

(2004) 02 JH CK 0065

In the Jharkhand High Court

Case No : Writ Petition (C) No. 111 of 2004

Society for Rural Industrialization TDC-TRC Network and
Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 84

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : P.K. Sinha and P. Neeraj Roy, for the Appellant; Anil Kumar Sinha, Gen. and Krishna Shankar, JC to AG, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioners have prayed for :

(a) Declaring letters dated 25.11.2003 (Annexure-27). 5.12.2003 (Annexure-32), and 18.12.2003 (Annexure-34) issued by the respondent No. 2 as arbitrary, illegal and unconstitutional;

(b) Commanding the respondents to forebear from seeking refund of Rs. 35 lakhs from the petitioners for which works have been carried out and for a direction to pay the remaining balance amount with interest for the work done by the petitioners;

(c) Declaring the threatening of black listing as illegal and arbitrary;

(d) Setting aside the Joint reports (Annexures-27/1 and 32/1) submitted by the experts;

(e) For referring the matter to an independent expert body unconnected with the

State for resolving the dispute.

3. The petitioner No. 1 is a Society registered under the Societies Registration Act and the petitioner No. 2 is it's Secretary. They will be referred as petitioner.

On 25th March, 2003, State of Jharkhand entered into a consultancy services agreement (Annexure-16) with petitioner for strengthening of the database for developing District-wise Agriculture and Horticulture perspective for 22 districts of Jharkhand under Macro Management Scheme. The Ministry of Science and Technology (Department of Science & Technology) New Delhi recommended to the Government of Jharkhand to involve the TDC-TRC network in implementation of various schemes, programmes and also replication of the Technology Management Packages in the State of Jharkhand through the petitioner which the Government of Jharkhand accepted. As per the terms of agreement, the Government of Jharkhand was required to pay a sum of Rs. 70,20,000/- by way of fees to the petitioner for carrying out the services detailed in the agreement. 50% was to be paid on signing of agreement and rest 20%, 20% and 10% on submission of draft report, detailed draft strategy plan and final report respectively. Some of the terms and conditions are as follows :

"4.1.1. GoJ shall provide to TDC-SRI such documents/informations/reports as may be reasonably required by TDC-SRI to enable it carry out the services. GoJ shall from time to time also furnish such documents/reports/informations in its possession and/or knowledge as it may be considered relevant to the general scope of the assignment as and when such information is received by/available with GoJ.

4.2. GoJ shall facilitate consultations with representative of the various State Deptt and Institution as may be needed from time to time.

4.3. TDC-SRI shall undertake the assignment based upon information furnished to it by GoJ. And TDC-SRI shall be entitled to rely upon such information as authentic. TDC-SRI shall not be required to check the veracity of the information provided and therefore shall not be liable for any deficiency of service due to erroneous or incomplete information received.

4.4. TDC-SRI may seek expert's advice on specific issues, and if GoJ wishes to seek advice of external consultant on specific issues, TDC-SRI shall arranged for the same at specific request of GoJ. GoJ shall also bear the fees payable to/on account of such external consultant engaged by TDC-SRI at the specific request of GoJ. 4.5. All fees payable to TDC-SRI are non-refundable and non-adjustable.

4.6. Service charges wherever applicable to the payments made to TDC-SRI would be borne by GoJ.

4.7. SRI is a non-profit organization as such is not liable to pay income tax hence no deduction at source if applicable.

4.8. In case GoJ desires TDC-SRI to perform any other additional services, TDC-

SRI may agree to perform such services on mutually agreed terms.

4.9. TDC-SRI shall have the discretion to adopt such methodology and procedure as it may deem fit for carrying out such assignment.

5. OWNERSHIP :

All documents and reports generated by TDC-SRI and delivered to GoJ while carrying out the services shall become the property of GoJ, provided due payment of fees and reimbursables have been made by GoJ to TDC-SRI. TDC-SRI shall in no way be responsible for any defects, damage or loss thereof, once the same has been delivered to GoJ by TDC-SRI.

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8. TERMINATION :

Either of the parties shall be entitled to terminate this agreement after providing written notice of 30 days to the other party. In the event of such termination, TDC-SRI shall be entitled to receive payment from GoJ for all services performed upto-the-date of such termination and all costs incurred by TDC-SRI as a result of such termination.

4. Petitioner addressed a letter dated 7.7.2003 (Annexure-22) to respondent No. 2 and other authorities of the State of Jharkhand. With this letter, first interim report of the activity undertaken under the said agreement was submitted. Petitioner asked for, certain further informations from the different departments/ authorities of the Government of Jharkhand as soon as possible, and suggestions for improvement in the reporting structure. It was further requested that the balance 50% of the amount may be released. Respondent No. 2 by letter dated 18.7.2003 (Annexure-23) expressed his dissatisfaction over the said Interim report and informed petitioner that the Project will be cancelled and the petitioner will be directed to refund the advance if database of at least 8-10 districts is not sent by 30th September, 2003 based on field survey. Petitioner by its letter dated 10.11.2003 (Annexure-26) submitted the corrected database of Lohardaga district. It was mentioned in the said letter that database same is based on sample survey, report received from the different Government Departments, Census data, 1991 and various reports. Petitioner requested to instruct the officers to cooperate for successful completion of the Project.

5. By letter dated 25.11.2003 (Annexure-27) respondent No. 2 informed petitioner that Prof. N.C. Das and Shri R.K. Mishra of Birsa Agriculture University were jointly deputed for verification of the data to ascertain whether the database being prepared by petitioner should be treated as authentic or not. They expressed some doubts over the said interim report submitted by the petitioner and gave certain suggestions in their report dated 25.11.2003 (Annexure-27/1), which was forwarded to the petitioner.

By letter dated 15.12.2003 (Annexure-28) petitioner in reply to the said letter dated 25.11.2003 informed respondent No. 2 that full cooperation was extended to the said experts and that no further issue was raised by them in course of verification. Petitioner said that authenticity of data depends on the informations supplied by the departments and the source of secondary information, is beyond scope to verify through measurements. Petitioner requested for release of second installment.

6. By letter dated 15.12.2003 (Annexure-32), respondent No. 2 cancelled the said agreement dated 25.3.2003 and asked petitioner to refund the amount of advance, failing which all legal actions will be taken including a request for canceling the registration under the Societies Registration Act and black listing the petitioner. By this letter, respondent No. 2 took action for audit of petitioner to ascertain whether it has used the Government money properly or not. The joint report of the experts (Annexure-32/1) was enclosed with this letter. Said experts reported that the datas submitted by petitioner were not acceptable from any angle of Statistics. Moreover, sampling methodology has not been adopted. Other defeats were also pointed out by the experts in their report regarding the report submitted by petitioner.

Petitioner requested for reviewing the said order, which was rejected by respondent No. 2 vide letter-dated 18.12.2003 (Annexure-34).

7. Mr. P.K. Sinha, learned Senior Counsel for the petitioner submitted that the report submitted by petitioner was based on the datas and informations which were supplied by the different Government departments to petitioner; petitioner has been requesting respondent No. 2 from time to time to give suggestions for improvement of the work in progress; that respondent No. 2 has acted on the basis of the reports of Prof. Das and Shri R.K. Mishra which he could not do as only petitioner could take services of experts as per the terms of the agreement; that as per terms of the agreement, petitioner is entitled to receive payment from Government of Jharkhand for all services performed upto-the date of termination and all costs incurred by petitioner as a result of such termination; that the threat of black listing and recommending de-registration as a Society under the Societies Act and for getting the account of the Society audited, goes to show that respondent No. 2 is acting in a biased manner; that respondent No. 2 wanted to get the work done through the said external experts of Birsa Agriculture University and this is the reason for taking the impugned action against petitioner; that the Science & Technology Department, Government of India requested the Government of Jharkhand for giving this work to petitioner; that petitioner is a non profit organization; that the Project undertaken by petitioner is not a business to earn profit and therefore the Principle of Promissory estoppel will apply against the Government of Jharkhand, He relied on the decisions reported in AIR 1968 SC 718, Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , M/s. Dwarikadas Marfatia and sons v.

Board of Trustees of the Port of Bombay.

8. Mr. Anil Kumar Sinha, learned Advocate General raised a preliminary issue regarding maintainability of this writ petition. He submitted that petitioner is complaining breach of non statutory contract which cannot be entertained and examined under Article 226, of the Constitution of India. He submitted that this Court can examine whether the decision making process is arbitrary or not but once a decision is taken and a contract is entered into, the High Court under Article 226 of the Constitution of India cannot. Interfere if there is complain about breach of the same. Once the agreements is signed, the complaint of violation of Article 14 of the Constitution of India is no more available to a party. He relied on the decisions reported in AIR 1997 SC 1496 M/s. Rad-hakrishna Agarwal and Ors. v. State of Bihar and Ors. and Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .

He further submitted that whether there has been breach of contract by the parties and to what extent cannot be adjudicated in this writ petition; that rights and obligations of the parties under the contract is to be adjudicated on the basis of the evidences; that petitioner did not question the deputation of the two experts, rather it participated in the enquiry conducted by them but when their reports went against petitioner the same is being challenged; that petitioner took part in a tender wherein it was selected, therefore, the recommendation of the Government of India is not of much relevance; that the principles of promissory estoppel will not apply when the work of petitioner is not found satisfactory; that the allegation of bias is absolutely vague; that only if the audit of the accounts of petitioner is done, it can be ascertained whether petitioner is earning profit or not. However, he fairly submitted that any order of black listing has to be passed only in accordance with law. He lastly submitted that petitioner may be a very good Agency but the Department is not satisfied with its work.

9. In my view, seeking expert advice by respondent No. 2 is not against Clause 4.4 of the agreement. This Clause provides that if petitioner or the Government of Jharkhand wishes to seek advice of consultant on specific issues, petitioner shall arrange for the same, and fees of which will be borne by the State of Jharkhand. This Clause contemplates a different situation. In my opinion, respondent No. 2 is justified in taking assistance from the said experts. Moreover, petitioner did not object to the deputation of the said experts by respondent No. 2 for examining the data collected by the petitioner. The petitioner took part in the enquiry held by the said experts.

It is true that as per the Clauses 4.1, 4.2. 4.3 of the agreement, petitioner was to rely on the informations and datas furnished to it by the Government departments and it was not required to check the veracity of the informations provided and could not be held liable for any deficiency of service due to erroneous or incomplete information provided to it. But whether the performance of petitioner was otherwise as per the agreement, or not, can not be decided by this Court in this writ petition.

10. This Court in this writ petition under Article 226 of the Constitution of India, can not adjudicate on the controversies involved in this case such as who has committed breach of the agreement and to what extent; whether termination of agreement is valid or not; whether petitioner is entitled to receive payment for the services performed and the costs incurred upto-the-date of the termination and all costs incurred as a result of such termination; whether principles of promissory estoppel will apply or not etc.

In the facts and circumstances, it is clear that the rights and obligations of the parties under the contract are to be adjudicated on the basis of the evidence by a competent body/Court. This Court under the writ jurisdiction cannot decide such questions.

11. But keeping in view that this matter involves planning of Agriculture and Horticulture in the State and in view of the report of the experts dated 15.12.2003 (Annexure-32/1), this Court thinks it proper that Respondent No. 2 may reconsider the matter. While rejecting the present estimates furnished by petitioner the experts opined that such sample survey if proposed to be done again, may got to be conducted by petitioner itself in adherence to the sampling design and on the basis of crop cutting experiments, because the resource persons were seen to be quite sincere and also they have acquired some experience. The sample survey once again could be obtained either by the petitioner or by any other Agency.

If, within four weeks, petitioner expresses it's willingness to Respondent No. 2 to complete the work as per the suggestions of the experts and as may be directed by Respondent No. 2, Sri Shiv Basant (respondent No. 2) may reconsider his decisions. He may hold meetings with petitioner and the experts to sort out the matter, as early as possible.

If this exercise fails, petitioner will be at liberty to move the Civil Courts and in that event this order will not prejudice cases of the parties.

12. With these observations and directions, this writ petition is dismissed.