(2013) 04 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6876 of 2012

The Union of India and Another — APPELLANT

Vs

Ekta Telecommunication System and Others — RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Micro, Small and Medium Enterprises Development Act, 2006 — Section 16, 2(b)

Citation : (2013) 04 JH CK 0075

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Jalisur Rahman, for the Appellant; Abhay Kumar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The order dated 19th June, 2012 passed by the Director of Industries-cum-Chairman, HMSEFC (Jharkhand Micro and Small Enterprises Facilitation) is under challenge, whereunder the petitioners have been communicated the decision contained in the Award dated 18th May, 2012, as per which the first party i.e. sole respondent no. 1 herein is entitled to get outstanding principal amount of Rs. 8,83,861/- and interest for delay in payment of material supplied to the opposite party. The petitioners have been directed to pay outstanding principal amount with compound interest on delayed payment at three times of the Bank rate, notified by Reserve Bank of India in terms of Section 16 of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the Act, 2006) till the time, the payment is made.

2. The petitioners had an alternative remedy of appeal under the provisions of the Arbitration and Conciliation Act, 1996 against the impugned award. However, the writ petition was filed after the time limit for filing of such application u/s 34of the Act of 1996, had expired. The writ petitioners have taken a plea that the order has been passed by the Council without opportunity of proper hearing to it

as no copy of the application was served upon it in order to enable it to defend itself in a proper manner in the said proceeding.

3. A perusal of the impugned order dated 19th June, 2012, however, indicates that the copy of the application was sent to it on 24th March, 2012 by registered post. The Council has held its meeting on 24th February, 2012, 27th April, 2012 and 18th May, 2012, but the petitioners had remained absent. The petitioners have tried to make out a case that the notice was served without a copy of application in respect of which Annexure-8 is being referred dated 29th February, 2012. However, from perusal of the impugned order itself, it appears that after 29th February, 2012 the matter had been adjourned on 27th April, 2012 and 18th May 2012, but the petitioners perhaps kept on taking plea that the copy of the application was not served upon it, although it was sent on 24th March, 2012 by registered post. Therefore, the ground for violation of principle of natural justice, do not appear to have been made out. The petitioners had adequate opportunity to defend themselves and the notice sent to it also contained the copy of the application. Perusal of Annexure-8 dated 29th February, 2012 also indicates that in the said letter the petitioners had taken a plea that the parties were bound by the conditions of the contract as per para 2900 whereunder arbitration is to be undertaken on any dispute arising between the parties.

4. On merits, learned counsel for the petitioners submits that the respondent no. 1 has failed to undertake the maintenance of the U.P.S. supplied as per the terms of the work order contained at Annexure-2 dated 28th March, 2009. These objections were communicated to the respondent no. 1-supplier vide Annexure-4 dated 5th October, 2010 and subsequent correspondences issued thereafter. Therefore, the claim of payment for supplies is not tenable.

5. The respondent no. 1 has, however, submitted that it being a small industry is covered under the beneficial provisions of Micro Small and Medium Enterprises Development Act, 2006. According to him, for failure to make payment by the buyer, liability has been fixed under Chapter V of the Act of 2006. If the payment is not made before the appointed date thereafter it would be liable to pay interest over the outstanding amount in terms of Section 16 of the Act of 2006. Accordingly, the petitioners being aggrieved because of nonpayment of the dues against such supply made had invoked the Forum of the Facilitation Council under the relevant provisions of the Act, 2006, whereunder the impugned order has been passed.

6. According to the private respondents, the respondents were under a work order (Annexure-2) to supply 304 UPS of the specified description within a period of 30 days from the date of issue of purchase order. In terms of work order 100% payment is to be made after successful supply, installation, testing and commissioning of the material at site. Further 36 months warranty was for maintenance and the respondent was also under obligation of the work order to carry out annual maintenance for a period of 5 years. However, according to him, supplies were made starting from 2nd April, 2009. They were inspected by the

RITES in respect of which the report is annexed with the counter affidavit as Annexure-D Series which was undertaken on different dates on 24th December, 2009 onwards. In fact, the petitioners-railway issued certificate of installation and commissioning also in favour of the petitioners. Copies of which have been annexed to the counter affidavit and when thereafter the petitioners failed to make the payment, within the time stipulated as per the Act of 2006 and without any objection from their part within the period of 45 days of the supply the private respondent has invoked the Forum of the Council for award of outstanding principal amount, along with interest as notified by the R.B.I. in terms of section 16 of the Act of 2006.

7. I have heard learned counsel for the parties on merits also. Under Chapter V of the Act of 2006, there is a liability upon the buyer to make payment from the date agreed between the parties or in case where there is no agreement in that behalf, before the appointed day. Section 2(b) of the Micro, Small and Medium Enterprises Development Act, 2006, reads as under:

Section 2(b): "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

8. In the present case, as the facts disclose the supplies were made w.e.f. 2nd April, 2009 over a period of time. They were inspected by RITES and Commissioned, thereafter at the respective sites at the petitioners'' premises. No objections to such supplies were made before 5th October, 2010 admittedly as per the case of the petitioners. Therefore, in view of the provisions of the Act, 2006, the petitioners were liable to make payment of the dues as per the work order after the supply, installation, testing and commissioning of the materials etc. When these facts were brought to the notice of the Facilitation Council, after giving notice and adequate opportunity to the petitioners and on their failure to rebut the case of the first party/respondent no. 1 on facts or in law the Council has directed payment of the outstanding principal amount of Rs. 8,83,861/- and interest three times of the Bank rate as notified by the R.B.I. in terms of Section 16 of the Act of 2006. The impugned order, therefore, does not appear to suffer on merits as well and no grounds are made out for interference in the impugned order on the part of the petitioners. Though the petitioners had an alternative remedy of appeal and preliminary objection was taken by the private respondent on that score, but this Court though it proper to entertain the writ petition, as the petitioners had tried to make out a case of violation of principle of natural justice and lack of proper notice in the decision making process by the Facilitation Council. On facts, however, they have failed to establish that the order has been passed without notice or adequate opportunity of hearing to them.

In the totality of circumstances, therefore, no grounds for interference is made out on the part of the petitioners in the impugned order. The petitioners have deposited a Bank Draft of Rs. 4,41,931/- being 50% of the principal amount as per the order dated 1st March, 2013 passed by this Court as a condition precedent. In view of the fact that the writ petitioners have failed to make out a case for interference in the writ petition, the aforesaid Demand Draft deposited earlier in the name of the Registrar General of this Court, however, shall be returned to the petitioners. The petitioners would ensure the payment of the awarded amount as per the orders of the Facilitation Council in accordance with law. Accordingly, the writ petition is dismissed.