

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 982 of 2018**

M/s D. Thakkar Constructions Private Limited, A Duly Registered Company Under The Indian Companies Act, 1956, Having Its Registered Office At 1105/1106, Universal Majestic, Behind RBK International School, P L Lokhande Marg, Chembur W Mumbai- 400043 (Maharashtra), Through Its Authorized Representative, Mr. Vishal Thakkar, S/o Shri Pravin N. Thakkar, Aged About 38 Years, R/o 702, Coral Apartment, Shri Vallabh Bagh Lane, Ghatkopar (East), Mumbai 400077, Maharashtra

---- Petitioner**Versus**

1. Union of India Through Its Secretary, Ministry of Railways, Rail Bhavan, 1, Raisina Road, New Delhi 110001
2. South East Central Railway (S.E.C.R.), Through Its General Manager, RTS Colony, Railway Colony, Bilaspur (C.G.), 495004
3. Chief Engineer (Construction), South East Central Railway, Beside DRM's Office Building, Kingsway, Nagpur 440001
4. Deputy Chief Engineer (Construction), South East Central Railway, Beside DRM's Office Building, Kingsway, Nagpur 440001
5. Deputy F.A And Chief Administrative Officer (Construction), South East Central Railway, Beside DRM's Office Building, Kingsway, Nagpur
6. Axis Bank Limited, Through Its Branch Manager, MG House, Rabindranath Tagore Road, Civil Lines, Nagpur

---- Respondents

For Petitioner	:	Shri Abhinav Kardekar, Advocate.
For Respondent Nos.2 to 5	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Prashant Kumar Mishra****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****26.07.2018**

1. Annexure-P/1 to the writ application is dated 23.12.2017 which is under challenge in the present writ application. Annexure-P/1 is the notice of termination of the contract and failure of the Petitioner to complete the balance

civil engineering work in mega block to make section fit for commissioning in the section between Keolari Station to Nainpur.

2. Petitioner was awarded the contract by the South Eastern Central Railway; hereinafter referred to as 'SECR', as he was the successful bidder in terms of the agreement dated 03.03.2016. The period of completion was 18 months from the date of acceptance i.e. from 05.01.2016 to 04.07.2017. It seems that not much progress was made by the Petitioner while executing the contract for which many reminders including extension of time by way of concession and indulgence was given to the Petitioner. Having failed to avail the opportunity and keeping in mind the priority which was accorded to completion of the execution of the work of conversion of broad-gauge, the authorities decided to annul the contract with consequential fallout upon the Petitioner.
3. Submission of the counsel for the Petitioner is that the Railway authorities had themselves extended time which would be evident from the communication dated 13.12.2107. It is the argument that the time was extended till 31.01.2018 and 15 days time was granted to execute supplementary agreement on any working day. However, without waiting for the execution of the supplementary agreement within 15 days and despite the extended time not having expired, the Railway authorities rushed to a decision and annulled the contract which has serious consequences for him.
4. In one of the earliest communications which was a 7 days notice issued to the Petitioner by the Railways on 05.12.2017, it was clearly pointed out that due to failure on his part to mobilize sufficient resources, he has failed to complete the work within the schedule. The 18 months periods which was the time fixed for completion of contract, financial progress only to the extent of 22.4% was made. In other words, the contract was far-far behind the schedule. If the Railway authorities on whatever assurance given by the Petitioner and hoping that he would deliver, decided to give him indulgences but such concession did

not beget the required result, then obviously the extended time had no meaning and being convinced that the capability and the ability of the Petitioner to complete the contract even within the extended time was not visible on the ground, the option was exercised and the contract was terminated.

5. Learned counsel representing the Railways has filed a detailed return besides taking objection with regard to maintainability of the writ, they have also filed their reply on the merits of the matter. The details of the work assigned, the indulgence shown to the Petitioner from time to time, and the communications made, have been brought and annexed as part of the said return. The *bona fide* of the Railways cannot be doubted nor can the power vested in the contract which has been exercised can be said to be irrational or arbitrary. The failure is fairly on the shoulders of the Petitioner in not completing the contract within time and even not taking advantage of the extended period of time. If the Railway authorities were satisfied with lack of significant progress made in regard to the contract being achieved on the ground, they were left with no option but to go for termination of the contract and the said decision cannot be said to be irrational or arbitrary which can be interfered with.
6. The writ application, therefore, has no merit. It is dismissed. Dismissal of the writ application however, may not come in the way if the Petitioner has otherwise remedy within the contract.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge