
(2002) 05 JH CK 0062

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 5408 and 5465 of 2001

Himachal Construction Co. Pvt. Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Citation : (2002) 05 JH CK 0062

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Mihir Kr. Jha and M.S. Mittal, for the Appellant; P. Modi, GP-I, Dilip Jerath and S.K. Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—By the Court.--Both the cases have been preferred by common petitioner, M/s. Himachal Construction Co. Pvt. Limited and sought for similar relief in respect to two agreements. They were heard together and are being disposed of by this common order.

2. W.P. (C) No. 5408/2001 relates to agreement No. 3/SMC/88-89 in respect to residual earthwork of Chandil Left Main Canal from K.M. 22.555 to K.M 25.481 whereas W.P. (C) No. 5465/2001 relates to agreement No. 1/SMC/87-88 for residual earthwork of Candil Left Main Canal from K.M. 21.39 to K.M 22.19, 30.57 to 31.03 & 31.33 to 31.69.

3. The petitioner has prayed for issuance of an appropriate writ or a writ in the nature of mandamus for direction on the respondents to allow the petitioner to complete the balance work in respect to agreements aforesaid.

The petitioner has also challenged the entire tender process in connection with the aforesaid work on the ground that no tender could have been floated as long as there is a subsisting agreement between the petitioner and the respondents. Alternative prayer has also been made to allow the petitioner to complete the work aforesaid at the prevailing Schedule of rates or the lowest bidding rate

submitted pursuant to the fresh tender for the same work.

The agreements in question were made on 24.9.1987 in respect to agreement No. 1/SMC/87-88 (1st agreement for short) and on 17.1.1989 in respect to agreement No. 3/ SMC/88-89 (2nd agreement for short). The 1st agreement was to be completed within 15 months and the 2nd agreement was to be completed within six months. According to petitioner, the quantity of work already done and payment received by the petitioner was about 80% of the total work but rest of 20% of the agreements could not be completed because of inaction on the part of the respondents.

4. To suggest that both the agreements are still persist having not rescinded, the petitioner referred one or other letter such as letter dated 12.9.1996 written by petitioner to the Executive Engineer and the letter of Executive Engineer dated 27.8.1998 in respect to 1st agreement. The Executive Engineer vide letter dated 27.8.1998 asked the petitioner that if it was willing to complete the construction work on a contract rate then to give its consent within a week. Reference was also made therein to the proceedings of the meeting held on 12.8.1998 between the Builders' Association and the Project Officers at Jamshedpur. According to petitioner, the letter is in five parts namely :--

"(i) Work allotted to the petitioner is not completed till now and the department is desirous to complete the balance work in phases.

(ii) Department is contemplating to arrange funds for the same and a sum of Rs. 40.00 crore is likely to be allotted for first phase for completing the work from KM 0 to 16.

(iii) Residual work between KM 16 and beyond will be taken in second priority.

(iv) The proceedings in the meeting held on 12.8.1998 may be referred to.

(v) If the petitioner is willing to complete the above work on the contract rate, the written consent may be sent within a week."

5. Counsel for the petitioner also relied on letter of Executive Engineer dated 15.10.1998, letter of the petitioner dated 12.9.2000 and the Circular of the Government of Bihar dated 11.12.1998 to suggest that the agreements still persist. It was brought to the notice of the Court that the petitioner raised objection on 3.10.2000 to award fresh contract to any other agency till the work is settled. Reference of one or other letter was also made in the writ petitions and highlighted in the written argument in support of the contention of petitioner that the agreements made between the petitioner and the respondents are persist and for such work, no fresh work order can be issued.

Similar reference has been given in respect to one or other letter of the Executive Engineer dated 10.8.1996, 27.8.1998, petitioner's letter dated 1.9.1998, letter of Executive Engineer dated 15.10.1998 and the objection raised by the petitioner on 3.10.2000 to award the contract to any other agency till I he

work is settled with the petitioner.

6. Counsel for the State made preliminary objection to the writ petition, there being alternative remedy of arbitration suggested under both the agreements. It was pointed out that in pursuance of subsequent tenders such as tender notice No. 02/2000-2001 issued for the rest of the work, the petitioner did not choose to submit tender paper, nor challenged the tender notice. Counsel for the respondent-State relied on one or other letter, to suggest that the petitioner himself refused to do the rest of the work even if price escalation is allowed by the department.

7. The letter written by petitioner No. HOC/HO/391/99 dated 24.7.1999 relates to 1st agreement. The petitioner refused to execute the rest of the work will be evident from its language as quoted hereunder :

"HIMANCHAL CONSTRUCTION COMPANY PVT. LTD.

*** ** No. HOC/HO/391/99

Date 24.7.1999

The Executive Engineer Minor Dis tribution Division No. 5. Dimna Colony, Jamshedpur

Sub : Preparation of final bills after joint measurements in connection with Agree ment Nos. 1/SMC/87-88 & 3/SMC/88-89.

Dear Sir,

Kindly refer to various correspondences in connection with the above two contracts.

We have already informed you long back that it is not possible to execute the work further even if price escalation is allowed by the Deptt.

We request you again to kindly arrange for joint measurements for settling the final bills at an early date.

Thanking you.

Yours faithfully Himanchal Construction Co. Pvt. Ltd. (B.N. Dikshit) Managing Director."

Letter aforesaid issued by the petitioner also relates to second contract showing its inability to execute the rest of the work even if price escalation is allowed by the department.

7. In the aforesaid background, after refusal letter is given to execute the rest of the work, on the basis of such letter the respondents having issued re-tender notice in respect to the rest of the work, the work order having been allotted in favour of respondent No. 5 on such re-tender, now it is not open to the petitioner to pray for direction on the respondents to allow it to complete the balance of the

work in pursuance of 1st or 2nd agreement, nor the petitioner can pray for alternative relief to complete the work at the prevailing schedule of rates or the lowest bidding rate pursuant to the fresh tender for the rest of the work.

Further, the agreement having reached with the petitioner in the year 1987-88, for one or other reason, the work having not been completed on the basis of such agreement, after 13 to 15 years, it is not desirable to give effect to such stale agreement for the purpose of completion of rest of the work.

8. For the reasons aforesaid, no relief can be granted. Accordingly, both the writ petitions are dismissed.