
(2013) 08 CAL CK 0083

In the Calcutta High Court

Case No : M.A.T. No. 972 of 2013 and C.A.N. No. 6312 of 2013

Subrata Majumdar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2014) 1 CHN 406

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Judgement

Arun Mishra, C.J.—The Intra-Court appeal has been preferred questioning the legality of the order dated 20.6.2013 passed by the Single Bench dismissing the writ petition in the matter of period of agreement entered into by the appellant/petitioner with the railway administration. The agreement was entered into for a period of ten years by the appellant with the railway for beautification and display of the commercial publicity media of total 1104 sq. ft. of illuminated kiosk or equivalent as per terms and conditions of the tender application of the contractors. The contract period will be valid for ten years from the date of completion of construction work at initial phase of the scheme as provided in the contractual period in the agreement. On 25.3.2003, a notice was issued to the petitioner that the period of ten years will be expired on 20th April, 2013. The petitioner was requested to remove all the publicity media allotted on beautification scheme from Sealdah Station Circulating Area by 20.4.2013 positively. Aggrieved by the aforesaid communication, writ petition was filed for the relief that the communication dated 25.3.2013 be quashed and it be ordered that the ten years period granted to the petitioner would come to an end in the month of December, 2013.

2. The petitioner has come up with the case that electrical charges, as per clause 1(f) of the agreement, were to be borne by the contractor as per rates fixed by the railways. Electric charges will be deposited with the railways on yearly basis. Contract was to be valid for ten years from the date of completion of the

construction work at initial phase of the scheme as per clause 6(a) of the agreement. Commencement of the date of installation of commercial publicity media is to be fixed by a Committee consisting of Senior Station Manager/Sealdah, Senior Section Engineer (Electrical)/G/Sealdah and Junior Engineer (Works)/Sealdah PF as per clause 6(c) of the agreement. Copy of the agreement has been filed as annexure P-1 to the petition.

3. It is submitted that the letter dated 13.12.2002 for supply of electricity to illuminated media erected by M/s. Swagat Services in connection with the work for beautification of the Sealdah Station Circulating Area on sponsorship basis. The power supply on temporary basis was given on 19.1.2000 and disconnected on 9.10.2002. A sum of Rs. 43,934/- has already been deposited to the Chief Cashier by the petitioner. On 31.10.2003, petitioner intimated the Senior Divisional Electrical Engineer (G) for supply of the electricity in connection with beautification of Sealdah Station Circulating Area on sponsorship basis. On 15.12.2003 again the electricity connection was given on permanent basis. The railway administration had provided only 700 sq. ft. to the appellant/petitioner for beautification and display of commercial publicity media. Thus, the petitioner has suffered a loss of Rs. 10 lakhs. Petitioner, now had been asked to remove all the hoardings vide communication dated 25.3.2013. It is submitted by the appellant/petitioner that electric publicity media have to be counted from the date of electric connection as it is a general practice and also illuminated media have no value without electrical connection. Thus, the action is illegal and bad in law and the agreement be ordered to be continued till December, 2013.

4. Affidavit-in-opposition has been filed in the appeal by the respondents as per direction of this Court.

5. It is contended that offer letter was issued to M/s. Swagat Services on 3.3.2000 wherein the appellant was clearly advised to execute the contract within 15 days from date of issue of Letter of Acceptance. M/s. Swagat Services was advised to complete all the works in all respect within six months. Copy of the letter dated 3.3.2000 has been annexed as Annexure-1 to the affidavit-in-opposition. The appellant was provided with temporary electric connection on 19.10.2000 and was disconnected on 9.10.2002. Again permanent electric connection was provided to the appellant in December, 2003.

6. It is further contended that the letter submitted by the appellant Subrata Majumdar on behalf of M/s. Swagat Services dated 30th May, 2002 indicated that they had completed the initial job of beautification of Sealdah Station as per modified drawing. Copy of the letter has been annexed as Annexure-V to the affidavit-in-opposition.

7. It is contended by the respondent that as per clause 8(a) of the agreement, the contract will be valid for ten years from the date of completion of construction work at initial phase of the scheme. No such Committee has been formed as provided in clause 8(c) of the agreement for fixation of commencing

date of the installation of the publicity media. It was apparent from the letter submitted by the appellant on behalf of M/s. Swagat Services dated 24.9.2001 that it was declared that permitted project would be wholly completed within 60 days i.e. by 23.11.2001. Again on 5.8.2002, they informed that there are 49 numbers of permitted advertisement boards remaining to be installed very soon. There are total 64 numbers of advertisement boards installed or to be installed. Copies of the letter dated 24.9.2001 and 5.8.2002 have been annexed as Annexures 6 and 7 to the affidavit-in-opposition. The appellant did not execute the agreement within the specified period as indicated in the letter of acceptance dated 3.3.2000. It is clear that commencing date of installation of the advertisement board was prior to the date of execution of agreement i.e. on 21.4.2003. The appellant cannot claim for extension of work upto December, 2013. There is an arbitration clause in the agreement. As such, writ petition cannot be said to be an appropriate remedy.

8. Rejoinder has been filed by the appellant reiterating the same facts as pleaded in the writ petition. Certain documents have also been filed along with the reply indicating that work had been commenced for installation of advertisement boards prior to formal execution of the agreement dated 21.4.2003.

9. The Single Bench has dismissed the writ petition on the ground that it was not apparent from which date the agreement had commenced. The petitioner has failed to bring any document with respect to the commencement of the agreement. Disputed facts would have to be gone into and oral evidence may be necessary. Petitioner has been given liberty to avail the alternative remedy which may be available in accordance with law. Aggrieved by the impugned order passed by the Single Bench, this intra-Court appeal has been preferred.

10. It is submitted by the learned counsel appearing on behalf of the appellant that it is a case where permanent electricity connection was provided in December, 2003. Thus, the display of the glow sign board was not possible before the permanent electricity connection was granted. Thus, the date of commencement has to be taken as December, 2003 when electricity connection was provided. He has also referred to the agreement to submit that on completion of construction of the first phase, the period of ten years had to commence. Thus, the learned Counsel for the appellant has submitted that the dismissal of the writ petition cannot be said to be appropriate. He has also referred the communication dated 27.8.2003 written by Senior Divisional Commercial Manager, Eastern Railway, with respect to the supply of electricity to the illuminated media erected by M/s. Swagat Services in connection with the work of beautification of Sealdah Station Circulating Area on sponsorship basis.

11. The learned Counsel appearing on behalf of the railways has submitted that the period of ten years has already expired. In fact, the letter of intent was issued in January, 2000. Work had been commenced and glow sign boards were already erected as apparent from various communications of 2001-2002 written by the appellant/petitioner. Thus, the agreement had commenced from

21.4.2003. As a matter of fact, agreement was to be executed much earlier. The temporary electricity connection had been enjoyed by the appellant/petitioner with effect from 19.10.2002 for erecting various glow sign boards etc. and for beautification. Thus, the period of agreement commenced from the date of completion of beautification at the initial phase, which was pleaded in the instant case, before entering into the agreement itself. No case for interference is made out as the agreement has been rightly terminated.

12. After hearing the learned Counsel for the parties, we are of the considered opinion that the work had been started by the appellant much before the agreement was formally signed. A communication in March, 2000 with respect to beautification of Sealdah Station Circulating Area was issued. The letter of acceptance was issued to the petitioner and he had obtained electricity connection for a period of two years from 2000 to 2002 for completing the work, which was assigned to him for beautification etc. There are communications which have been referred to in the affidavit-in-opposition filed by the respondent that the appellant was in the process of erecting the advertisement boards as apparent from the communications dated 23.11.2001 and 5.8.2002. Thus, it is apparent that before entering into the agreement, work had been completed at the initial phase of the scheme. It is also apparent from Annexure V, written by M/s. Swagat Services to the Senior Divisional Manager that they had completed the job as per modified drawing mentioned in the beautification of Sealdah Station Circulating Area on sponsorship basis without ancillary work. Thus, there are admissions made by the appellant himself that the concerned company had completed the aforesaid work before signing of agreement on April, 2003.

13. In the circumstances, prima facie, it appears that though the appellant/petitioner is disputing now the aforesaid aspect, we find that no case for interference was made out in the writ petition filed by the petitioner. Prima facie, the termination could not be said to be a pre-mature one in the backdrop of the aforesaid facts. However, liberty has already been given to the appellant/petitioner to pursue any alternative remedy available to him. There is an arbitration clause. We are not disturbing the order passed by the Single Bench as it is not appealed against.

14. In view of the aforesaid discussion, we find no merits in the instant appeal. The same is hereby dismissed. We make it clear that any observation made in this decision shall not come in the way of the appellant to maintain the appropriate proceeding in accordance with law.

15. However, the parties are to bear their own costs. Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.