

(2012) 04 JH CK 0173

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2791 of 2010

Modi Projects Ltd., Ranchi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2012) 4 JCR 136 : (2012) 3 JLJR 60

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rajesh Kumar and Amit Kumar for W.P.C Nos. 2642, 3534/2010 and Cont. 668/2011 M/s M.S. Mittal and A.K. Yadav for W.P.C No. 2791/2010, for the Appellant; A.K. Sinha, A.G, for the Respondent

Judgement

Narendra Nath Tiwari

1. The petitioners in this batch of writ petitions are the contractors. They were allotted work for construction of residual earth work and P.C.C lining in different lots between KM 22.50 KM to KM 53.76 of Galudih Right Main Canal in Kharkai Link Canal Division, Musbani under the Subernrekha Multipurpose Project. Deeds of Agreements were executed between the petitioners and the State-respondent. Works to the extent of 60-65 % were executed as per the terms of the agreements. Suddenly the respondent took decision to rescind their agreements. The decision was communicated by the Chief Engineer, Project Monitoring and Planning, Water Resources Department to the Chief Engineer, Subernrekha Multipurpose Project, Adityapur by letter dated 5.5.2010 asking him to rescind the contract of the petitioners in terms of the agreement and to inform the department. In all the writ petitions, one of the prayers has been made for quashing the said order dated 5.5.2010. The petitioners have also prayed for quashing the subsequent order whereby the petitioners agreement was rescinded and the security money has been forfeited. The practitioners have further prayed for an order for closure of the contract agreement without any liability and for a

direction to release all the securities of the petitioners taken in connection with their agreement. The petitioners have also alternatively prayed for a direction to allow them to complete the remaining work at the modified rate, which has now been offered to new tenderers. In Contempt Case (Civil) No. 668/2011, the petitioner has sought for a suitable action / punishment against the respondents -- opposite parties for proceeding in the matter further by re-inviting e-Tender in spite of the interim order dated 15.6.2011 of this Court passed in W.P.(C) No. 2642/2010 for not taking any step prejudicial to the interest of the petitioner.

Facts

2. A tender was floated by the Executive Engineer, Kharkai Link Canal Division, Musabani, District - East Singhbhum for construction of residual earth work and P.C.C lining of Galudih Right Main Canal within the KMs, as aforesaid.

3. The petitioners submitted their tenders. After due scrutiny of the tender, work was allotted to the petitioners.

4. A contract agreement was executed in Standard Form F-2 of PWD between the petitioners and the respondent No. 7 with provisional rates, subject to condition of approval from S.R. Committee, after submission of the performance guarantees.

5. Accordingly, the petitioners furnished Bank guarantees of several Lacs.

6. According to the agreement, the work was to be completed within 16 months.

7. The petitioners, thereafter, deployed their men and machinery at the site and started the work.

8. Soon thereafter, the villagers started causing hindrances and disrupting the work. They stopped the work for pressing their demand that the machinery like Pavers and Batching plants for concrete work should not be used. They started pressurizing for their employment as skilled, although being unskilled. The ultras and Naxal outfits also stopped the work for not paying levy to them.

9. The matter was reported to the concerned authorities including the respondent No. 7. The Executive Engineer, Kharkai Link Canal Division by Letter No. 288 dated 25.4.2006 addressed to the Superintending Engineer, Kharkai Link Canal Circle, Adityapur informed about the said obstruction by the villagers and the extremists and requested him for taking steps for setting up a Police Picket of 30-40 armed police.

10. The Chief Engineer, Subernrekha Multipurpose Project, Adityapur by Letter No. 900 dated 29.4.2006 also admitted that the work is being impeded by the ultras and Naxals in the area of the Village - Surgi to Murathakura and requested the Deputy Commissioner to deploy appropriate police force.

11. There were several communications to that regard at different levels.

12. The said area is highly extremists (MCC) infested. The Members of

Parliament and the Legislative Assembly were killed besides others eminent persons in the said area. The situation is totally out of control of the State authorities.

13. No police force was deployed and no step was taken by the local administration or the respondents to remove the said impediments and hindrances.

14. The respondents, however, extended the period of contract agreement at three occasions for one year each, but without providing any protection against the ultras and extremists.

15. Regarding payment of bills for the work done, the Executive Engineer expressed his helplessness till the further fund is allocated. The works worth several Lacs were done, but payments were not made in March 2010.

16. The Executive Engineer, however, asked the petitioners to extend the validity of the Bank guarantees, meaning thereby, that the time was extended for completion of the work.

17. In the meanwhile, the Chief Engineer, Project Monitoring and Planning, Water Resources Department, unilaterally took decision to terminate the contract agreement of the petitioners on the ground that their work is very slow and the same has not been completed within the stipulated period. By Letter No. 415 dated 5.5.2010, he directed the Chief Engineer, Subernrekha Multipurpose Project Adityapur to take steps for rescission of the agreements and to inform the department.

18. The petitioners are against the said decision of the respondents and have strongly challenged the said order in their respective writ petitions.

Grounds

19. The said decision was taken behind the back of the petitioners without giving them any opportunity of representation against the said decision.

20. The petitioners were themselves became fed up with the aforesaid situation and they have offered to close the contract.

21. The petitioner of W.P.(C) No. 2791/2010 wrote a letter dated 13.5.2010 to the concerned Minister requesting him to close the contract. The concerned Minister referred the matter to the departmental authorities. But the department slept over the matter and did not pass any order on the said offer of the petitioners.

22. During pendency of the writ petitions, a letter dated 19.11.2010 was sent to the petitioners informing them that their contracts have been rescinded.

23. The petitioners, thereafter, brought the said letter on record by way of amendment in the writ petition and prayed for quashing the said letter as well.

24. The common grounds taken by the petitioners to challenge the said actions of the respondents are that the decision to rescind the agreement of the petitioners without giving them any prior notice and opportunity of representation is wholly arbitrary, illegal and violative of the principles of natural justice.

25. The grounds on which the said order is said to have been passed are baseless and mala fide. The petitioners were always ready and willing to execute the work within the stipulated time, but they were prevented from doing so by the local residents and the M.C.C extremists, which were the reasons well within the knowledge of the respondents and beyond the control of the petitioners. Several requests were also made for providing police assistance, but the same remained unheeded. The petitioners' offer for closure of the agreement was arbitrarily kept pending and no order was passed. Suddenly, letter dated 19.11.2010 was served informing the reasons for rescission of the petitioners' contracts, during pendency of the writ petitions. It has been stated that even after the decision taken for rescission on 5.5.2010, a tripartite meeting of the contractors, Advisor to the Governor and the departmental representative was convened and a consensus was arrived at that if the petitioners file an affidavit before the Court in the writ petitions that they are ready and willing to complete the work within the stipulated period i.e. by 31.5.2011, they will be allowed to work. A letter dated 14.12.2010 to that respect was also written by the Executive Engineer to the Superintending Engineer. The petitioners, thereafter, filed affidavit(s) to that regard in the Court and an amendment petition was also filed in the Court for addition of the said facts in the writ petitions. In view thereof, the Court passed an interim order directing the respondents not to take any action prejudicial to the interest of the petitioners. It has been contended that in spite of the said interim order the respondents invoked the Bank guarantees of the petitioners and took the drafts from the Bank which was reported to the Court. The Court taking serious view of the same, directed the concerned Executive Engineer to physically appear on the next date. However, the Executive Engineer filed an affidavit dated 11.7.2011 tendering unconditional and unqualified apology and stating that the drafts have been deposited back with the Bank. Despite continuance of the interim order, the respondents floated a Notice Inviting Tender for the remaining work with much inflated amount i.e. at the triple rate than the rate of the earlier contract. Against the said defiant attitude of the concerned respondents, a contempt application was filed before this Court being Contempt Case (Civil) No. 668/2011 in which prayers have been made by the petitioner for quashing the impugned orders dated 5.5.2010 and 19.11.2010 and to punish the concerned officials for defiance of the order of this Court.

Case Laws cited by the petitioners

26. In support of their contentions and grounds seeking reliefs against the cancellation of their agreement, the petitioners have referred to and relied on the

following decisions:

(i) ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,

(ii) Hindustan Petroleum Corporation Limited & Ors. Vs. Super Highway Services & Anr. (2010) 3 SCC 321

(iii) Food Corporation of India and Another Vs. SEIL Ltd. and Others,

(iv) Union of India (UOI) and Others Vs. Tania Construction Pvt. Ltd.,

27. In support of the contempt case, the petitioner has referred to and relied on the following decisions:

(i) Prestige Lights Ltd. Vs. State Bank of India,

(ii) All Bengal Excise Licensees' Association Vs. Raghabendra Singh & Ors, (2007) 11 SCC 374

Respondents' contentions

28. The State-respondents contested the writ petitions on several grounds. The preliminary objection has been emphatically raised against the maintainability of the writ petitions. It has been contended that the said agreement is not a statutory agreement and no writ petition is maintainable in the instant case. Moreover, the State action is not arbitrary and illegal. Earlier thrice extensions were given to the petitioners one year each, but only 60-65% work was done. Thereafter, the State was left with no option than to cancel the agreement. The offer for closing agreement was made on 13.5.2010 subsequent to the decision of rescission of the agreement by the respondents. Notice / request for closure dated 13.5.2010, given to the concerned Ministry, has no relevance, as the State had already rescinded the agreement on 5.5.2010 and the security money had been forfeited in terms of the agreement. There was no such extremists and law and order problem. The same has been exaggerated by the petitioners. They have themselves completed 60-65% of the work. The other contractors have also completed the work. The petitioners have got alternative remedy for redressal of their grievance either by way of filing suit or in some cases through arbitration. The petitioners have complained breach of the terms of the contract, which cannot be decided in writ jurisdiction. The principle of natural justice has also got no application in contract matter. The writ petitions are not maintainable and are liable to be dismissed.

29. Regarding the contempt, it has been submitted that there was no order of stay for inviting tender. In the interim order, the direction was for not taking any step prejudicial to the petitioners. Since the petitioners themselves had prayed for closure of the contract, inviting tender for the remaining work cannot be said to be prejudicial to the petitioners. The respondents have not taken any step contrary to the order of this Court. They have high respect for the Court and the respondents had or have never any intention to go against the interim order of

this Court However, since the petitioners have complained against the Notice Inviting Tender, the respondents immediately stayed their hands and have not issued any work order.

Case Laws cited by the respondents

30. The respondents have referred to and relied on the following decisions:

- (i) Radhakrishna Agarwal and Others Vs. State of Bihar and Others,
- (ii) Chaman Lal Singhal Vs. Haryana Urban Development Authority 2003 (4) SCC 369
- (iii) State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd.,
- (iv) State of Maharashtra and Others Vs. A.P. Paper Mills Ltd.,
- (v) Villayati Ram Mittal (Pvt.) Ltd. Vs. Union of India (UOI) and Another,
- (vi) J.R. Raghupathy and Others Vs. State of A.P. and Others,
- (vii) State of Kerala Vs. Smt. A. Lakshmikutty and others,
- (viii) Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,
- (ix) Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others,

Submissions

31. Mr. M.S. Mittal, learned Sr. counsel, and Mr. Rejesh Kumar, learned counsel, appearing on behalf of the petitioners, submitted that the delay was due to apathy in providing proper protection by the State - authorities and under the circumstances beyond the control of the petitioners. The respondents cannot shut their eyes and deny the said situations. It is true that the petitioners themselves had done the major work, but that was in the area which was less problematic and the petitioners made all endeavours to execute the works, despite the obstructions up to the manageable extent. The documents clearly go to show that the area to the certain extent where the petitioners were required to work thereafter is totally in the grip of the extremists and is unmanageable by the petitioners. Learned counsel submitted that the grounds on which the agreement of the petitioners have been rescinded, are extraneous and malicious. The respondents being the instrumentality of the Welfare State, cannot arbitrarily and suddenly rescind the agreement without giving any notice and opportunity to the petitioners to represent. Learned counsel heavily relied on the decisions of the Apex Court in ABL International Ltd. & Hindustan Petroleum Corporation Ltd., supra. They further contended that because there is alternative remedy of suit or arbitration, that cannot be the only ground for denying the reliefs in exercise of writ jurisdiction of the High Court or the Supreme Court. The Constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the

provisions of the Constitution. Learned counsel placed their reliance on the decision of the Supreme Court in *Tantia Construction Pvt. Ltd.*, supra. Learned counsel further contended that when the petitioners themselves had opted for closure of the contracts much prior to the decision of rescinding the contracts was communicated to them, the concerned authority should have accepted the same and should have closed the agreement after taking final measurement and observing all other required formalities. Learned counsel further submitted that the malafides of the respondents are writ large in their action, as in spite of filing affidavit that the petitioners shall complete the work within the stipulated time, no opportunity was given to them. And during pendency of the writ petitions, the impugned order rescinding their agreement has been served on them. The respondents have further proceeded to issue Notice Inviting Tender offering three times higher rate than the rate the petitioners had worked and are ready to work.

32. Learned Advocate General appearing on behalf of the respondents, on the other hand, referred to several decisions of the Supreme Court and submitted that the contract being non-statutory, the writ petitions are not maintainable. The petitioners have raised several disputed issues, which cannot be decided in writ jurisdiction of this Court. Learned A.G contended that the petitioners agreement has been rescinded in the compelling circumstances, as they failed to complete the work and in spite of giving three extensions, they have done only 60-65% work and there was no scope for further extension of time. He submitted that the project in question is a joint venture of Jharkhand, Orissa and some part of West Bengal and its monitoring is done by the Central Government. Other States have proceeded to complete their parts of the work, whereas the petitioners moved in a slow pace. The respondents gave more than the required latitude to the petitioners. When they became disgusted and there was no possibility of completion of work, the said decision has been taken in the interest of the Project. There is no arbitrariness, malafide or illegality in rescinding the agreement of the petitioners and in proceeding for floating further tender for execution of the residuary work.

Findings

33. I have heard learned counsel for the parties and perused the facts and documents on record.

34. The facts of allotting contracts to the petitioners and grant of subsequent three extensions are admitted. It is also admitted that before rescinding the contract, no notice was given to the petitioners informing the reasons and no opportunity of representation was afforded to them. Both the parties admitted that there was delay in execution of work. According to the petitioners, the delay was due to agitation of the local residents and coercion / obstruction created by the MCC extremists and other ultras. But the same has been disputed by the State - respondents.

35. On perusal of the letters written by the Executive Engineer to the

Superintending Engineer dated 25.4.2006 and request made by the Chief Engineer to the Deputy Commissioner, East Singhbhum by letter dated 29.4.2006 and letter dated 28.7.2008 written by the Executive Engineer to the Superintending Engineer and other uncontroverted documents on record, it is evident that the reasons explained by the petitioners for delay in completion of work are not without basis and appear to be beyond their control.

36. The contentions of learned A.G. on the other hand, depicts the concern of the State-respondents in the interest of the project and also in the interest of the public going to be benefited by the said project and the same cannot be said to be a mere pretence. The concern is reasonable.

37. But, howsoever, the respondents intention is genuine and bonafide, it does not justify the sudden rescission of the petitioners agreements without giving prior notice to the petitioners and without giving them any opportunity of representation.

38. The respondents being the instrumentality of a Welfare State are expected to act reasonably, fairly and in accordance with rule of law and natural Justice.

39. Since it has been admitted that no notice was given before rescinding the agreements of the petitioners, the said issue requires no adjudication and on that admitted ground alone, the act of rescission of the petitioners' agreement by the respondents becomes nullity -- being violative of principle of natural justice.

40. Though learned Advocate General has vehemently challenged the maintainability of the writ petitions by referring to several decisions of the Hon'ble Apex Court, the said decisions are not applicable in the context The principles laid down in some of those decisions such as in Radhakrishna Agarwal and Jain Plastics and Chemical Ltd., supra, have suffered great change in the later views of the Supreme Court, as would be evident from decisions of the Supreme Court in ABL international Ltd., Hindustan Petroleum Corporation Limited, Food Corporation of India and Tantia Construction Private Limited, supra.

41. It is now well established that an alternative remedy is not a complete bar for invoking the writ jurisdiction of the High Court or the Supreme Court. The Constitutional power and jurisdiction vested in those Courts are not fettered by any alternative remedy.

42. The other decisions referred to by learned Advocate General have been rendered in different fact situation and the same are also not applicable to the facts of the instant case.

43. When violation of principle of natural justice is apparent offending valuable rights guaranteed in Articles 14 & 21 of the Constitution of India, this Court's jurisdiction to set aside the wrong and protect the citizen, who has been wronged, is unquestionable and unfettered. The decisions of the Supreme Court in ABL International Ltd., Hindustan Petroleum Corporation Ltd. and Food

Corporation of India, supra, fortify the said view.

44. In view of the above discussions, the decision dated 5.5.2010 of the Chief Engineer, Project Monitoring & Planning, Water Resources Department, Government of Jharkhand, Ranchi communicating to the Chief Engineer, Subernrekha Multipurpose Project, Adityapur, Saraikela - Kharsawan regarding rescission of the petitioners' contract and the order dated 19.11.2010 issued by the Executive Engineer, Kharkai Link Canal Division, Musabani, East Singhbhum are quashed.

45. As a consequence, the actions and the steps taken by the respondents on the basis of the said orders become redundant.

46. However, since the petitioners have themselves offered for closure of the contract agreement, they also cannot be allowed to continue with the work in terms of the said respective agreements (s).

47. The respondents are now at liberty to take fresh steps for completion of the remaining work in accordance with the procedures prescribed by law.

48. In the circumstances of the case before proceeding for the fresh tenders etc., the respondents shall take final measurement of the works already completed by the petitioners, treating the agreements closed, as offered by the petitioners, and take other steps as required in the event of closure of a contract.

49. The respondents shall also pass a final order on the petitioners claim of refund of the security money, considering the contracts closed after their offer, within two months.

Re. contempt case

50. Having considered the facts and materials on record, this Court finds that the respondents have stayed hands and have not proceeded to allot any work to anybody during pendency of the writ petitions and are not guilty of committing contempt of the Court.

No further proceeding in the contempt case is required. The contempt proceeding is dropped.

In the result, these writ petitions and the contempt case are disposed of in the above terms.