
(2015) 04 JH CK 0152
In the Jharkhand High Court
Case No : WP(C) No. 4985 of 2010

Hari Om Traders

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 JLJR 666

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; Priya Shreshtha, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 15.6.2010 whereby, the agreement executed with the respondent-Jharkhand Education Project Council on 19.2.2009 was terminated, the present writ petition has been filed. During the pendency of the writ petition vide order dated 20.6.2011, the respondent-authority invoked the Bank Guarantee for Rs. 13,23,000/- furnished by the petitioner as security deposit. The order dated 20.6.2011 was challenged by the petitioner by filing I.A. No. 3069 of 2011, which has been allowed vide order dated 21.1.2015 and thus, order invoking Bank Guarantee is also under challenge. The petitioner pursuant to advertisement published in the newspaper submitted its bid and it was awarded work for construction of Jharkhand Kasturba Gandhi Balika Vidyalaya, Chaibasa, Sadar Block and Agreement No. 19F2/2008-09 was executed on 19.2.2009. The scheduled completion period was 15 months however, the respondent-authority did not provide the site for construction of Girl's High School and subsequently, the site for construction of the School was changed. Lay-out plan for construction of the School at alternative site was given on 27.1.2010 whereas, the period for agreement was to expire in June, 2010 itself. The petitioner submitted representations for

providing free and clear land for construction of the School however, the local villagers objected to construction of the School, which is evidenced in the meeting held between the various authorities including, the Circle Officer and the villagers however, the issue could not be resolved. Though the petitioner due to reasons beyond its control could not complete the work, the agreement was terminated vide order dated 15.6.2010 and subsequently, the Bank Guarantee has been invoked on 20.6.2011.

2. Mr. Manoj Tandon, the learned counsel appearing for* the petitioner refers to various documents annexed with the writ petition and submits that the respondent-authority did not provide land/site for construction of the Girl's High School however, they have terminated the agreement and illegally invoked the Bank Guarantee more than one year after termination of the" agreement. Alleging arbitrariness on the part of the respondent-authority, the teamed counsel for the petitioner submits that in contractual matters also, the respondent which is "State" is -bound to observe the mandate of Article 14 of the Constitution of India.

3. Mr. Saurav Arun, the learned counsel appearing for the respondent-Jharkhand Academic Project Council refers to the enquiry report and submits that the petitioner in spite of notices issued did not complete the work and he refused to remain present at the time of inspection. It is submitted that it has been found that only 10-12% work has been completed by the petitioner and due to negligence of the petitioner more than 200 tribal girls were forced to remain shelter-less. It is further submitted that the construction of the Girl's High School namely, Kasturba Gandhi Balika Vidyalaya is a flag-ship project and the petitioner, who was given 15 months" time did not complete the work and therefore, in terms of NIT and Agreement dated 19.2.2009, the agreement has been terminated and the Bank guarantee which was furnished by the petitioner as security deposit has been invoked.

4. Ms. Priya Shreshtha, the learned counsel appearing for the respondent-State supports the order of termination dated 15.6.2010 and submits that forfeiture of security deposit is in terms of the NIT Clauses and the Agreement dated 19.2.2009.

5. Having considered the rival contentions and after perusing the documents on record, I am of the opinion that the respondent-employer has committed fundamental breach of agreement. The employer was under a duty to provide free and clear land/site for construction of the Girl's High School which it failed to provide to the contractor. The letter dated 28.8.2009 records that the petitioner had commenced the work and foundation as well as pillars were erected at the site. The proceedings/letters dated 4.9.2009, 16.9.2009, 10.10.2009 and 16.10.2009 unerringly indicate that there was objection from the local villagers (Munda community) to the construction of the Girl's High School due to which, the petitioner could not complete the work though, the local authorities including, the Circle Officer had taken efforts for resolving the issue.

Finally, an alternative site/land was provided to the petitioner and a lay-out plan was given to the petitioner on 27.1.2010, which was more than 11 months after the execution of the agreement. On the representation of the petitioner, it was allowed to complete the work by September, 2010, however, the agreement was terminated on 15.6.2010. The petitioner who was entitled for extension of time for completion of work, was not granted time for completing the work. From the facts disclosed in the present proceeding, I find that the respondent-authorities could not have terminated the agreement dated 19.2.2009, as the delay in execution of work was due to fault on the part of the respondent No. 3- Jharkhand Education Project Council.

6. A perusal of the Enquiry Report indicates that the Enquiry Officer has recorded an erroneous finding that the C.R.P.F. entered the premises and protected the area by barbed wire, because the petitioner could not complete the work inasmuch as, the reason of non-completion of work has not been taken note of by the Enquiry Committee. The unimpeachable documents produced by the petitioner in the present proceeding, the veracity of which has not been doubted by the respondents, would disclose that there was no fault on the part of the petitioner insofar as, the delayed execution of work in question, that is, construction of the Girl's High School, is concerned. In the Enquiry Report itself, it is found that the site was subsequently changed and an alternative land was provided to the petitioner and the lay-out plan was given by the employer on 27.1.2010.

7. The judgment relied upon by the learned counsel for the Jharkhand Education Project Council in " Union of India (UOI) and Another Vs. International Trading Co. and Another, AIR 2003 SC 3983 : (2003) 4 JT 549 : (2003) 4 SCALE 581 : (2003) 5 SCC 437 : (2003) 1 SCR 55 Supp : (2003) AIRSCW 2828 : (2003) 4 Supreme 114 does not lend support to the case of the respondents in the facts of the present case. The learned counsel for the respondent-Jharkhand Education Project Council has stated that the work was though re-tendered on 30.8.2012, subsequently a fresh e-Tender notice was published and the work has been allotted to another contractor. In the aforesaid facts, though no interference is possible insofar as, termination of agreement dated 19.2.2009 is concerned however, insofar as, forfeiture of security deposit by invoking Bank Guarantee on 20.6.2011 is concerned, it is held illegal and a direction is issued to the respondent No. 3 to refund the amount of Rs. 13,23,000/- to the petitioner with interest, as applicable from the date of invocation, that is, 20.6.2011. In the result, the present writ petition is partly allowed.