(2015) 11 KAR CK 0235

In the Karnataka High Court

Case No : Writ Petition No. 19329 of 2009 (GM-RES)

P.R. Chenna Reddy APPELLANT

Vs

Mysore Minerals Limited RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0235

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : D.L.N. Rao, Senior Advocate for G. Gangi Reddy, Advocate, for the Appellant; A.K. Vasanth, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Senior Advocate Shri D.L.N. Rao, appearing for the Counsel for the petitioner, and the counsel for the respondents.

2. It is the case of the petitioner that the respondent -company which is a Government of Karnataka Undertaking had called for quotations for the supply of +65% iron ore fines from Subbarayanahalli and -65% iron ore fines from Thimmappanagudi iron ore mines. The petitioner had also submitted his quotation, which was accepted and the respondent had agreed to supply +65% iron ore fines from Subbarayanahalli Mines and -65% iron ore fines from Thimmappanagudi iron ore mines. The respondent had allotted 10,000 tonnes of +65% iron ore fines from Subbarayanahalli iron ore mines and 10,000 tonnes of -65% iron ore fines from Thimmappanagudi iron ore mines at the rate of 350 PDMT for +65% iron ore fines and 250 PDMT for -65% on x-mine basis including royalty, forest permit charges, cess and applicable taxes if any, excluding loading charges. The payment of 100% total value of the material to be paid in advance within 7 days from the date of issue of the letter of indent dated 29.12.2003, which the petitioner had made.

That the petitioner had deposited the entire amount of Rs. 25,00,000/-. While issuing the work order, the respondent has changed the location from "Thimmappanagudi" to "Jambunathanahalli" iron ore mines. The same was also accepted by the petitioner, though there was change of place from Thimmappanagudi to Jambunathanahalli for -65% iron ore fines. But however, it is the claim of the petitioner that the respondent had failed to supply iron ore from Jambunathanahalli iron ore mines, as agreed. Thereafter on several representations being made for over a year, the respondent ultimately intimated the petitioner by letter dated 18.1.2005, that petitioner can lift -65% iron ore from Subbarayanahalli mines, instead of Jambunathanahalli mines. Therefore, there was a breach of contract on the part of the respondent in supplying 10,000 Metric Tonnes of -65% iron ore within the agreed time, though the petitioner had paid the entire amount of consideration in advance.

On account of such denial, the petitioner had to pay Rs. 32,70,000/- over and above the agreed amount of Rs. 25,00,000/-, which was the prevailing cost of the iron ore supplied. In order to comply with its own contractual obligations, the petitioner having paid that amount was under duress. The petitioner therefore had made a request for refund of the additional amounts so paid under duress. The respondent did not respond to the request and therefore, a legal notice was issued claiming interest at 12% from the date of payment till 5.8.2008 and damages. Though there was an assertion that the matter would be settled amicably, there was no further response. It in this background that the present petitions are filed.

3. The learned Senior Advocate Shri D.L.N. Rao would point out that the above circumstances would indicate that there was a firm contract for supply of iron ore at an agreed price and the duration of the contract was also fixed. Therefore, when the respondent was not in a position to supply the quantity of iron ore agreed upon within the prescribed time, and the delay being attributable to the respondent, the petitioner having been called upon to pay additional price which was the prevailing price on the date that the respondent would eventually effect supplies, was an unfair imposition on the petitioner and the amount collected under duress could not be detained and therefore seeks that there be an appropriate direction to the respondents.

On the other hand, the learned counsel representing the respondents have filed statement of objections vehemently contesting the petition. It is stated that the petitioner is seeking to make out a case that the respondent was not in a position to supply iron ore from Thimmappanagudi iron ore mines and the petitioner was called upon to lift the iron ore from Jambunathanahalli, which is incorrect. That there was an inadvertent error committed by the respondent - company in initially naming Jambunathanahalli mines as appropriate mines, from which iron ore was to be lifted and when this was sought to be corrected, the petitioner chose not to lift the iron ore from the said mines and requested that he may be permitted to lift the iron ore from Subbarayanahalli mines and it is therefore at the petitioner''s own request that he was permitted to lift the iron ore from the Subbarayanahalli Mines.

The delay which is said to be on the part of the respondents is, therefore, an incorrect assertion. If it has occasioned, it was on account of the petitioner''s own default in not having chosen to lift the iron ore from Jambunathanahlli mines and therefore, the allegation is vehemently denied.

Insofar as the supply of + 65% iron ore is concerned, it cannot be a grievance of the petitioner that there was delay in such supply. The conduct of the petitioner also in having paid the additional amount which is Rs. 30,10,000/- as being the difference of amount of price prevailing as on the date the supply was to occasion, cannot be construed as having been imposed on the petitioner under duress. It was a contractual obligation which the petitioner has voluntarily met and it is an after thought that the petitioner has chosen to file a writ petition. The inordinate delay in even raising such a claim itself would speak volumes. The legal notice issued or the request said to have been made were clearly an after-thought and even otherwise, the legal notice of the year 2008 was itself a belated legal notice and the present petition was filed even after further delay and therefore, the petitioner has made a speculative claim belatedly. Therefore it cannot be said that the petitioner is before this court with any genuine claim and in law, he is not entitled to recover any amount when he is not capable of being demonstrated that it is an unjust enrichment on the part of the respondents or that it was fraudulently obtained from the petitioner.

The admitted payment in terms of Annexure-E which clearly indicates that he has voluntarily paid while lamenting that it has caused loss and that the petitioner should be compensated by supplying additional quantity of 30000MTs, has in fact, been complied with as per Annexure -R.10, wherein in response to the petitioner''s letter of 14.7.2005, the Managing Director of the respondent company has in fact, directed that the petitioner be allotted an additional quantity of 25000 MTs of iron ore, which was the original demand of the petitioner in respect of the alleged purported loss. Therefore, the further demand for refund or reimbursement of the amount paid with interest thereon was clearly speculative and cannot be countenanced by this court in a petition which is hopelessly barred by delay and laches.

4. Given the above circumstances, as rightly pointed out by the learned counsel for the respondent, the only grievance the petitioner had made was to call upon the respondents to atleast allot an additional quantity of 30000 MTs of iron ore, so that he could get some financial relief as claimed by him as per letter dated 5.8.2005 and the very letter also indicating that he had voluntarily paid the additional price being difference of the amount of the price demanded by the respondents and in response to which, the respondents having, in fact, supplied an additional quantity of 25000 MTs as per the request as indicated in Annexure-R.10, would clearly demonstrate that there is no further claim that can be held by the petitioner.

Hence the petition lacks merit and is dismissed.

