
(2007) 02 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5260 of 2006

Hindustan Steelworks Constructions Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2007 Jhar 95 : (2007) 4 BC 302 : (2007) 2 CTLJ 111 : (2007) 4 JCR 445

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Indrajeet Sinha, for the Appellant; Sumeet Gadodia, J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the letter No. 478 dated 12.8.2006, issued under the signature of the Executive Engineer, Rural Development Special Division, Simdega, whereby the agreement entered into between the petitioner and the concerned department by virtue of Agreement No. 1F-2 of 2003-04 has been sought to be rescinded. The petitioner has further sought direction on the respondents not to encash the Bank Guarantee being B.G. No. 36/20 dated 4.6.2003 issued by the State Bank of India, Middleton Street Branch, Kolkata to the extent of Rs. 75.60 lakhs. It has been, inter alia, stated that on the basis of a clause for termination of the contract on the breach of the terms a letter was issued by the Executive Engineer on 10.4.2006 asking the petitioner to show cause as to why the agreement shall not be terminated and action, as per the provisions of the agreement, be not taken against it. The petitioner submitted its reply on 19.4.2006 stating, inter alia, that the terms of the agreement were breached by the respondents and not by the petitioner. Subsequently, by the said impugned order issued vide letter No. 478 dated 12.8.2006, petitioner's contract has been sought to be arbitrarily

rescinded.

2. The petitioner contended that it being a Government Company, the respondents should have issued notice and given opportunity of hearing to the petitioner before taking any punitive decision against it.

Mr. Indrajeet Sinha, learned Counsel appearing on behalf of the petitioner referred to and relied on a decision of the Supreme Court in Harbanslal Sahnia and Anr. v. Indian Oil Corporation Ltd. and Ors. reported in 2003 (1) SCC 446 and also a decision of the Division Bench of this Court in Pratap Constructions Vs. State of Jharkhand and Others, to support his contentions.

3. A counter affidavit has been filed on behalf of the State-respondents stating, inter alia, that the issues sought to be raised by the petitioner arise out of a concluded contract and several disputed questions have been raised in the writ petition. It has been stated that the agreement arrived at by the parties contains an arbitration clause being Clause-23 of the said agreement. According to the said Clause, disputes arising out of the agreement are to be decided in an arbitration proceeding. It has been further stated that vide letter No. 307 dated 20.6.2006, the Executive Engineer, Rural Development Special Circle, Ranchi has informed the Superintending Engineer about the breach of the terms of the agreement on the part of the petitioner seeking necessary instructions of the said Superintending Engineer. The petitioner was also earlier given a show cause notice to which a reply was filed by the petitioner before the respondent No. 3, Executive Engineer. The said reply was, however, found unsatisfactory and the same was reported to the Superintending Engineer. Subsequently, on 10.7.2006, a review meeting was held under the Chairmanship of the Principal Secretary, Rural Development Department, Government of Jharkhand, Ranchi and after taking into consideration the facts that the petitioner failed to complete the work allotted to it in spite of granting extension two times, decision was taken to rescind the agreement and to forfeit the earnest money deposited by the petitioner in terms of the Clause in the contract. A copy of the proceeding has been enclosed as Annexure-I to the supplementary counter affidavit. It has been stated that the petitioner's agreement has been rescinded/cancelled on its violation of the terms and conditions of the agreement, as the petitioner failed to execute and complete the work allotted to it within the stipulated time despite granting extension of time to it, twice. It has been submitted that the issues involving contractual disputes cannot be decided in writ jurisdiction of this Court. The respondents referred to and relied on a decision of the Supreme Court in National Highway Authority of India Vs. Ganga Enterprises and Another, .

4. Having heard learned Counsel for the parties and considered the facts and materials appearing on record, I find that the controversies involved in this writ petition arise out of a concluded contract and there is rival allegation(s) of breach of contract by the parties. It is also an admitted fact that Clause-23 of the Agreement provides a forum for deciding such disputes by way of arbitration. The decision of the Supreme Court in Harbanslal Sahnia & another (supra) and

the decision of this Court in M/s Pratap Constructions Jamshedpur (supra) are grounded of different fact situation and the same have got no application to the facts and circumstances of this case and the said precedents are not helpful to the petitioner. In National Highways Authority of India (supra), the Apex Court, inter alia, held that the disputes relating to contract cannot be adjudicated upon and decided under Article 226 of the Constitution.

In view of the above, this writ petition, which raises the contractual dispute, is not maintainable and is, hereby, dismissed.

However, the petitioner is at liberty to approach the appropriate Forum as provided in the terms of the Agreement for redressal of its grievance raised in this writ petition.

It is made clear that this Court has not entered into the merit of the rival claim(s) and contention(s) of the parties and this order shall not in any way prejudice either of the parties in any proceeding before the appropriate Forum.