
(2003) 08 JH CK 0079

In the Jharkhand High Court

Case No : Writ Petition (C) No. 577 of 2003

Hindustan Steel Works Construction

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 532

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Sachin Kumar and Binod Kumar, for the Appellant; JC to GA, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. In this writ application the petitioner seeks issuance of a writ of mandamus directing the respondents to issue fresh cheque in lieu of cheque No. 588843 dated 13.11.2000 for a sum of Rs. 63.91,402 against the passed bill for package No. 23 of Rania Block together with interest at the rate of 18% per annum till the date of issuance of fresh cheque.

3. It appears that the petitioner entered into an agreement with the Chief Engineer, Rural Engineering Organisation, Chotanagpur and Santhai Pargana Division for construction of rural roads and bridges in Rania Block vide agreement No. BPDP/ REO/23/96-97-46 dated 4.3.1997. The petitioner executed the work. After completing all the formalities i.e., verification and measurements of the works the petitioner submitted bills and the Executive Engineer issued cheque for a sum of Rs. 63,91,402/-vide cheque No. 588843 dated 13.11.2000 against the works certified.

4. In the meantime the State of Jharkhand came into existence. By that time the cheque was not cleared although the petitioner had already submitted the cheque. It is contended by the petitioner that another cheque was issued for a

sum of Rs. 11,54,416/- vide cheque No. 588840 dated 12.11.2000 against the same package. Various other cheques were also issued which were not honoured on their presentation and ultimately it resulted in filing of a writ petition being CWJC Nos. 2199/2001. Pursuant to the direction of this Court vide order dated 31.5.2001 four cheques has been honoured. The order dated 31.5.2001 is worth to be quoted hereinbelow :--

"Heard the parties. It appears that in pursuance of agreement reached on 15.12.1995 the petitioner performed the work. On completion of such work he submitted bill for payment. The Executive Engineer, Minor Irrigation Department, Ranchi formally issued a cheque bearing No. A/3 233283 on 14.11.2000 for a sum of Rs. 3,93,763/-in favour of petitioner in respect, of package No. 42 of Kadra Block Bihar Pathari Development Project. However, the said cheque could not be encashed having issued without any clearance of the Treasury Officer concerned. Having regard to the facts and circumstances the case is remitted to respondents to find out as to whether in pursuance of work performed by petitioner the cheque aforesaid dated 14.11.2000 was issued or not. If any such cheque was issued but could not be encashed by the petitioner, the respondents will re-issue a fresh cheque on cancellation of the earlier one and pay the amount of Rs. 3,93,763/- as was shown in the earlier cheque within one month from the date of receipt/production of a copy of this order. The Treasury Officer concerned should co-operate in the matter.

If any adverse decision is taken, the respondents will communicate the ground within the aforesaid period of one month.

The writ application stands disposed of with the aforesaid observations and directions."

5. In the counter affidavit filed by respondents 3 to 6 it is admitted that cheque for Rs. 63,91,402/- was issued by the Executive Engineer but it could not be encashed and the same was handed over to the Executive Engineer, BPDP, Ranchi. On 15.11.2000 all the allotment given to the Division was withdrawn upon the bifurcation of the erstwhile State of Bihar. However, it is stated in para 15 of the counter affidavit that the cheque was issued towards payment of an outstanding running account bill of the agency which is to be treated as intermediate payments to the agency only to be adjusted in the final settlement of all the work executed by the agency. It is further stated that the petitioner is entitled to receive the amount payable to it upon final settlement of the account from the contract package No. 23.

6. I am fully conscious of the law that where there is a money claim arising out of a contractual obligation and the liability having been disputed, this Court cannot issue direction under Article 226 of the Constitution but in the instant case it has not been disputed that either the aforementioned cheque was issued or the petitioner was not entitled to the amount mentioned in the cheque. The only stand taken by the respondents is that because of re-organisation of the

State the cheque amount could not be paid as the allotment was withdrawn.

7. Learned JC to GA has very fairly submitted that the petitioner is entitled to the amount by issuance of a fresh cheque but subject to deductions of taxes etc and other charges.

8. As noticed above, since payment of the aforesaid amount is by way of money claim, the respondents are entitled to adjust any amount which may be found recoverable from the petitioner. For the present, in absence of any dispute with regard to entitlement of the petitioner to the amount covered by the cheque, I direct the respondents to immediately and forthwith issue fresh cheque for the aforementioned amount and latest by 30.9.2003.

9. With the aforesaid direction/observation this writ application is disposed of.