

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6348 OF 2013

(M/s. Rajkumar Santoshkumar thr. its Proprietor vs. WCL thr. CMD, Nagpur & Ors.)

AND

WRIT PETITION NO. 3509 OF 2013

(WCL thr. CMD, Nagpur & Anr. vs. Rajkumar Santoshkumar thr. its Proprietor)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
FEBRUARY 27, 2015.**

Heard Shri Palshikar, learned counsel for the petitioner in Writ Petition No. 6348/2013 and for the respondent in Writ Petition No. 3509 of 2013 and Shri Samudra, learned counsel for the respondent – WCL in both the matters.

The contract for construction / digging of 17 Borewells was awarded to the petitioner – Rajkumar Santoshkumar. The petitioner has sunk eight bore holes at Silewara Unit. As per award value, the petitioner – contractor claimed that he is entitled to recover an amount of Rs.2,36,230/- for the said work. It appears that till then there was no formal contract between the parties. Only a draft agreement was prepared and he raised objection to certain clauses. A dispute arose and the contractor then proceeded under Section 20 of the Indian Arbitration Act, 1940, before the Civil Court.

Respondent No. 3 in Writ Petition No. 6348 of 2013 has been appointed as Arbitrator. The

proceedings were going on before him. It is not in dispute that initial time for completing adjudication expired and trial Court extended time on 21.12.2012 by four months. The employer WCL has filed Writ Petition No. 3049 of 2013 in same matter against the contractor. There the extension given by the Civil Court vide order dated 21.12.2012 has been questioned. The controversy was before the learned Single Judge and by a judicial order has been directed to be looked into along with Writ Petition No. 6348 of 2013 filed by the Contractor.

The communications sent by Respondent No. 2 – Arbitrator produced as annexures with Writ Petition No. 6348 of 2013 show that original records are not available at least since April 2013 and, therefore, the matter could not progress. The learned Arbitrator has requested both parties to assist him in reconstruction of records.

In this situation, submission of Shri Palshikar, learned counsel is, as work of digging of eight bore holes is not in dispute, the admitted amount can be paid to him.

Shri Samudra, learned counsel submits that as the remaining nine bore holes have not been sunk, the employer was required to engage other contractor and, therefore, incurred more expenditure. The employer, therefore, has got a counter claim in the matter against the contractor. The amount of counter claim needs to be adjusted out of the amount found payable to the petitioner contractor towards Silewara work.

Though the counter claim is not produced by any of the parties, the fact that such a counter claim has been preferred is not in dispute.

In this situation, it is apparent that a direction as sought for by the Contractor cannot be issued at this stage. However, the dispute is going on since long and it is before the Arbitrator sine last more than two years. The respective parties, therefore, state that they may attempt to reconstruct the record. They also pointed out that the extended time given to Respondent No. 3 – Arbitrator has already expired. However, there is no report by the said Arbitrator to the Civil Court.

In this situation, as the Arbitration clause exists, it is apparent that the Arbitration must be brought to an end legally and logically. The reconstruction of records for said purpose is, therefore, must. Hence, both the parties to assist Respondent No. 3 in reconstructing the records within a period of four weeks from today. After the records are reconstructed, the parties can obtain appropriate orders from the Competent Court for further prosecution of the said proceedings.

With these directions and with liberty as mentioned supra, both the petitions are disposed of. However, there shall be no order as to costs.

JUDGE

JUDGE

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