

GAHC010081832022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/242/2022

M/S GANNON DUNKERLEY AND CO LTD
864, TOPSIA ROAD (SOUTH), HAUTE STREET, (7TH FLOOR), KOLKATA-
700046, WEST BENGAL, REP. BY AUTHORISED SIGNATORY/ DEPUTY
GENERAL MANAGER HR AND ADMIN, SHRI SUBROTO MUKHERJEE, AGE
ABOUT 43 YEARS, 864, TOPSIA ROAD (SOUTH), HAUTE STREET, (7TH
FLOOR), KOLKATA- 700046, WEST BENGAL.

VERSUS

CHANCHAL KUMAR AND 4 ORS
MANAGING DIRECTOR, NHIDCL, 3RD FLOOR PTI BUILDING,
PARLIAMENT STREET- 110001.

2:WANPYN SHNGAINLANG BLAH
EXECUTIVE DIRECTOR
NHIDCL
3RD FLOOR PTI BUILDING
PARLIAMENT STREET- 110001.

3:PANKAJ SINGH
EXECUTIVE DIRECTOR (P)
REGIONAL OFFICE
NHIDCL
AMBARI
GUWAHATI
ASSAM.

4:FINESON POJAR
GENERAL MANAGER (P)
NHIDCL
PMU JORHAT ASSAM.

5:KUKIL BARUAH
ASSISTANT MANAGER LEGAL NHIDCL
REGIONAL OFFICE AMBARI GUWAHATI
ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : MR. U K NAIR (r-1,2)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

19.10.2023

1. Heard Mr. D. Mazumdar, learned Senior Counsel for the petitioner assisted by Mr. S.K. Deori, learned counsel; Mr. P.J. Saikia, learned Senior Counsel for the respondent nos.1 & 2 assisted by Mr. K.J. Saikia, learned counsel and Mr. R.K. Talukdar, learned counsel for the respondent nos.3 & 5. No one appears for the respondent no.4.

2. This contempt petition has been filed on the ground that the respondent nos.1 & 2 had invoked the bank guarantee submitted by the petitioner, despite the stay order issued by this Court on 18.04.2022.

3. The learned counsel for the petitioner submits that the *status quo* order had been passed by this Court after 1:30 p.m. on 18.04.2022. While it was the duty of the officers working under the respondent nos.1 & 2, who were present in the Court at the time of passing of the *status quo* order, to inform the bank with regard to the fact that the bank guarantee could not be invoked as a *status quo* order had been passed, the same was not done. As such, the bank guarantee was encashed by the bank at 7:41 p.m. on 18.04.2022. He submits

that due to the respondents not informing the bank with regard to the *status quo* order, the respondents have committed contempt of Court. Mr. D. Mazumdar also submits that paragraph-9 of the affidavit filed by the respondent no.5, is to the effect that *status quo* order was passed by this Court after 1:30 p.m. on 18.04.2022 and it was communicated to the NHIDCL Headquarters on 18.04.2022 itself.

4. Mr. P.J. Saikia, learned Senior Counsel for the respondent nos.1 & 2 submits that the request for encashing the bank guarantee had been made by the respondents much prior to 18.04.2022, i.e from 11.04.2022 to 18.04.2022 at 1:17 p.m. As such the invocation of the bank guarantee by the respondent nos.1 & 2 and encashment of the same by the bank, was not in violation of the Court's order, as the petitioner should have informed the bank with regard to *status quo* order passed by this Court on 18.04.2022, prior to the bank acting on the bank guarantee.

5. I have heard the learned counsels for the parties.

6. The facts of the case is that the petitioner was allotted a contract work under the NHIDCL, which was however terminated, vide order dated 08.04.2022, on the ground that the petitioner continuously failed to meet contractual obligations and the desired pace/rate of progress. Thereafter the NHIDCL, vide letter dated 11.04.2022, wrote to the UCO Bank for invocation of the bank guarantee submitted against performance security by the petitioner, amounting to Rs.19,90,30,000/-. The petitioner being aggrieved with the termination of the contract work filed WP(C) No.2651/2022. This Court took up

the matter on 18.04.2022 and at around 1:30 p.m, issued an interim order to the effect that *status quo* should be maintained by both the parties relating to the bank guarantee submitted by the petitioner. The bank guarantee was however encashed and in this regard the UCO Bank sent an e-mail to the NHIDCL and the petitioner on 18.04.2022 at 7:41 p.m., stating that the proceeds of the invoked bank guarantee had been credited in the account of the NHIDCL. The question that is to be decided is as to whether any case of contempt has been made out, as the *status quo* order had been passed on 18.04.2022 at around 1:30 p.m. and the proceeds of the bank guarantee had been credited into the account of the NHIDCL on the same day.

7. The facts of the case show that NHIDCL had invoked the bank guarantee on different dates starting from 11.04.2022, as reflected in paragraph-9 of the affidavit of the respondent no.2, which is as follows :-

Sr.No	Particulars	Letter No./Email/date & time	Remarks
1.	Request to bank for invocation of BGs	No. NHIDCL/Assam/NH-37/Jhanji-Demow/173229/1519 dated 11.04.2022	First communication to the Bank on 11.04.2022 at 12:57 Hrs.
2.	Reminder-I to bank for invocation of BGs	E-mail dated 11.04.2022 at 16:51 Hrs.	
3.	Reminder-II to bank for invocation of BGs	E-mail dated 12.04.2022 at 04:04 PM.	
4.	Reminder-III to bank for invocation of BGs	E-mail dated 13.04.2022 at 02:17 PM.	

5	Reminder-IV to bank for invocation of BGs	E-mail dated 11.04.2022 at 01:17 PM.	
Note : No Reminders were issued to the bank by NHIDCL from 14 th April 2022 to 17 th April, 2022 due to official holiday. 14 th April 2022 - Mahabir Jayanti 15 th April 2022 - Good Friday 16 th & 17 th April 2022 - Saturday & Sunday.			

8. There is nothing stated by either of the parties as to when the order of *status quo* order passed by this Court on 18.04.2022 had been uploaded in the Case Information System (CIS) system and when a certified copy of the said order had been taken by the respondents/NHIDCL. There is nothing to show that UCO Bank had been made aware of the *status quo* order passed by this Court, prior to the Bank crediting the proceeds of the bank guarantee into the account of the NHIDCL. The affidavit of the respondent no.5 shows that the order of *status quo* made by the Court had been communicated to the NHIDCL Headquarters on 18.04.2022. However, there is nothing to show as to what time the said communication had been made and whether the same had been communicated to the Bank. Though the petitioner has taken the stand that it was the duty of the officials of the NHIDCL, who were present in the Court to communicate the *status quo* order to the Bank, this Court cannot lose sight of the fact that it was the duty of the petitioner to also communicate the order of

this Court to the Bank or the NHIDCL within time. The date and time of the *status quo* order being effective would be from the time the order is signed and the same is communicated to the concerned person/party. Though, there might be knowledge of the order being passed in the Court, the date and time an order would become effective and enforceable is from the time it is signed and communicated to the concerned person/authority. However, the petitioner has not been able to show when the *status quo* order became effective. The copy of the *status quo* order that has been annexed to the contempt petition also shows that application for being furnished a certified copy of the order dated 18.04.2022 was made by the petitioner on 18.04.2022 and the copy was delivered to the petitioner on 19.04.2022. As such, if copies of the order could be delivered only on 19.04.2022, the crediting of the proceeds of the bank guarantee on 18.04.2022 does not appear to be in violation of the *status quo* order.

9. In view of the above reasons, it cannot said that there was any contempt of Court, as there is nothing to show that the signed order passed by this Court on 18.04.2022 could have been communicated to the Bank by the respondents, prior to the proceeds of the bank guarantee being credited.

10. In view of the reasons stated above, this Court does not find any case of contempt being made out. The contempt petition is accordingly closed.

JUDGE

Comparing Assistant