

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 22.08.2019

Judgment pronounced on 12.09.2019

REVP No. 97 of 2019

- Shree Mahamaya Constructions, 231, 2nd Floor, Rishabh Complex, M.G. Road, Raipur Chhattisgarh, Through Its Sole Proprietor Sh. Sandeep Rungta, S/o Late Sh. G.R. Rungta, Aged About 46 Years, R/o Navkar Apartments, 3rd Block, 2nd Floor, Choubey Colony, Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Public Health Engineering Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh
2. Engineer - In - Chief, Public Health Engineering Department, Chhattisgarh Raipur, District Raipur Chhattisgarh
3. Chief Engineer, Public Health Engineering Department , Jagdalpur Zone, District Jagdalpur Chhattisgarh
4. Superintending Engineer, Public Health Engineering Department, Jagdalpur Circle, District Jagdalpur Chhattisgarh
5. Executive Engineer, Public Health Engineering, Jagdalpur Division, Jagdalpur Chhattisgarh

-----Respondents

For Petitioner : Shri Saurabh Dangi, Advocate
For Respondents/State : Shri Gagan Tiwari, Dy GA

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. The petitioner who is a contractor seeking review of the order dated 20.03.2019 passed in WPC-3044 of 2017 whereby this court in the writ proceedings, dismissed the writ petition leaving the petitioner at liberty to avail other remedies available to him outside the writ jurisdiction.
2. The petitioner was awarded with a contract for providing, laying, jointing, interconnection, testing & commissioning of 56644 mtr

Distribution network of 80,100,150, 200 & 250 mm dia Ductile Iron pipers class K-7 with valves, specials and all allied civil works from Over Head Tanks Under Bastar Augmentation Water Supply Scheme (hereafter referred to,'Water Supply Scheme') for Nagar Panchayat Bastar. The work order was issued in favour of the petitioner on 22.01.2015 (Annexure RP/3) and the period of completion of the work was 16 months excluding rainy season. The value of contract was Rs.890.90 lakhs. The petitioner could not complete his work of the contract within the prescribed time, even after granting extension of period and therefore his contract was terminated vide letter of termination dated 31.10.2017 (Annexure RP/4). Subsequently, fresh tender notice was issued on 01.11.2017, for the estimated cost of Rs.9.76 lakhs. The petitioner challenged the termination of his contract and also the issuance of fresh tender notice on 01.11.2017 mentioning therein that his tender was illegally terminated ignoring that major part of the work has been completed, and projected that, out of the estimated tender value of Rs.890.90 lakhs, balance work is only of Rs.9.76 lakhs, as mentioned in the new tender document i.e. dated 01.11.2017.

3. Looking to the case projected by the petitioner that out of Rs.890.90 lakhs of work, only the remaining work has been re-tendered, estimating the work as Rs.9.76 lakhs, an interim order was passed by this court on 24.11.2017 which reads as under:

“The learned Additional Advocate General submits that the Petitioner has invoked arbitration clause. We think that it would be appropriate that the learned Additional Advocate General

obtains instructions on the merits as well and submit whether the Petitioner could be permitted to continue with the work.

For such instructions, post on 29.11.2017.

For the time being, further steps for rearranging the work will be held back.”

4. Looking to the nature of work involved in the contract awarded to the petitioner involving the public interest which is of laying down drinking water pipe lines and testing the same for supply of water and also the interim order dated 24.11.2017 by this Court, it was asked to the state to submit whether the petitioner could be permitted to do the work. In writ proceeding petitioner filed application for taking additional document on record. In the said application he also mentioned that even after writing several letters on different dates mentioned therein to the authorities to grant extension of time to the petitioner to enable him to execute the balance work at the earliest, but the authorities did not reply. Taking into consideration the said pleading made by the petitioner in the application for taking additional document on record and the contents of letters enclosed along with the application, this court looking to the upcoming season of summer and the need of supply of drinking water, an order was passed on 12.03.2019 with the consent of counsel for the petitioner based on the pleadings made in the application for taking document on record, which was supported by an affidavit of the proprietor of the petitioner. In that he pleaded that he will complete the balance work by 30.04.2019. The proprietor of the petitioner has also executed an affidavit on 09.03.2019, Para-2 of which has been specifically mentioned as under:

“That the petitioner undertakes to complete the balance work by 30.4.2019 with the understanding that the respondent/ department will fulfil all its contractual obligations.”

5. On the basis of pleading made in application for taking additional document on record and the pleadings of aforementioned affidavit and undertaking given by the petitioner this court vide its order dated 12.03.2019 passed the following orders:

“Keeping in mind the interest of people at large and to ensure that the contract gets completed before summer sets in with vigour, the Court directs the respondent authorities to provide all the support and wherewithal to the petitioner to complete balance work by 30.04.2019. This is not to say or to provide an excuse to the petitioner by finding or inventing reasons to blame the respondents for non-completion of the work.

Matter will be listed on 6.5.2019 when the progress so made in matter of completion of balance work will be made known both by the petitioner by way of an affidavit as well as by the respondent State authorities.”

6. After passing of the order dated 12.03.2019, the respondent state filed an affidavit dated 20.03.2019 wherein it has been mentioned that the contract awarded to the petitioner was for laying and jointing of 80 mm to 250 mm diameter 56644 mtr length pipelines including its testing and trial run for three months complete for distribution system under Bastar Augmentation Scheme and the balance work of the petitioner is 21% of the total work and estimated cost of which comes to Rs.187.6 lakhs.

7. The respondent state have also filed an application dated 18.03.2019 for modification of interim order dated 12.03.2019, wherein the

detailed facts have been narrated. In the said application, it has been mentioned that the NIT dated 01.11.2017 was floated for laying 1261 mtrs pipe line and testing of the whole pipe line so that the water from existing water tanks of Sector No. 1 & 2 can be connected and it is part of the contract work and not the whole balance work which the petitioner has left incomplete.

- 8.** The petitioner replied to the said application for modification of order on 20.03.2019 and it has been mentioned therein that the left over work or balance work is only as per NIT dated 01.11.2017. Paragraphs 3 and 9 of reply are reproduced for ready reference:

“Para-3. That, it is stated the “left over work” or the “balance work” is only as per NIT dated 01.11.2017 (Annexure P/41), wherein the Executive Engineer has clearly stated that the NIT dated 01.11.2017 was invited for completion of the incoplete balance work left by the Petitioner, as is evident from the letter dated 22.11.2017. Copy of the letter dated 22.11.2017 issued by the Executive Engineer is annexed herewith and marked as Annexure”D”

Para-9. That, in reply to the contents of para6, it is stated that the affidavit was given on the basis that the balance work for which NIT dated 01.11.2017 for 1261 mtr. Work was floated would be completed by the Petitioner on or before 30.04.2019.”

- 9.** Looking to the affidavit dated 09.03.2019 executed by the proprietor of the petitioner as well as the reply to the application for modification order dated 12.03.2019 supported with affidavit, this court found that the petitioner by placing wrong facts had obtained the order dated 12.03.2019 and suppressed the material fact of the left over work which is estimated to Rs.187.6 lakhs but pressing that the balance work is only of Rs.9.7

lakhs, this court refused to exercise its jurisdiction under Article 226 of the Constitution of India by observing the conduct of the petitioner in the order. The petitioner who entered into the contract was well aware of the volume of work and the part of work which he completed.

10. The thrust of the argument of the learned counsel for the petitioner is that no opportunity of hearing was granted to rebut the pleading of the application for modification of the order. The said submission of the learned counsel does not appear to be correct because the copy of application for modification was served and thereafter, reply to the application for modification was also filed by him. When once the reply to the application was filed in which he pleaded what he wanted to say controverting the contents of application for modification it cannot be said that no opportunity was granted to rebut. He also made his submission before the Court. The affidavit dated 09.03.2019 filed on 11.03.2019 and the reply to the application for modification make the things clear.

11. In these proceedings we have also directed the State to produce the relevant material to show that the re-tender process is only with respect to part of left over work and not the whole left over work. Respondent/State submitted the documents and sketched map of the contract work and from perusal of which it is clear that the re-tender is for the part of left over work. The petitioner who entered into contract agreement was very well aware about the volume of work he has to execute and also what volume of work he has completed and therefore he cannot take a plea that what was his under standing. It is the petitioner who filed very specific affidavit to complete balance work.

12. The scope of review for interference with the final orders passed in the proceedings is very limited and it can be exercised only when there is some error apparent on the face of record, or some patent mistake has been crept in.

13. The Hon'ble Supreme Court in the matter of **Sow Chandra Kante Vs SK Habib** reported in (1975) 1 SCC 674 has held thus:

“Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to re-hearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge back-log of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings

on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

14. Considering the overall facts, pleadings of the respective parties, we do not find any error much less error apparent on the face of record which is *sine qua non* for invoking the jurisdiction of review.

15. The review petition which is *sans* merit is liable to be and it is hereby dismissed. However, it is made clear that any observation made by this Court against conduct of petitioner with regard to act of misleading in its order dated 20.03.2019 is limited to the proceedings of the writ petition and that will not come in any way against the petitioner while availing other remedies available to him in accordance with law and the same be decided on its own merits.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge