
(2016) 03 JH CK 0013
In the Jharkhand High Court
Case No : W.P. (C) No. 706 of 2016

SEW Infrastructure Ltd., Singhbhum East	APPELLANT
Vs	
State of Jharkhand and others	RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 JBCJ 292 : (2016) 3 JCR 197

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : R.S. Mazumdar, Sr. Advocate and Kumar Vaibhav, Advocate, for the Appellant; Jai Prakash, A.A.G, for the Respondent

Final Decision : Disposed off

Judgement

Aparesh Kumar Singh, J. - The grievance of the petitioner are encapsulated in the order dated 11.02.2016, which reads as under:-

"Mr. R.S. Mazumdar, learned senior counsel, submits that vide letter dated 25.01.2016 (Annexure-7), issued by respondent No. 4, the Executive Engineer, Barrage Division, Galudih, Singhbhum East, respondent No. 5-Bank has been served with a prior notice of recovery of the balance amount of advance and to initiate necessary procedure for payment of the amount submitted by the petitioner in the nature of a bank guarantee towards mobilisation advance. It is submitted that though prior notice has been issued but there are apprehensions of coercive steps being taken as soon as the original bank guarantee is submitted before the respondent-Bank by the respondent No. 4. It is submitted that because of the reasons beyond the control of the petitioner due to non-acquisition of the land, subject matter of the agreement and also for the reasons that some of the land falling in the HCL township, major portion of the work could not be executed within the time schedule on the part of the petitioners which is in the conscious knowledge of the respondents-authorities. He has also made an application for extension, which has also been recommended by the

respondents. The land in question, is in the process of being acquired, as per the statement made in para-15 of the writ application. Therefore, the respondents may be restrained from taking coercive steps in the matter.

Learned counsel for the respondents-State seeks time to obtain instruction in the matter and respond.

As prayed for, list this case after two weeks i.e. on 25.02.2016.

In the meantime, no coercive steps be taken against the petitioner in connection with impugned letter dated 25.01.2016 (Annexure-7) issued by respondent No. 4, the Executive Engineer, Barrage Division, Galudih, Singhbhum East, if not yet taken."

2. Respondents have filed their counter affidavit also.

Agreement is dated 5.3.2014 (Annexure-2) of a work of construction of Earth work, lining, all structures including cut and cover and WBM Road in Galudih Left Main Canel from Km. 7.02 to Km. 10.230 to be completed within a period of 24 months, which would expire on 4.3.2016.

3. Petitioner have taken a plea that for reasons beyond their control, due to non-acquisition of the land, subject matter of agreement and also for the reasons that some of the land fall within the H.C.L. Township, major portion of work could not be completed within time schedule in the conscious knowledge of the respondents.

4. Respondents in their counter affidavit have not uttered any statement about the aforesaid contention of the petitioner relating to non-execution of portion of the project in certain areas. The mobilisation advance that has been issued in favour of the petitioner is to the tune of Rs. 6,83,55,000 against which petitioner has also furnished four Bank guarantee dated 10.3.2014, which has been extended till 9.4.2018 on 1.3.2016. A total of Rs. 12,68,789/- has been recovered from the petitioner company against the total mobilisation advance as per para-8 of the counter affidavit. They have, however, indicated that these steps have been taken to protect Government money under mobilisation advance to the petitioner.

5. The realm of dispute lies on the question of extent of execution of work against the mobilisation advance given. Neither the averments made in the writ petition nor the counter affidavit discloses the percentage of work executed on the part of the petitioner and that which is left. It also does not disclose as to what percentage of work lies within the area which is yet to be acquisitioned or falls within the H.C.L. Township. Whether the petitioner has been able to execute the portion of total work falling in the area free from any encumbrance due to aforesaid reasons is also not evident from the records.

6. Respondents on the basis of the measurements of the executed work can come to a conclusion about the extent of work executed in the area which does

not have any encumbrance like non-acquisition of land or area falling under H.C.L Township. Petitioner is also entitled to produce all such documents and vouchers in support of extent of work executed by it under the agreement. Dependant upon such exercise, the competent authority / respondent no. 4, the Executive Engineer, Barrage Division, Galudih, Singhbhum East is entitled to come to a conclusion whether the petitioner is liable for refund of the mobilisation advance towards un-executed work or on its failure to do so, for revocation of Bank guarantee submitted by it.

7. This Court is conscious that this exercise relates to questions of fact arising out of an agreement which cannot be gone into in the writ Jurisdiction of this Court. In such circumstances, proper course would be to leave it to the competent authority to undertake said exercise and come to a definite conclusion about the exact percentage of work executed by the petitioner and whether non executed remaining work is on account of no fault of the petitioner or on account of his own fault. The decision of the competent authority should be based upon reasons before taking steps for realisation of mobilisation advance, whether by way of invocation of bank guarantee itself. This Court need not comment on the issue whether the respondents would give extension of time for execution of the remaining part of the work if the circumstances so warrant.

8. In view of the discussion made herein above, this Court is persuaded to take a view that impugned prior notice of recovery dated 25.1.2016 be not given effect to for the time being. The competent authority/respondent no. 4, the Executive Engineer, Barrage Division, Galudih, Singhbhum East would be at liberty to take any decision in that matter pursuant to the exercise required to be undertaken as observed herein above.

9. It goes without saying that the rights and liabilities of the parties are determined by the terms and conditions of the agreement and no observation made herein above would be taken as a comment on the merits of the case of the parties.

10. The writ petition is disposed of accordingly. I.A. No. 1177 of 2016 also stands disposed of.