and correctness of the order dated 11-12-2003 (Annexure-P/1) passed by Respondent No. 2 whereby the Petitioner has been debarred from participating in the tender process of Respondent department for a period of two years on account of non-completion of the work within the stipulated time awarded to the Petitioner.

2. Brief facts leading to filing of this writ petition are that Respondents floated tenders for construction of the road in Khairagarh Division. The Petitioner being the successful tenderer executed an agreement with Respondent No. 4 vide contracts bearing Nos. 62/D.L./2001-2002 and 61/ D.L./2001-2002 work to the tune of Rs. 68 lacs and for remaining two works to the tune of Rs. 18 lacs. As the Petitioner could not complete the work within the stipulated time, he sought for extension of time, in one case two times and in one case for one time. It appears that even then the Petitioner was not able to execute the work and as admitted by learned Counsel for the Petitioner, during the course of arguments, that work has been undertaken by Respondents and same has been completed at the risk

and cost of the Petitioner herein. However, in the meantime, by order Annexure-P/1 the Petitioner has been debarred from participating in the tender process for a period of two years.

3. The main reply of the Respondents is that the Petitioner did not start the work within the stipulated time. The Petitioner applied for extension on 22-1-2003 on the ground of break down of machinery and difficulty in procurement of stones. Even for the agreement No. 43/DL-02-03 amounting to Rs. 18,12,000/- work order was issued on 18-9-2002 and the work was to be completed by 31-12-2002, that work was not started by the Petitioner even after the expiry of time period. The Petitioner applied for extension on 21-1-2003. Similarly, for the agreement No. 62/DL-02-03 amounting to Rs. 1,10,74,000/- work order was issued on 5-2-2002 and period for completion of the work was 5 months i.e. 5-7-2002. The Petitioner had not completed the work as per work schedule for which extension was also granted from 6-7-2002 to 15-1-2003; even then the Petitioner was not able to complete the work. For Khairagarh Division-Janjgir Road work was not completed by the Petitioner. For agreement No. 61/DL-02-03 amounting to Rs. 67.29 lacs work order was issued on 6-2-2002 and the Petitioner had partly done the work of Khairagarh-Dongargarh Road and asked for extension of time for completing the work of Dongargarh-Chichola Road which was granted up to 15-12-2002, but the Petitioner failed to complete that work. For the agreement No. 25/DL-02-03 amounting to Rs. 35,29,000/- work order was issued on 22-7-2002 and was to be completed by 21-10-2002 (three months), but the Petitioner had not even started the work within the stipulated time. Therefore, the Petitioner neither completed the work nor shown any interest in completing the work. Even the extension was not applied within the stipulated time despite several reminders and notices and the Petitioner failed to complete the work. The contention of the Petitioner that he was willing to complete the work, therefore, he applied for extension of time is fully without any basis.

4. I have heard learned Counsel for the parties.

5. Learned Counsel for the Petitioner very fairly submitted that as far as the question of non-completion of work on the part of the Petitioner is concerned, the Respondents had already undertaken the work and got it completed by a third agency at the cost of the Petitioner for which the Petitioner has not made any challenge in this writ petition. The Petitioner has challenged Annexure-P/1 whereby he has been debarred from participating in the future tender process for a period of two years. She further submitted that in the impugned order clause-4 of the additional special condition has been invoked. On the plain reading of clause-4, looking to the facts of the present case, it was not attracted at all. No notice to show cause or opportunity of hearing was given to the Petitioner before passing the impugned order.

6. On the other hand, learned Govt. Advocate submitted that the Petitioner failed to execute the work within the stipulated time. Even in two cases he had not

started the work within the stipulated time. Even extension was applied after expiry of time period, therefore, Respondents was within their right to invoke provisions of clause-4 of additional special condition.

7. In this connection, clause-4 of additional special condition postulates that "if the contractor fails to execute the agreement within time prescribed in N.I.T. or abandon any work after executing the agreement, he shall be debarred from participating in any tender for any P.W.D. works in Chhattisgarh for a period of two years from the date of forfeiture of his earnest money or from the date of termination of the contract." Therefore, in order to attract the above clause condition is to be satisfied i.e. (i) if the contractor fails to execute the agreement within time prescribed in N.I.T. or (ii) abandon any contract after executing the agreement. As far as first condition is concerned, that is not attracted at all, as agreements were entered into in all the four cases. Now, coming to the question of abandon of work is concerned, in this case no show cause notice was issued to the Petitioner that he has abandoned the work nor any opportunity of hearing was given to him to explain his conduct. Even from the record it appears that the Petitioner sought extension from time to time, as he could not complete the work within the stipulated time that is why as per clause-3 of the agreement necessary steps were taken by Respondents and work was got completed at the risk and cost of the Petitioner herein. The impugned order Annexure-P/1 itself shows that the work was not completed within the stipulated time as per the agreement that cannot be termed that the Petitioner herein had abandoned the work. As per Webster's Dictionary "Abandon" means "1. to leave completely and finally; forsake utterly; desert. 2. to give up; discontinue; withdraw from; to abandon a project; to abandon hope." If we look into the facts of the present case, the case of the Respondents is that the Petitioner herein did not execute the work even after extension. It is nowhere stated that he left the work completely or finally or withdrawn from the work or gave up the work, therefore, clause-4 of the additional special condition was not attracted at all in this case. Therefore, the decision of the Respondents Annexure-P/1 is wholly based on non-existent ground.

8. In view of the above position, I am of the opinion that the impugned order Annexure-P/1 passed by Respondent authorities without following principle of natural justice, as also without any cause and clause-4 which was invoked was not applicable in the facts and circumstances of the case.

9. In the result, the writ petition is allowed and the impugned order is quashed.

10. In view of this order, M.(W.)P. No. 56/2004 and I.A. No. 3040/ 2004 stand disposed of.