

(2012) 05 JH CK 0062

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1982 of 2012

M/s Bhardwaj Construction Co. Pvt. Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Citation : (2012) 3 JCR 491

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant;

Judgement

Narendra Nath Tiwari, J.

I.A. No.1380 of 2012

1. In this I.A. the petitioner has prayed for addition of some prayers and amendment of the writ petition. It has been submitted that certain facts which were not available at the time of filing of the writ petition, which were relevant for the purpose of the writ petition are necessary to be brought on record. The petitioner has assailed the order of rescinding the agreement regarding widening and strengthening of "Kowar-Koderma Road". The petitioner has already done substantial work on the road and suddenly his agreement was rescinded to the great prejudice to the petitioner. The respondents have not stopped there rather they have proceeded to allot the work by issuing a fresh tender through public notice during pendency of the writ petition. These facts are necessary to be brought on record for complete and effective adjudication of the case and for sorting out the controversies between the parties.

2. In view of the above, the proposed amendment is required to be made in the writ petition. The amendment prayed for is based on the same factual foundation as made in the writ petition and it does not change the nature of the writ petition. The amendment is also required in order to avoid multiplicity of the litigation between the parties for almost same case.

3. The respondents have contested the petitioner's prayer for amendment on the ground, inter alia, that the facts, which are intended to be brought on record by way of amendment, were available on the date, when the writ petition was filed. There was negligence on the part of the petitioner in not bringing those facts in the writ petition.

4. In view of the above, the petitioner is not entitled to amend the writ petition, as prayed for.

5. I have heard learned counsel for the parties and considered the facts stated in the writ petition and the proposed amendment, as mentioned in the application.

6. I find that the amendment prayed for is subsequent development in the same matter and is based on the same factual foundation as in the writ petition. The same will also not change the nature of the writ petition. I, therefore, find no legal impediment in allowing this application.

7. Considering the above, this I.A. is allowed. The amendment prayed for in this I.A. stands allowed.

(Narendra Nath Tiwari, J.)

I.A. No.1381 of 2012

8. In this I.A. the petitioner has prayed for stay of the notice inviting tender for the same work, which is the subject matter of the writ petition and which was earlier allotted to the petitioner and agreement was subsequently rescinded.

9. It has been stated that the petitioner has been always ready and willing to complete the work, but the respondents have arbitrarily and maliciously rescinded the agreement and are out to allot a fresh tender for the same work. If the respondents are allowed to proceed with the tender process, the petitioner shall be put to suffer irreparable loss and injury and shall be highly prejudiced.

10. The respondents have vehemently opposed this application for stay of the aforesaid process. It has been submitted that the petitioner has failed to execute/complete the work within time. He was also found to have breached the terms and conditions of the agreement. According to the provisions of the agreement, his agreement was rescinded. The subject matter of the agreement is public road and in the public interest it is required to be completed without further delay. No illegality has been committed on the part of the respondents in rescinding the agreement and allotting a fresh tender for completion of the remaining work of the road. It has been further submitted that the petitioner has no prima-facie ground to obtain stay and its prayer is fit to be rejected.

11. I have heard learned counsel for the parties.

12. Though the petitioner made out a case that the contract agreement made in favour of the petitioner has been arbitrarily and illegally rescinded by the respondents and they have illegally proceeded for the fresh tender, the same has

been emphatically disputed and denied by the respondents.

13. Learned counsel for the respondents submitted that the tender has already been floated for strengthening and widening of remaining portion of the road which has not been completed by the petitioner. It has been submitted that an order of stay shall cause the public interest to suffer, particularly in view of the ensuing rainy season. If the work is not allotted now, the same will not be completed within the prescribed time.

14. At this stage learned counsel for the petitioner submitted that it is an admitted fact that the petitioner has completed a considerable extent of work and the respondents have not even taken final measurement in presence of the petitioner, any allotment without taking joint final measurement shall cause serious prejudice to the petitioner.

15. Considering the facts, circumstances and submissions made by learned counsel, I am not inclined to grant stay of tender process as prayed for by the petitioner. However, since it is an admitted fact that the petitioner has worked up to some extent, it is necessary that final and joint measurement be taken in presence of the petitioner. In view of the above, this I.A. is disposed of directing the respondents to take final joint measurement with due notice to the petitioner before proceeding further in the process and allotment of work to the other person.