
(2004) 08 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4071 of 2004

R.K. Construction Private Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 JCR 317

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.S. Mittal, A.K. Yadav and N.K. Pasari, for the Appellant; A.K. Singh and A. Allam, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. Petitioner has prayed for quashing the letter dated 8.7.2004 as also the letter dated 17.7.2004 issued by the Executive Engineer, Kharkal Link Canal Division, Mosabani and Branch Manager to the respondent-Bank respectively whereby the amount recovered by the Bank Guarantee furnished by the petitioner has been invoked and realized.

3. It appears that petitioner was awarded certain contract for construction of excavation of Galudih Right Bank Main Canal. As against the said contract the Bank Guarantee was furnished by the petitioner. Some dispute arose and the matter was referred to the Arbitrator which is pending. The contention of Mr. M.S. Mittal, learned counsel for the petitioner is that the arbitrator in terms of order dated 21.7.2004 directed the Senior Branch Manager, Bank of India, Sakchi Branch, Jamshedpur not to encash the Bank Guarantee as demanded by the authority of the project but inspite of that Bank Guarantee has, been encashed. From perusal of the record, it appears that letter invoking Bank Guarantee was issued on 8.7.2004. The said letter was delivered to the Bank on 17.7.2004 and the Bank Guarantee was encashed before 21.7.2004.

4. Taking into consideration these facts and also having regard to the fact that Arbitration proceeding in respect of the said contract is pending before the Arbitrator this Court cannot entertain the writ petition for relief sought for by the petitioner. Petitioner is at liberty to move the Arbitrator for the appropriate relief.

5. Needless to say that the Arbitrator shall decide the application that may be filed by the petitioner within a period of two weeks from the date of filing of the application.

6. With the aforesaid observation this writ petition is disposed of.