(2014) 12 JH CK 0085

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3361 of 2013

Raaj Construction Co. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 2 JLJR 5

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Rupesh Kumar, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.?Seeking a direction for release of arrears of amount for the work executed by the petitioner-company, the present writ petition has been filed. The brief facts of the case are that, pursuant to Notice Inviting Tender dated 16.1.1999, the petitioner was awarded work for execution of Residual Earth Work of Chandil Left Main Canal from K.M. 32.392 to 40.840. The letter of intent was issued on 11.10.1999 and agreement with the petitioner-company was executed on 5.11.1999. The Mechanical Carriage Item was sanctioned on the basis of (Current Schedule Rates) CSR-1999 and all payments were made from the year 1999-2004 on CSR-1999 basis. In terms of letter dated 30.7.1998 providing price escalation which was made part of the Notice Inviting Tender, on 19.9.2001 a proposal was directed to be sent and the Chief Engineer was directed to resolve the matter. The Chief Engineer accordingly, took a decision in terms of letter dated 30.7.1998 and vide letter dated 24.5.2003 sent a proposal for final approval of the department for payment of 90% amount of price escalation. The said proposal was referred to the Cabinet Vigilance Department, Government of Jharkhand for conducting enquiry why and under what authority 90% payment for price escalation was recommended. The Vigilance Bureau submitted a report dated 22.3.2006 and opined that in view of letter dated 30.7.1998, the department rightly recommended for price escalation. Further report/letter dated 11.11.2006 and 19.12.2006 were issued stating that there was no financial irregularity in recommending payment of 90% of price escalation. The file containing recommendation for payment of 90% price escalation was approved by the Chief Secretary and the Chief Minister and the file was returned to the Department of Water Resources for further action. Thereafter, vide letter dated 22.7.2010, the Executive Engineer, Swarnrekha Canal Division, Jamshedpur sent the proposal on the basis of the Final Bill, however, no payment has been released by the respondent-Department of Water Resources.

2. The respondent-State of Jharkhand took a plea that no payment contrary to the terms of agreement dated 5.11.1999, can be made to the petitioner. The letter dated 30.7.1998 was recalled by the Department vide letter dated 18.8.1999 and thus, no price escalation can be awarded to the petitioner. The agreement dated 5.11.1999 executed with the petitioner does not contain a provision for price escalation. The Chief Engineer recommended payment of 90% escalation without approval of the department and therefore, the matter was referred to the Vigilance Bureau. The part payment of price escalation made on the order of Chief Engineer was without any approval of the competent authority and thus, the illegal part payment cannot be a ground for seeking further payment.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner relying on the Official Nothings which were obtained by the petitioner through R.T.I. and the communication dated 22.7.2010 of the Executive Engineer submits that, the dues of the petitioner have been admitted by the respondent-Department of Water Resources. The Cabinet Vigilance Bureau did not find financial irregularity in the matter and accordingly, the Chief Secretary and the Chief Minister also approved payment to the petitioner however, the admitted dues of the petitioner has not been paid. Relying on a decision in Bharat Sanchar Nigam Ltd. and Another Vs. BPL Mobile Cellular Ltd. and Others, , the learned counsel for the petitioner submits that, letter dated 18.8.1999 whereby the letter containing provision for price escalation was withdrawn, was never brought to the notice of the petitioner and therefore, the petitioner is entitled for payment in terms of the agreement dated 5.11.1999 which incorporated letter dated 30.7.1998.

5. The learned counsel for the respondent-State of Jharkhand disputed the claim of the petitioner and submitted that, in fact, excess payment has been made to the petitioner which is liable to be recovered.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. It appears that the agreement dated 5.11.1999 does not contain a specific clause for price escalation. The petitioner has relied on letter dated 30.7.1998 whereby a decision was taken to make a provision for price escalation however,

vide letter dated 18.8.1999 the said letter was recalled. Admittedly, the agreement was executed with the petitioner on 5.11.1999 that is, after the letter dated 30.7.1998 was withdrawn. Thus, it is apparent that the petitioner cannot claim price escalation in terms of letter dated 30.7.1998. The reliance of the learned counsel for the petitioner on the judgment in "Bharat Sanchar Nigam Limited and Anr. vs. BPL Mobile Cellular Limited and Ors." (supra) is also misplaced. In the said case, a challenge was made to the applicability of a subsequent notification whereby the price escalation clause was withdrawn, without notice to the petitioner. The same is not the case here. From the materials on record it appears that it has been observed that part payment on account of price escalation has been illegally made to the petitioner and a recommendation has been issued for recovery of excess amount paid to the petitioner. I find no merit and accordingly, the writ petition is dismissed.