
(2009) 12 OHC CK 0022
In the Orissa High Court

Rajesh Mohanty

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2010) 109 CLT 504 : (2010) 1 OLR 971 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Judgement

Sanju Panda, J.—In this Writ Petition, the Petitioner has prayed for issuance of a writ of certiorari quashing the letter dated 8.10.2009 issued by the Executive Engineer, BBSR Central Division No. III, BBSR, Opp. Party No. 2, rescinding the contract for construction of boundary wall for Disaster Management Battalion of CISF & for writ of mandamus commanding the Opp. Parties to comply with their part of obligation on the terms & conditions of the contract dated 5.4.2007.

2. The Petitioner was the successful bidder with regard to the tender dtd 17.11.2007 for construction of boundary wall for Disaster Management Battalion (4th Reserve Bn.) for CISF at Mundali, Dist. CTC. He was offered complete work at the cost of Rs. 1,03,27,772 which was 26.43% above the estimated cost of Rs. 81,68,985. The terms & conditions of the contract work were as per the standard format covered under the general conditions of the contract for the Central PWD Works. The Petitioner deposited Rs. 5,16,389 for the performance guarantee in the form of fixed deposit having its validity upto 12.1.2011. The same was accepted by the Opp. Parties. The agreement entered into contained various clauses imposing reciprocal obligation on both the parties, Copy of the said agreement is Annexure 2/1. As per the said agreement, the work was to be completed within 9 months & if there was a delay on account of other factors, the time stipulated was to be extended. Similarly, Clause 11 of the said agreement also called upon the contractor to complete the work in conformity with the drawings supplied by the Opp. Parties. Accordingly, the Petitioner approached the authorities for supply of drawings & giving vacant possession of

the site. The authorities asked the Petitioner to commence the work on the site which was partially available & they only supplied the tentative drawings. Finding no other way, the Petitioner started the work to avoid the delay & in course of undertaking the work, the Petitioner faced a lot of inconvenience for non-availability of the total site & the final drawings. On 14.5.2008, the Petitioner wrote a letter to Opp. Party No. 2 stating about his difficulties. He further alleged that a portion of site was hilly area & there was no provision in the agreement to lay the wall on the hilly slope. In the said letter, he also stated about the revised price of the work due to hike in price of the materials. While the matter stood thus, Opp. Party No. 2 vide his letter dated 28.3.2009 extended the period of work to 31.5.2009. On 18.5.2009, Opp. Party No. 2 requested the Petitioner to expedite the work. As the work was not progressing due to non-availability of the map & drawings & non-handing over of the site, further vide Letter dated 30.6.2009 Opp. Party No. 2 extended the time to complete the work till 31.7.2009. In pursuance of the said extension of time, Petitioner further requested the Opp. Parties to reconsider the market price & enhance the rate. He also demanded vide letter dated 16.7.2009 for payment of the pending dues & pointed out all the deficiencies of the Opp. Parties for which the work could not progress. While the matter stood thus, on 20.7.2009 Opp. Parties gave a reply to the Petitioner that the department was not liable for the delay. However, they further extended the period for execution of the work till 31.8.2009. When all the correspondences were going on, on 8.10.2009 Opp. Parties issued a letter cancelling the contract by invoking Clause-3 of the agreement vide Annexure 2. In the said letter, Opp. Parties clearly stated that the contract was rescinded & earnest money deposit, security deposit & performance guarantee amount shall stand forfeited & further called upon the Petitioner to attend on 14.10.2009 for joint measurement. The Petitioner has challenged the said cancellation of the contract as illegal, arbitrary & contrary to the terms & conditions of the agreement & has prayed for quashing of the same.

3. Opp. Parties filed their preliminary counter affidavit stating therein that the Petitioner could not maintain requisite progress work & completely abandoned the site after doing RCC structural work upto 900 metres & brick work upto 100 metres only out of a total 3000 metres long boundary wall. In spite of repeated instructions issued by the office of the Executive Engineer, the Petitioner failed to execute the work. As such, show cause notice was served on the Petitioner under Clause-3 of the agreement. The Petitioner filed reply to the said show cause notice. Since the reply was not convincing, the authorities rescinded the contract & communicated the said decision to the Petitioner. They further stated that as the boundary wall was urgently required for the para-military establishment which is at present engaged with counter-insurgency activities in Orissa, the authorities took a decision to call a fresh tender for executing the balance work. Accordingly, fresh tenders were Invited fixing the date to 1.12.2009 & the tenders were opened on 4.12.2009. Since the fresh tenders have already been invited, the present Writ Petition is not maintainable. Clause 25 of the contract is

for arbitration in respect of any dispute between the parties & in view of such term of the agreement, the Petitioner may approach for arbitration.

4. From the above narration of facts, it appears that there is a dispute between the parties regarding completion of the work as per the agreement dated 5.4.2007. It is also the admitted fact that there is an arbitration clause in the said agreement. In the case of Smt. Kalpana Kothari Vs. Smt. Sudha Yadav and Others, , the Apex Court held as follows:

As long as the Arbitration clause exists, having recourse to Civil Court for adjudication of disputes envisaged to be received through arbitral process or getting any orders of the nature from Civil Court for appointment of Receiver or prohibitory orders without evincing any intention to have recourse to arbitration in terms of the agreement may not arise.

5. In view of the above principle laid down by the Apex Court, it is open to the Petitioner to take steps to resolve the dispute by arbitration. Therefore, this Court is not inclined to interfere with the matter.

With the above observation, the Writ Petition is disposed of.

I.M. Quddusi, A.C.J.

I agree.