

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

10 WRIT PETITION NO. 7451 OF 2015
WITH CA/1632/2016 IN WP/7451/2015

M/S J.K. CONSTRUCTION COMPANY THROUGH ITS PARTNER
VERSUS
THE UNION OF INDIA AND OTHERS

...
Advocate for Petitioner : H.V. Tungar h/f. Deshpande C.R.
ASG for Respondents 1 to 8 : S.B. Deshpande
...

CORAM : T.V. NALAWADE, J.
DATED : 18th August, 2016.

ORDER :

1. The petition is filed to challenge the order of imposition of penalty made by respondent Railway after appointing one Committee against the petitioner, contractor. Both the sides are heard.

2. It appears that the work of supply and staking of stones of particular size was given to the present petitioner. It is the case of Railway that the work was not to be executed in night time and in one incident dated 26.4.2015, during execution of the work of supply of the stones, truck dumper was kept stationary on railway line in the night time. It is also the case of Railway that due to keeping of stationary vehicle on the track, there was a collision between one goods train and the said

dumper and further, more trains were delayed due to this incident and Railway sustained loss. After this incident, one Committee was constituted by the Railway and on the basis of report of Committee, the Railway decided to impose penalty of Rs. 19.99 lakh on the Contractor, petitioner.

3. The learned counsel for petitioner submitted that no notice at all was issued to the petitioner of the said inquiry by the Committee and principles of natural justice were not followed. The learned counsel for Railway submitted that the said Committee was appointed as Inquiry Committee by Railway and it was internal machinery of Railway and Railway wanted to ascertain the loss sustained by it. The learned counsel for petitioner submitted that already entire amount is deducted and final bill is also prepared. However, he submitted that final bill is not signed by the contractor.

4. The learned counsel for Railway drew the attention of this Court to Clause No. 36 of the contract, the clause of arbitration. The learned counsel submitted that if the contractor has dispute with regard to the said deduction or the claim of Railway, the contractor can approach arbitrator and arbitrator can decide such dispute. The learned counsel for petitioner

placed reliance on some observations made by the other Hon'ble Judge of this Court (Division Bench) in **Writ Petition No. 8173/2015 on 27th June 2016 [M/s. L.K. Goyal Vs. The Union of India and Ors.]**. This Court is avoiding to go through the facts of that case. It cannot be disputed that the so called Committed appointed by Railway had no power to adjudicate the claims. In view of these circumstances, this Court holds that there are no merits in the petition and the contractor can approach appropriate forum.

5. Petition is disposed of in aforesaid terms. These observations will not come in the way of petitioner or the forum which will be considered the claim of petitioner. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/