

(2020) 09 JH CK 0217
In the Jharkhand High Court
Case No : Writ Petition(C) No. 1694 Of 2020

M/s Kandla Projects Private Limited

APPELLANT

Vs

Chairman-cum-Managing Director, Central Coalfields, Ltd.,
Ranchi And Ors

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Citation : (2020) 09 JH CK 0217

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : V. P. Singh, Amit Kumar Sinha

Final Decision : Disposed Of

Judgement

The present writ petition has been filed for quashing the order as contained in letter Ref No. PO(G)/GRD OC/JB OS/Termination/19-20/1300 dated 29.10.2019 (Annexure-8 to the writ petition) passed by the respondent No.4 whereby the work order No. GM(B&K)/SO(M)CT/GRD/J.B.OS/WO/115 dated 09.08.2016 awarded to the petitioner has been terminated without considering the reply submitted by it on 02.06.2019 in response to the notice dated 18.05.2019 issued by the respondent No.4. Further prayer has been made for issuance of direction upon the respondents to pay the admitted dues to the petitioner for the work done by it pursuant to the tender in question.

Mr. V. P. Singh, learned Sr. counsel for the petitioner, submits that the impugned order dated 29.10.2019 has been passed by the respondent No.4 without considering the reply dated 02.06.2019 submitted by the petitioner in response to the notice dated 18.05.2019 issued by the respondent No.4. The respondent No.4 has failed to consider that the petitioner was prevented from resuming the said work due to the objections raised by the local people.

Mr. Amit Kumar Sinha, learned counsel appearing on behalf of the respondent-C.C.L, submits that since the present writ petition involves factual dispute and

there is an alternative recourse of settlement of the dispute at company level itself, the petitioner may agitate its claim before the concerned Engineer-in-charge for settlement of the same.

On this, Mr. V. P. Singh, learned Sr. counsel for the petitioner, submits that there may be possibility that the Engineer-in-charge, as mentioned in Clause 12 of the Conditions of Contract, may be junior to the respondent No.4, who has issued the impugned order dated 29.10.2019 and in that situation, the process of settlement of the present issue before the Engineer-in-charge would be a futile attempt.

Mr. Amit Kumar Sinha, learned counsel appearing on behalf of the respondent-CCL, submits that as per his instruction, the Engineer-in-charge is higher in rank than the respondent No.4. However, if at all it is found that the Engineer-in-charge is of lower or equal rank to that of the respondent No.4, the General Manager of the concerned area shall take steps for settlement of the dispute on behalf of the respondent-CCL.

Heard learned counsel for the parties and perused the terms of the Conditions of Contract, a copy of which has been annexed with the present writ petition. Clause 12 of the Conditions of Contract reads as under:

"12. SETTLEMENT OF DISPUTES:

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty) days of arising of the cause of dispute/claim, failing which no disputes/claims of the contractor shall be entertained by the company.

If differences still persist, the settlement of the dispute with Govt. Agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Govt. of India in this regard. In case of parties other than Govt. Agencies, the redressal of the dispute may be sought in the Court of Law."

It would be thus evident that Clause 12 of the Conditions of Contract provides that an effort shall be made to settle the disputes at the company level itself. For the said purpose, the contractor is required to make request to the "Engineer-in-charge" for settlement of the claims/disputes within 30 days of arising of the cause of dispute/claim, failing which no disputes/claims of the contractor shall be entertained by the company.

However, since the petitioner has directly filed the present writ petition before this Court challenging the impugned order dated 29.10.2019 passed by the respondent No.4 terminating the contract in question, I am of the view that the

period of 30 days as provided under Clause 12 of the Conditions of Contract for raising the dispute before the "Engineer-in-charge" should not be insisted by the respondents in the facts and circumstance of the present case.

Hence, without entering into the merit of the case, the petitioner is given liberty to raise the dispute/claim before the Engineer-in-charge/appropriate authority, as may be nominated by the respondent-CCL, within a period of 30 days from the date of this order. On raising such claim, the process of settlement shall be taken up by the Engineer-in-charge/the person nominated by the respondent-CCL and after due deliberation on the dispute/claim and on providing due opportunity of hearing to the petitioner/its representative, an appropriate decision shall be taken by the said authority of the respondent-CCL within a period of two months from the date of raising of the claim by the petitioner.

The present writ petition is accordingly disposed of with the aforesaid liberty and direction.