

(2011) 05 JH CK 0105
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5167 of 2010

CISC-SRSC Joint Venture

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Arbitration Act, 1940 — Section 34

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2011) 4 BC 286 : (2011) 3 JCR 161

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly for the reasons that for No. justifiable reason, the Petitioner has to continue and keep alive the bank guarantee, worth Rs. 55 Lacs.

2. Learned Counsel for the Petitioner submitted that initially contract was given to the Petitioner for a period running from 1st February, 2003 to 31st January, 2004 for transportation of the coal and the contract is now over and the work has been done. As per the learned Counsel for the Petitioner, at the relevant time the bank guarantee was to be given and, therefore, during the pendency of the contract, the aforesaid bank guarantee worth Rs. 55 Lacs was given towards the satisfactory performance of the contract. Learned Counsel for the Petitioner further submitted that after completion of the contract, some dispute arose for payment of money and ultimately, an arbitrator was appointed and the Petitioner made a claim for Rs. 4 Crores before the arbitrator and the Respondents also filed a counter claim for Rs. 42 Crores. The Petitioner was compelled to keep the bank guarantee alive for years together," without any justifiable reasons. Learned Counsel for the Petitioner also submitted that the arbitrator passed an award and decided that the Petitioner is entitled for a sum of Rs. 262 Lacs and the counter claim, made by Respondent No. 1 was totally rejected. It is further

submitted by the learned Counsel for the Petitioner that Respondent No. 1 preferred an application u/s 34 of the Arbitration Act, 1996 before the Sub Judge-V, Ranchi. The same is also pending since years. This application was preferred in the year, 2008. For No. reasons, again Petitioner was compelled to keep the bank guarantee worth Rs. 55 Lacs alive. Learned Counsel for the Petitioner submitted that basically the bank guarantee was given for satisfactory performance of the contract for the period, running from 1st February, 2003 to 31st January, 2004. The work is over but the dispute is going on and there is No. clause that during the period of dispute also, the bank guarantee will be kept alive. However, the Petitioner being a bonafide company has continued the bank guarantee, but enough is enough and now the Respondents are not proceeding with their application u/s 34 of the Arbitration Act, 1996 before the Sub Judge-V, Ranchi (now pending before the Sub Judge-IV, Ranchi). It is further submitted by the learned Counsel for the Petitioner that the Respondents have No. claim at all as per the arbitration award and, therefore, the present petition has been preferred. Further prayer has been made by the learned Counsel for the Petitioner that renewal of the bank guarantee may not be insisted upon and the Petitioner is ready and willing to give an undertaking that in case any amount is found payable by the Petitioner, the same will be paid forthwith and such undertaking will be filed separately before this Court within a period of one week from the date of the order of this Court by the Managing Director/Partners of the Petitioner-company.

3. Learned Counsel for the Respondents submitted that the contract for transportation of coal was given to the Petitioner for the period, running from 1st February, 2003 to 31st January, 2004 i.e. for one year and the aforesaid bank guarantee was taken for satisfactory performance of contract. Now the contract is already over, but the dispute for the amount payable is going on, initially before the arbitrator and now before the Sub Judge-IV, Ranchi u/s 34 of the Arbitration Act. 1966 and, therefore, the bank guarantee must be kept alive, so that the amount can be realized from the Petitioner, without any loss of time.

4. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that there is No. reason for the Petitioner to continue with the bank guarantee, worth Rs. 55 Lacs, or to keep alive the bank guarantee, worth Rs. 55 Lacs, mainly for the reason that the contract given to the Petitioner for transportation of the coal was for a period of one year i.e. from 1st February, 2003 to 31st January, 2004. The bank guarantee was to be given for satisfactory performance of contract. Once the contract is over, the liability to keep alive the bank guarantee comes to an end. Moreover, the arbitration award has also been decided in favour of the Petitioner. Thus, on the contrary, the bank guarantee for Rs. 262 Lacs ought to have been given by the Respondents for the awarded amount, which is yet to be paid by the Respondents to the Petitioner, as per the arbitration award. High and tall claim was made as a counter claim by Respondent No. 1 for Rs. 42 Crores, but, nothing was proved before the arbitrator and hence the whole claim of the

Respondents was rejected/dismissed. Therefore, u/s 34 of the Arbitration Act, 1996, an application has been preferred for quashing and setting aside the award, passed by the arbitrator. This application has been preferred by Respondent No. 1 and is still pending.

5. Be that as it may, the fact remains that the purpose, for which the bank guarantee was given i.e. the contract must be performed satisfactorily, is already over in the year, 2004. Merely because the dispute is going on, that cannot be a reason for keeping the bank guarantee alive by the Petitioner and, as stated herein above, the award has been decided in favour of the Petitioner and the amount payable by Respondent No. 1 to the Petitioner, worth Rs. 262 Lacs, has not yet been paid and, therefore, there is, on the contrary, a reason to give a bank guarantee by the Respondents, but, as the Respondent is a Government company, this is also not required. But the fact remains that receiver of the money has not to give a bank guarantee. Petitioner has to receive a sizable amount from Respondents.

6. In view of the aforesaid facts, the bank guarantee is not required to be continued by the Petitioner. Nonetheless, as the application u/s 34 of the Arbitration Act, 1996 is pending, an undertaking will be given by all the partners of the Petitioner-company within 15 days from today, to this Court as well as to Respondent No. 1 and also before the Sub Judge-IV, Ranchi, to the effect that if the case is decided against the Petitioner by the Sub Judge-IV, Ranchi, the amount, legally payable by the Petitioner to the Respondents, will be paid forthwith.

7. This writ petition is, accordingly, allowed and disposed of, with the aforesaid observations.