

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3711 of 2014

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M/S NCC Ltd. (Formerly Known As Nagarjuna Construction Company Limited), NCC House, Madhapur, Hyderabad- 500081 Through Its Company Secretary And Senior Vice President (Legal), Mr. M.V. Srinivasa Murthy Son Late Subrehmanyam, Residing At Flat No. 201, Padmaja Towers, Plot No. 81, Srinagar Colony, Hyderabad- 500073

.... Petitioner

Versus

1. The State Of Bihar Through Principal Secretary, Water Resource Department
2. The Principal Secretary, Water Resource Department, Government Of Bihar
3. Engineer In Chief (Central), Water Resource Department, Government Of Bihar, Patna
4. Chief Engineer, Water Resource Department, Valmiki Nagar, West Champaran, Patna
5. Chief Engineer, Water Resource Department, Muzaffarpur
6. Engineer in Charge, Water Resource Division, Chekie, Motihari, East Champaran

.... Respondents

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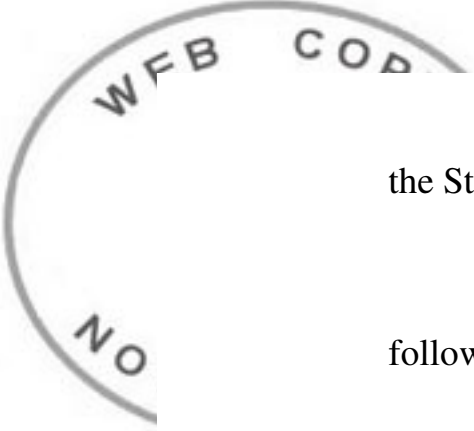
Appearance :

For the Petitioner : M/s Y.V.Giri, Sr. Advocate and
Ashish Giri, Advocate

For the State : M/s Lalit Kishore, PAAG and
Binita Singh, GP 31

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 26-06-2015



I have heard learned counsel for the petitioner as well as the State.

Through this writ application the petitioner seeks following reliefs:

- (i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 26.2.2013 passed by the respondent Principal Secretary, Water Resources Department, Government of Bihar rejecting the representation dated 11.12.2012 of the Petitioner.
- (ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the Circular bearing no. 948 dated 13.06.2011 issued by respondent Principal Secretary, Water Resources Department, Government of Bihar wherein the mode of deducting the Royalty charges has been changed in midst of the contract dated 6.8.2009 by deducting the Royalty charges on the net amount of Bill of Quantity (BOQ) rather than the gross amount of Bill of Quantity as was prevalent upto May, 2011.
- (iii) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondent authorities to refund an amount of Rs. 8.16 crores (as on December, 2013) already deducted unlawfully and illegally in excess towards Royalty charges from the R.A. Bills of the petitioner and also any further amount so deducted after December, 2013.
- (iv) To any other relief or reliefs for which the petitioner is

found to be entitled in the facts and circumstances of the case.

However, at the time of hearing of the writ application, learned counsel for the petitioner has confined his prayer to a short question raised by him that the final order passed by the Principal Secretary, Water Resources Department, Government of Bihar suffers from the vice of arbitrariness inasmuch he is not considered the grounds raised by the petitioner in his representation dated 11.12.2012.

It is contended on behalf of the petitioner that respondents, using their sovereign power, have issued a circular completely changing the terms of the contract and the common understanding of the parties for 20 months during which part of the contract was implemented as a result of which, the State can now charge royalty contrary to the contract dated 6.8.2009 resulting in unprecedented loss to the petitioner.

Counter affidavit has also been filed on behalf of the State.

At the time of hearing learned counsel for the petitioner drew attention of this Court towards Annexure 9 which is an order dated 30.11.2012 passed by a Single Bench of this Court in C.W.J.C. No.22920 of 2011. It is contended that against the aforesaid action



of the State the petitioner had approached this Court by filing the aforesaid writ application which was disposed of vide Annexure 9 granting liberty to the petitioner to file a detailed representation afresh before the Principal Secretary, Water Resources Department, Government of Bihar with a copy to the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna. The respondents were directed to consider the same in terms of agreement and dispose of it with a reasoned order in accordance with law.

It is contended that the petitioner filed is detailed representation on 11th of December, 2012, a copy of which has been appended as Annexure 10. Mr. Y.V.Giri, learned Senior Counsel appearing for the petitioner drew attention of this Court towards the representation in which it has been demonstrated that during execution of work, notwithstanding the provisions contained in Bihar Mineral Concession Rule, 1972, the royalty was deducted from R.A. Bills in the manner which has been described in paragraph 9. It is stated with the help of example set up in paragraphs 9 and 12 that the petitioner has been put to considerable loss by introduction of new condition under the new circular no. 948 dated 13.6.2011 deducting royalty at BOQ rate directly from R.A Bills. He submits that net effect of impugned circular would be of about Rs. 7.35 per Rs. 100.00 of the bill on one cubic meter volume of banking soil.

Thus, crores of rupees have unlawfully been deducted after introduction of aforesaid circular. In paragraph 14 of the representation the points of the petitioner have been summarised under about five heads namely:

A. Terms of the contract cannot be changed, altered, modified or corrected unilaterally by one of the parties to the contract and on this petitioner has referred four decisions of the Apex Court rendered in **Delhi Development Authority, N.D. and Anr. Vs. Joint Action Committee, Allottee of SFS Flats and Ors. [(2008) 2 SCC 672]**, **Barat Sanchar Nigam Ltd. and Anr Vs. BPL Mobile Cellular Ltd. and Ors. [(2008) 13 SCC 597]**, **Build India Construction system Vs. Union of India (UOI) [(2002)5 SCC 433]** and **H.B. Basavaraj (Dead) by Lrs. And Anr. Vs. Canara Bank and Ors [(2010) 12 SCC 458]**

(B) Conduct of the party is decisive as to how the terms are to be interpreted and understood between them. On this point the petitioner has referred decision of the Hon'ble Supreme Court rendered in **Abdulla Ahmed Vs. Animendra Kissen Mitter [AIR 1950 SC 15]**

(C) Doctrine of promissory estoppel,

(D) Violation of principles of natural justice and

(E) When mistake is not rectified for long period, the

same in law may not be treated to be one. Thus, the authorities, since have not rectified the same for approximately 20 month after entering into the agreement i.e. since 03.07.2009, therefore, the same would now not deem to be a mistake in the eyes of law.

It is urged on behalf of the petitioner that none of the aforesaid grounds have been considered properly and none of the decisions of the Supreme Court has been considered and referred in the impugned order dated 22.3.2013 as contained in Annexure 11.

Mr. Giri submits that at Clause 4(v) it has been stated by the respondent Principal Secretary that the circular has not been issued for changing the terms of contract rather the same is for the purpose of clarifying the procedure and it does not affect the petitioner in any manner, however, it had not been considered as to how it would not affect the contract when the calculation by setting up example has been given in the representation showing that the petitioner is at loss of about Rs. 7.37 crores. It is also not clarified as to how, when the respondent themselves were making calculation as per the contract, after coming of new circular, can be allowed to change the procedure of calculation putting the petitioner at loss by acting unilaterally. It is further contended that the petitioner has referred several judgments of Supreme Court on every issue raised by it but none has been considered by the

respondent Principal Secretary.

Mr. Lalit Kishore, learned PAAG submitted that a detailed counter affidavit has been filed defending the action of the Principal Secretary endorsing the view expressed by him. However, he has miserably failed to show that the grounds raised by the petitioner in his representation have been considered properly and a reasoned order has been passed after consideration of all of them.

In such situation it would be very difficult to allow the impugned order to survive. It is well settled principle that if any action of the authority would lead to a serious civil consequence upon a party or a person then issuance of a show cause notice would be must and if reply to the show cause is filed then consideration of the grounds raised by such person or party would be mandatory and a reasoned order should have been passed, thereafter, explaining as to under what circumstances the grounds raised by such person are fit to be accepted or rejected. In the present case that does not appear to have been done.

As a result, in my considered opinion the impugned order contained in Annexure 11 cannot be sustained in its present form. Accordingly the same is quashed and set aside.

The matter is remitted back to the Principal Secretary, Water Resources Department, Government of Bihar (Respondent no.

2) to take a fresh decision upon the representation already filed by the petitioner vide Annexure 10 after granting opportunity of hearing within a period of three months from the date of receipt / production of a copy of this order.

Accordingly this writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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