(2016) 11 JH CK 0095

In the Jharkhand High Court

Case No : W.P.(C) No. 251 of 2013

M.N. Electricals APPELLANT

Vs

Jharkhand Urja Vikas Nigam Ltd. RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 792 : (2017) 2 JBCJ 18 : (2017) 2 JCR 616 : (2017) 1 JLJR 13

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Rajiv Kumar, Advocate, for the Petitioner; M/s Mukesh Kumar Sinha and Amit Sinha, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for the following reliefs :

(a) For a declaration that decision to stop all the payment of 10th plan APDRP (Accelerated Power Development and Reforms Programme) by an executive order of the respondent no.1 contained in Board''s Resolution No.591 dated 09.03.2010 as evident from the order dated 26.06.2012 contained in resolution vide Annexure-13 to be per se arbitrary and against public interest;

(b) And for a further declaration that this indecision has resulted in delayed implementation of APDRP Projects meant for efficient transmission system, while it has been closed in the entire country and ultra vires powers of an Electricity Board as under Section 18 (1) (a) and 18 (1) (c) of the Indian Electricity (Supply) Act, 1948 as also evasive of audit objection dated 17.03.2011, regarding decision dated 25.08.2010, it cannot be permitted in further fiddling with its decision as it causing wastage of availability of electricity to public and public exchequer as well.

2. The facts, as emanated from the writ application, in a nutshell is that petitioner is a registered electrical contractor having tons of experiences. The Ministry of Power, Government of India under the 10th Plan during 2002-03 made a vision for projects of electricity for efficient energy transmission, which is known as Accelerated Power Development and Reforms Programme (APDRP). Out of 18 selected APDRP Project of JSEB under 10th plan, the petitioner was given work order of Pakur, Chas, Hazaribagh and Dumka on different dates and has completed the work and is certified as such. Guarantee period of performance is admittedly over. Except the work of Dumka, the works in other projects have been completed. The JSEB has also submitted its completion status report in the year 2009 and it was required to send utilization certificate to the Ministry of Power, Government of India vide letter dated 26.03.2009 by the N.T.P.C. as evident from Annexure-1 to the writ application. As the projects were financially closed by its advisor on 26.03.2009, a new plan was named as restructured APDRP. Unverified news report was published alleging that there is irregularity in grant of work order in APDRP projects in general and the work orders were given at inflated rates. Instead of verifying the same, the Chairman sent a letter to the Director General (Vigilance) being letter dated 06.06.2009 as per Annexure-3 to the writ petition and on the basis of the said letter preliminary enquiry was conducted. In the meantime, after letter dated 06.06.2009, the Board was reconstituted and it was resolved on 09.03.2010 that all the payments of APDRP 10th plan shall be withheld till its decision is taken on closure and completion of all the projects as per Annexure-5. Thereafter, committees were constituted by the Board to give status report of the projects and it has been reported by the committee that the work of Pakur assigned to the petitioner has been completed before the resolution No.591 as per technical specification and handed over. Thereafter, meeting was held on 25.08.2010, wherein it was observed that there were three categories of projects. The project which was completed 100% is placed at serial no.1 and Pakur is placed in that category. Though, consequent report was also submitted by the Committee regarding completion of projects and recommendation was made for final payment, but no decision was taken for the reasons best known to the respondents. Thereafter, Board''s resolution dated 08.11.2011 was made formulating points for payment. A detailed presentation was made by the Chief Engineer, APDRP for taking a decision regarding pending payment. Thereafter, the Principal Secretary, Energy Department also wrote a letter to the Additional Director General (Vigilance) on 24.03.2012 stating inter alia that the projects assigned to the petitioner was completed. The ADGP, Vigilance wrote back to the Principal Secretary on 20.04.2012 stating the P.E. No.13/2009 complete and report has been submitted to the Government, though F.I.R has been recommended yet Vigilance has no objection, if payment of completed project be made as evident from letter dated 24.03.2012 vide Annexure-12 to the writ application. Thereafter, the letter was placed before the Board along with the detailed presentation in the 101th meeting of the Board in Agenda No.956/2012-13 held on 15.05.2012. However, the decision on the agenda was deferred on that date and again it was placed on

26.06.2012. On that day one of the members of the Board asked about the query raised on 08.11.2011 i.e. status of Vigilance case and it was decided to examine the contents before taking a final view of the resolution as evident from Annexure-13 to the writ petition. Being aggrieved by the inaction of the respondents for payment of the admissible dues, the petitioner being left with no efficacious and alternative remedy, has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance with the aforesaid prayer.

3. Mr. Rajiv Kumar, learned counsel for the petitioner during course of hearing submits that Electrical Superintending Engineer, JSEB, Hazaribagh Circle issued no demand certificate vide letter dated 30.04.2010 stating therein that the performance guarantee parameters has been established successfully for more than 12 months after put in commercial use, enabling to issue "no demand certificate" and the commissioning and final acceptance certificate has been issued on 30.04.2010 and the completion certificate has been issued on 30.05.2012. In spite of completion of the projects, since no payment was made, the petitioner-company submitted representation to the Chairman, Jharkhand State Electricity Board vide Annexure-22 for payment of admitted bills. Learned counsel for the petitioner submits that by virtue of the notification dated 06.01.2014 the Jharkhand State Electricity Reforms Scheme, 2013 has been made. In the said scheme the reforms has been made to "Jharkhand Urja Vikas Nigam Ltd" and Clause 2 (h) and Clause 4(1) relates to assets and liabilities of the State. Clause 5 (5) pertains to transfer and vesting of the functions. Learned counsel for the petitioner has submitted that the minutes of meeting held on 25.08.2010 in the chamber of Chairman for review of APDRP Projects, which have not completed 100% work have been paid like Dhanbad, but the petitioner''s projects have been subjected to untold financial stringency due to non-payment of admitted bills. Learned counsel for the petitioner further submits that on perusal of Annexure-13 it would be crystal clear that total fund for completed project in Pakur Town is 5.98 Crore, Chas Town is 5.24 Crore, Hazaribagh Town is 1.77 Crore.

4. Learned counsel for the petitioner further submits that for no rhyme and reason, decision has been taken to withheld payment when defects have been removed in the year 2007 much prior to 14.01.2010. In this respect, learned counsel for the petitioner has referred the decision of the Hon''ble Apex Court reported in (2005) 6 SCC 776 (para-43) (Punjab State Electricity Board Ltd. v. Zora Singh & Ors.) "A State" within Article 12 of the Constitution must act fairly and bona fide. It cannot act for a purpose which is wholly unauthorised and not germane for achieving the object it professes whether under a statute or otherwise."

5. Learned counsel for the petitioner submits that indecision for long 6 years is per se arbitrary particularly when the beneficiary brings home condition for its benign exercise. In this regard, he has referred to the decision of the Hon''ble

Apex Court reported in 1980 AIR 1622 (Municipal Council Ratlam v. Shri Vardhichand) (para-9) "?.. All power is a trust that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist" (i) Discretion becomes a duty when beneficiary brings home the circumstances for its benign exercise" and the starke reality is that this action/ inaction has no basis nor any legal justification rather based upon undefined, unclear parameters as to what it furled to view, closure and completion." Learned counsel for the petitioner further submits that parties to the contract does not cease to be amenable to Article 14 particularly when a party to a contract has unilaterally decided, not to decide till it views non existent thing/parameter in a manner and method alien to law. Therefore, the respondents ought to be directed to adhere to its own resolution dated 25.08.2010 & 11.10.2010 whereby it had resolved to clear liability of completed projects. The erstwhile JSEB Board on 09.03.2010 vide resolution No.591 took a decision that all payments of APDRP 10th Plan shall be withheld till the final closure and completion is reviewed by the erstwhile Board of all the projects. The Board in its resolution dated 25th of August 2010 headed by the then Chairman, JSEB, resolved that in view of the fact that @ 100% completion in certain projects have been reported and it has also been reported that they had not cleared their contractual dues; and equally vice versa picture was also presented, whereby certain agencies were also named who had been made payment more than the work done. Therefore, the decision was taken to get the final closure and completion done within a period of 60 days and it was also decided that the agencies which had not completed the project would be asked to complete the project, failing which a criminal case would be lodged against them.

6. Controverting the averments made in the writ application, counter affidavit dated 12.02.2013 has been filed by the respondents, wherein it has been submitted that since the amount payable to the petitioner and others is public money, thus Board has decided to make payment after full examination through third party inspection like PGCIL. The Chairman, JSEB has accordingly, written a D.O. letter no.139/Ch. Dated 23.03.2011 to the CMD, PGCIL for technical audit.

7. Supplementary counter affidavit dated 05.08.2015 has been filed by the respondents wherein it has been submitted that after completion of the enquiry of 5 projects of APDRP scheme 10th plan i.e. Ranchi, Khunti, Ramgarh, Pakur & Jamtara town projects Jharkhand Vigilance Bureau, Ranchi has found prima facie irregularities in the above projects and has lodged FIR vide Vigilance P.S. Case No.19/2013 dated 15.05.2013 under Section 407, 420, 467, 468, 471, 477(A), 120(B) and 13(2) read with 13(1) (c) (d) under Prevention of Corruption Act, 1988 against the 5 projects under APDRP namely Ranchi (M/s OMEC), Khunti (M/s Powertech), Ramgarh (M/s IECS), Pakur (M/s M.N. Electricals) and Jamtara (M/s Jaybee Enterprises) respectively and officers of the Board as per Annexure-SCA-V to the affidavit. Thus the Jharkhand Vigilance Bureau, Ranchi has lodged FIR against Pakur Town Project under APDRP scheme 10th plan vide VPSC No.19/2013 after the preliminary enquiry. It has been further submitted in the

supplementary counter affidavit that after submission of above reports agenda for review of Board''s Resolution No.591 and lifting of embargo on payment were placed several times before the Board. It has further been submitted that the total available funds under APDRP are only 15 Crore whereas pending liabilities are to the tune of Rs.135 Crore. The proposal seeks to divert funds from other sources and this diversion issue also needs to be thoroughly examined before taking a final view on the issue as per resolution vide Annexure-SCA-XI to the affidavit. In compliance to the Board''s Resolution No.952/2012-13 the then Secretary, JSEB has requested the A.G. (Audit), Jharkhand. The Senior Superintendent of Police, Central Bureau of Investigation, Ranchi and Additional Director General of Police, Vigilance Bureau, Ranchi vide letter dated 17.09.2012 regarding objecting/enquiry into the APDRP schemes in the JSEB as per Annexures- XII, XIII & XIV to the supplementary counter affidavit but no reply has been received by the Jharkhand Vigilance Bureau, Ranchi and A.G (Audit), Ranchi till date.

8. Admittedly, the petitioner has completed the work in question which has been accepted by the respondents without any demur. The acceptance of completion of work has been annexed to the writ application but allegedly without any rhyme and reason on taking the plea of Vigilance/CBI case due to the irregularities in the construction of the projects, the respondents have not paid the admissible bills to the petitioner. But no final decision seems to have been taken by the respondents, which has accentuated the financial stringency of the petitioner as averred in the writ application.

9. Accordingly, the writ petition is disposed of without delving into the nitty-gritty of the factual disputes pertaining to the quantification of admissible amounts, with direction to the petitioner to lay his claim before the respondents within a period of four weeks from today and the respondents on receiving of the same, will be taking a decision in accordance with the terms and conditions of the contract within a period of four weeks thereafter. While taking decision, if the respondent find that the amount is due to be paid, the same be paid to the petitioner immediately thereafter.

10. With the aforesaid direction, the writ petition stands disposed of.

