
(2012) 02 JH CK 0005
In the Jharkhand High Court
Case No : W.P (PIL) No. 6078 of 2010

Santosh Kumar Choubey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467

Citation : (2012) 2 JCR 203 : (2012) 2 JLJR 393

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties.

2. This writ petition has been filed under the title of Public Interest Litigation, seeking relief against only respondent no. 4, Tata Metaliks Kubota Pipes Limited, and M/s. Daroga Pradhan, was impleaded as party respondent because of the order dated 13th July, 2011, passed by this Court when this Court found that the work contract, in fact, was awarded to M/s. Daroga Pradhan by the State of Jharkhand through its department. Present writ petition has been filed with respect to one contract given by the State of Jharkhand to respondent no. 6, M/s. Daroga Pradhan, for laying down pipeline to the length of 20.27 kms only in one water scheme. The writ petitioner's contention is that 8 km pipelines might have been laid down with standard material of pipeline, i.e. ISI mark pipeline which mark is issued by the Bureau Of Indian Standards. However, according to the writ petitioner, as per his view, 12 km of the said pipeline has not been laid down with the standard quality of pipe. It is also submitted that respondent no. 4 was held guilty for misuse of BSI mark (ISI mark) and a number of documents have been placed on record by the writ petitioner. It appears from the pleadings of the writ petitioner that he has grievance only against manufacturer of the said pipes and has no grievance against M/s. Daroga Pradhan, who executed the work of laying down the pipe line under the contract granted to it. The relief claimed

by the writ petitioner, being relevant, is reproduced below:-

(a) That the Government of Jharkhand, the respondent no. 1 herein, be forthwith restrained from purchasing D.I. Pipes from Tata Metaliks Kubota Pipes Limited, respondent no. 4 herein and respondent no. 4 be further directed to withdraw pipes bearing fake IS Marks which are sold and supplied by it to respondent no. 1 which are used for supplying drinking water to people of Jharkhand;

And/Or

(b) That respondent nos. 2 and 3 be directed to forthwith cancel BIS License granted to Tata Metaliks Kubota Pipes Limited, respondent no. 4 herein and be further pleased to direct Tata Metaliks Kubota Pipes Limited, respondent no. 4 herein, not to use or apply IS Mark till further order as may be passed by this Hon"ble Court;

And/Or

(c) That respondent no. 1 be directed to blacklist Tata Metaliks Kubota Pipes Limited, respondent no. 4 herein, from participating in tender process of any nature whatsoever of respondent no. 1 in the larger public interest as well as public health;

And/Or

(d) To direct respondent authorities to initiate prosecution against Tata Metaliks Kubota Pipes Limited, respondent no. 4 herein, under the provisions of Indian Penal Code more particularly Sections 467 and 420 for applying fake IS Marks and selling substandard DI Pipes to respondent no. 1;

And/Or

(e) Pending the final disposal of the present writ application, an appropriate order be passed restraining respondent-BIS Authorities from granting license under the B.I.S Act to respondent no. 4 and the Hon"ble Court further be pleased to restrain respondent no. 4 from participating in any tender process undertaken by respondent no. 1;

3. Learned counsel appearing for Bureau Of Indian Standards as well as other respondents have submitted that similar writ petitions have been filed against respondent no. 4, Tata Metaliks Kubota Pipes Limited, one of which being Writ Petition (C) (PIL) No. 14/2011, wherein same relief has been prayed by other persons with respect to another contract, obviously which has been given by the State of Sikkim. The allegation is the same that sub-standard pipes were used in similar project. The said writ petition No. 14/2011 was disposed of by Sikkim High Court, vide order dated 18.3.2011. It is also submitted that there are writ petition, which has been dismissed by Delhi High Court recently in W.P (C) No. 2306/2011 MS. Narmada Vs. Union of India and Ors.,vide order dated 4.1.2012. Learned counsel for respondent no. 4 submitted that there are two writ petitions before Calcutta High Court.

4. We have considered the submissions of learned counsel for the parties. It appears from the writ petition that the writ petitioner suppressed the material facts and so has been done purposely to mislead this Court to believe that some contract was given to and executed by the respondent no. 4, Tata Metaliks Kubota Pipes Limited. However, we are of the considered opinion that in totality the grievance of one person is against respondent no. 4, a private firm, that too in the matter of not awarding contract but in the matter of violation of one of the conditions and of using sub-standard pipelines for a length of 11.27 km out of total contract awarded for laying down pipelines over 20.27 km, that too without seeking any relief against the party, who, in fact, executed the work in question as well as without impleading that firm as party in the writ petition and by suppressing this fact that the work was executed by party-respondent no. 6 and not be respondent no. 4. Several disputed questions of fact have also been raised, which includes as to from where remaining pipeline for 12.27 km was obtained by the contractor and whether it was obtained from respondent no. 4, then whether it must have been used for the same project, is also a question raised in this writ petition. We need not to mention very many other issues which also are questions of fact only, but we are of the considered opinion that in a matter of contract, may it be of laying down drinking water pipe line, where only violation of one of the conditions cannot constitute a cause of action for filing public interest litigation, when the petitioner himself in his writ petition stated that "one fine morning he came to know from the people of Dhanbad that in Nirsa Water Supply Scheme, Dhanbad, the degraded quality of pipes as well as other materials were supplied by the respondent no. 4 using I.S.I Mark over the product without acquiring certificate for the same". In the writ petition, it is nowhere stated as to how the petitioner came to know about the fact which he has alleged in the writ petition and it is also not stated as to why the petitioner has taken up the cause against one of the parties when there are so many contractors dealing with and executing work in the State of Jharkhand, not only in other departments but in the same department. Be that as it may, we are of the considered opinion that the petitioner also failed to show us that because of the alleged use of sub-standard pipes by the respondents, if it has been used, how it caused any damage to the public health and hygienic and if there is any loss to the public exchequer, what was the amount of loss caused to the State Government, which might have been gained by the supplier or contractor. All these material particulars are not in the writ petition, which clearly indicates that it is a litigation by one individual and can be with oblique motive as well as also be at the instance of some one else and this apprehension finds support from the fact that in different High Courts, writ petitions have been filed against respondent no. 4 by different persons and therefore, the possibility of having nexus with all cannot be ruled out.

5. In view of the above reasons, we are not inclined to entertain this writ petition. Hence, the writ petition is dismissed.