

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1622 OF 2016

Anish Narendra Nashine

-vs-

The Union of India, thr.Executive Engineer, Nagpur and others

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

Court's or Judge's Orders.

Mr. Rohit Joshi, counsel for the petitioner.
Mr. Ambarish Joshi, counsel for the respondents.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 29.11.2016.

By this writ petition, the petitioner challenges the order of the respondent No.2-Superintending Engineer dated 29/11/2013 directing the petitioner to pay a sum of Rs.8,12,069/- by way of compensation towards the delay in completion of the contract work. The petitioner also challenges the consequential order dated 07/12/2013 adjusting certain amount towards the liability imposed on the petitioner vide impugned order dated 29/11/2013.

The petitioner was awarded a contract of building construction on 29/12/2008 and the construction was to be completed before 28/10/2009. According to the petitioner, the site was handed over to the petitioner after the due date on or before which the construction was to be completed. The petitioner suffered losses due to the delayed handing over of the site to the petitioner and, therefore, the matter was referred to the Arbitrator. According to the petitioner, the Arbitrator passed an award in favour of the petitioner directing the respondents to pay a sum of Rs.18,35,988/- to the petitioner. Since the claim of the petitioner is awarded by the Arbitrator, the petitioner has challenged the action on the part of the Superintending Engineer of

directing the petitioner to pay the compensation of Rs.8,12,069/- for the delay in completion of the contract.

Shri Rohit Joshi, the learned counsel for the petitioner, submitted that a similar term like the one incorporated in the contract executed between the parties came up for consideration before the Hon'ble Supreme Court in the case of State of Karnataka v. Shree Rameshwara Rice Mills, reported in AIR 1987 SC 1359 and the Hon'ble Supreme Court held that the term does not empower the government to adjudicate upon disputed question of breach and the power to assess damages is confined only to cases where breach is admitted. It is submitted that the Superintending Engineer did not have jurisdiction to direct the petitioner to pay a sum of Rs.8,12,069/- towards compensation for the delay in completion of the work when the petitioner did not admit the delay. It is stated that when the site was handed over to the petitioner after 28/10/2009, there was no question of completion of construction work on or before 28/10/2009. It is stated that in the circumstances of the case, the impugned orders are liable to be quashed and set aside, more so, when an award is passed by the Arbitrator in favour of the petitioner, directing the respondents to pay compensation to the petitioner for the loss suffered by the petitioner due to the delay in handing over the possession of the site to the petitioner.

Shri Ambarish Joshi, the learned counsel for the respondents, does not dispute the position of law as laid down by the Hon'ble Supreme Court in the judgment, reported in AIR 1987 SC 1359. The learned counsel states that the Superintending Engineer would take a decision whether the matter is liable to be referred to the Arbitrator in respect of the dispute in payment of compensation by the petitioner for the delay in completion of the construction work. It is stated that an appropriate decision would be taken by the Superintending Engineer at the earliest.

Be that as it may, it is clear from a reading of the judgment of the Hon'ble Supreme Court that the Superintending

Engineer did not have the jurisdiction to direct the petitioner to pay the compensation to the tune of Rs.8,12,069/- when the petitioner had disputed that he was responsible for the delay. The matter in respect of payment of compensation to the petitioner was referred to the Arbitrator and the Arbitrator has passed an award in favour of the petitioner. If the Superintending Engineer was of the view that the petitioner was responsible in delaying the construction work, the Superintending Engineer could have taken appropriate steps for ensuring that the liability is fastened on the petitioner. The impugned order could not have been passed when the facts in regard to the delay caused by the petitioner were seriously in dispute.

For the reasons aforesaid, the writ petition is allowed. The impugned orders are quashed and set aside. The respondents are free to take appropriate steps against the petitioner, if so advised. Order accordingly. No costs.

JUDGE

JUDGE