
(2004) 05 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 386 of 2003

R.D. Singh (Contractor) through its Proprietor Ram Das Singh	APPELLANT
Vs	
Steel Authority of India Ltd., Bokaro Steel Plant and Others	RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 613

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sanjay Singh and K.K. Singh, for the Appellant; G.M. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—Heard the parties and with their consent, this writ petition is being disposed off at this stage itself.

2. The petitioner is a Proprietorship Firm and was granted contract work on 3.4.2001 by Annexures-1 and 1/1 for transportation of LD Slag Dust from the Coke Ovens to the Sintering Plant and then to unload the material into Bunker of the said Plant. For the aforementioned purpose, (it has been stated in paragraph-7 of the writ petition) the petitioner engaged the vehicle of M/s. Shankar Builders for transporting the said LD Slag Dust.

3. On 3.7.2001, the Central Industrial Security Force (CISF) submitted a report (see paragraph-10 of the Counter Affidavit) that one extra trip had been made to pass fraudulently through the truck in question carrying with it the same materials twice without unloading the contents at the end of the first trip in the bunker of the Sintering Plant. This was in violation of the contractual terms and conditions. It was further reported that the unused Challan No. 14473 was also found with them. Both the Proprietor as also the driver, who were admittedly engaged by the petitioner, confessed before the CISF that one extra trip of 10.12

MT was claimed by them.

4. Having received the aforesaid report, a Standing Committee of the respondents who are authorised to look into such cases of malpractice by contractors, considered the same and issued notice by letter dated 21.5.2002.

5. From paragraph-13 of the Counter Affidavit, it is apparent that a further opportunity was given to the petitioner and two other contractors namely M/s. Shanker Builder as also M/s. Venus Enterprises to depose before the Standing Committee as to why appropriate action including banning of business be not imposed. It is evident from the statements made in paragraph-14 of the Counter Affidavit that the Standing Committee met on various dates and considered the application of the petitioner and also gave opportunity for deposition before the Committee. The representation of M/s. Venus Enterprises were examined. Similarly, Shanker Choudhary was also examined and considering the statements of all the order dated 16.11.2002 (the impugned order) was passed (As contained in Annexure-4) informing the petitioner that the Company had taken a decision to ban future business dealings for a period of seven years with effect from the date of issuance of that order.

6. The petitioner prays for quashing of the aforementioned order and also prays for quashing of the order dated 27.12.2002 (Annexure-6) whereby and whereunder the representation of the petitioner was rejected.

7. The learned counsel for the petitioner relies upon the enclosure appended to Annexure-4 herein and which begins at running page-26 of the writ petition. The learned counsel specifically relies upon the remarks made in Clause 4.3 thereof at running page-27 of the writ petition which says that although the petitioner was not beneficiary of intended extra dummy trip, he failed to fulfil his contractual obligation to ensure that his material which was loaded and weighed vide Challan No. 14473 was unloaded at the proper place i.e. in the bunker of the Sintering Plant and this deficiency has led to an intended manipulation with malafide intention.

8. It is true that the aforementioned remark finds place at Clause 4.3 referred to above but that by itself cannot be read in isolation of the surrounding facts and circumstances which are associated with this case. At paragraph-6, for example, the petitioner has specifically referred to the nature of the work that it was supposed to carry on under the work order and that included firstly loading of the materials from the Coke Oven Plant and then unloading the same into the Bunker of Sintering Plant. Obviously, between loading of the material and unloading of the same, the vehicle necessarily had to be routed through the weigh bridge for appropriate weightment.

9. It is evident from the nature of allegations that the truck which was engaged by the petitioner lifted the materials on the relevant date vide Challan No. 14473. It did not unload the same in the Bunker of Sintering Plant and instead, the same material was again routed through the same weighbridge and a

different Challan No. namely Challan No. 14474 was used which was issued in favour of M/s. Venus Enterprises. While it was unloading the materials apparently collected against the 2nd challan, the matter was detected by the CISF which also recovered the unused Challan No. 14473 from inside the truck in question establishing that the material weighed against it had not been unloaded/delivered at the Sintering Plant.

10. The learned counsel for the petitioner has submitted that for commission and omission of M/s. Venus Enterprises or M/s. Shanker Builders, the petitioner should not be allowed to suffer as admittedly, the proprietor of the petitioner was not found along with the truck. The learned counsel further submits that the proprietor of the petitioner firm was not even aware as to what was going on when the truck was in the control of the Driver and that too when the truck did not belong to the petitioner at all. Such a submission of the learned counsel for the petitioner cannot be accepted by this Court in as much as from perusal of paragraph-7 of the writ petition, it is evident that the truck in question had been engaged by the petitioner itself for carrying out the work. The petitioner has said so in paragraph-7 and it is, therefore, relevant to quote the opening line of the said paragraph :--

7. That for execution of the said work the petitioner engaged the vehicle of M/s. Shankar Builders for transporting the LD Slag bust, who used to load the LD Slag from Coke Oven and respondent authority used to issue challan :and weight certificate in favour of the petitioner"s company....."

11. Upon perusal of the aforementioned opening lines, it is thus evident that this truck in question had been engaged by the petitioner itself and therefore, it cannot be said that its movements were not within the control of the petitioner. Having engaged the truck for purposes of carrying out a work order is itself a factor which proves and establishes the active control of the person engaging this truck because without his or her order, such a truck would not move from one place to another. Once a person engages a machine for a particular purpose, that machine comes under the control of the person hiring or engaging the same. Additionally, M/s. Bokaro Steel Plant is a Unit of a Government of India Undertaking namely M/s. Steel Authority of India Limited. The said authority is directly under the administrative control and supervision of Ministry of Steel and Mines, Government of India. While dealing in such matters, it is imperative that this authority is fully satisfied on every count in relation to transparency, bonafide and genuineness of those who are dealing with it because every fund and every amount that the Plant/Company pays is ultimately generated through the public exchequer. In such a situation, taking into consideration the CISF report and the other facts and circumstances involved in this case, the action of the respondents in issuing the impugned order cannot be said illegal, arbitrary, whimsical or bad in law.

12. For the reasons stated, therefore, this Court finds that there is no merit in this writ petition. It is accordingly dismissed. There shall however be no order as

to costs.