
(2008) 09 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 10280 of 2008

M/s J.S. Company

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Citation : (2009) 2 PLJR 706

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : N.K. Agrawal and Sunil Kumar Ravi, P.K. Verma and S.R. Sharan, for the Appellant;

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties. The petitioner is aggrieved by communication dated 2.6.2008 from the office of the Deputy Chief Engineer/Construction-II, East Central Railway, Darbhanga, whereby the contract agreement dated 18.10.2006, which was to be completed by the mutually extended date of 31.3.2008 has been rescinded with effect from 31.3.2008 because of non-completion of the said contract by the petitioner in the said time.

2. Railway have appeared and filed counter affidavit and rejoinder thereto has been filed by the petitioner and with their consent this writ application is being disposed of at the stage of admission itself.

3. A tender was issued with regard to linking of Broad Gauge track manually including dismantling Meter Gauge track and associated work in connection with Gauge conversion of Jaynagar-Darbhanga-Narkatiaganj section. Petitioner's tender was accepted and he was granted the said work and agreement dated 18.10.2006 was executed.

4. While the petitioner was working, the said agreement, certain variation contract was made. Petitioner asserts and it is not denied that the original contract work, as awarded, was duly satisfactorily completed within the time

framed without any extension. It is the variation that was made that extended the contract as the work was connected with the contract aforesaid. In other words, it was extension of the contract by additional work. It is for this reason in the counter affidavit, it is admitted that in terms of Clause (17) of the General Condition of Contract, the railway itself extended the time up to 31.3.2008 to complete the third variation. When the petitioner was unable to complete the work by the certification of May, 2008, the said impugned communication dated 2.6.2008 (Annexure-4) was issued. The ground given in the said communication for cancellation of the contract, as aforesaid is that in the extended period by 31.3.2008, petitioner was unable to complete the work. He did not seek any extension. Thus, he failed to complete the contractual obligation within the stipulated time and thus the contract dated 18.10.06 was cancelled.

5. Petitioner asserts that this has affected him in two ways, firstly, substantial payment for work for the tender and admitted has been withheld and petitioner would be now liable to pay a further performance guarantee charge of 5% of the entire contract value and secondly, petitioner would not be issued a completion certificate, which would then disentitle him from participating in some other associated tender. Petitioner has specifically asserted and it now stands admitted that almost about 90% of the work has already been done and only 10% was left, which could have been completed in a couple of days but without waiting for the same the action was taken. Again a very important fact has been mentioned and brought on record and not denied by the railway. Petitioner stated that certification from Railway Safety Board was required for some of the work because it was executed. It is not disputed in the counter affidavit rather admitted that railway got the said certification from the Railway Safety Board only on 22.5.2008. On basis thereof, petitioner submits that when railway itself admits that necessary certification was received by it from the Railway Safety Board on 22.5.08 how it can even be contemplated that the petitioner ought to have been completed the work by 31.3.2008 or sought extension of time on any reasonable ground because the delay was not on the part of the petitioner but the delay was on the part of the railway in getting the required certificate from the Railway Safety Board.

6. Railway in their counter affidavit have admitted that the very contract value was Rs. 2,53,77,340.52 and the total work done up to 28.5.2008 by the petitioner is to the tune of Rs. 2,30,15,432/- but payment of only Rs. . 2,21,80,006.08 has been made. It is also admitted in the counter affidavit that the original date of completion was 3.6.2007, which was extended suo motu by the railway on their own administrative ground up to 31.3.2008. These facts, in my view, are enough to show that the order impugned holding petitioner responsible for not completing the work by 31.3.2008 cannot be sustained. Even if the petitioner had done all other work he could not have done the work which required certification from the Railway Safety Board, which came only on 22nd of May, 2008. Thus, to hold the petitioner responsible for the delay is incorrect on the face of the record. Thus, in my view, the termination of the contract cannot

be sustained. Consequently, the petitioner would be entitled to payment for the work done to the extent done by him. As the balance work has been completed by another agency, as submitted by the railway in their counter affidavit, no completion certificate of the contract can be issued to the petitioner but that will not come in way of petitioner applying for other tender and would not operate as disqualification in future. With these observations and direction, the writ petition is allowed and consequently Annexure-4 is set aside.