

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2460 of 2019**

- Rakesh Kumar Jain, aged about 55 years, son of Shri Bhagchand Jain, Railway-contractor, resident of Renuka, 37/17, main road, opposite Dr. Ghosh Nursing Home, Tikrapara, Bilaspur, Tahsil & District Bilaspur (C.G.)

---- **Petitioner****Versus**

- Senior Divisional Engineer (Co-ordination), South Eastern Central Railway, Titli Chowk, Railway Settlement, Bilaspur (C.G.)

---- **Respondent**

For Petitioner	:	Shri Ritesh Verma, Advocate.
For Respondent	:	Shri H.S. Alhuwhalia, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Order on Board****Per P. R. Ramachandra Menon, Chief Justice****06.08.2019**

1. Heard Shri Ritesh Verma, the learned counsel appearing for the Petitioner as well as Shri H.S. Alhuwhalia, the learned counsel representing the Respondent-Railways.
2. The sequence of events narrated in the writ petition shows that the Respondent / Railways floated a tender in connection with the Construction of limited height subway by cut and cover method in lieu of closing of Manned Level Crossing No. BK-54 at Km 852/24-26 between NIQ-JTI stations on BSP-KTE section in Bilaspur Division stipulating the terms and conditions. According to the Petitioner, he satisfied all the conditions and requirements and accordingly he participated in the tender by submitting the bid alongwith the supporting documents in the manner as prescribed therein. On evaluation of

the credentials, the Petitioner came to be successful, and accordingly, the tender was awarded in favour of the Petitioner as per Annexure P/1.

3. The Petitioner contends that the work was of the total value of Rs. 3,00,97,503.47/-, and as per the work order awarded on 05.09.2018, it had to be completed by 08.04.2019. According to the Petitioner, for reasons beyond his control, it could not be completed on time and the time was extended upto 31.12.2019. But without any regard to the extended date, the contract came to be terminated as per Annexure P/6 order dated 15.06.2019, which made the Petitioner to approach this Court by filing writ petition with the following prayers:

“10.1 That, the Hon'ble Court may kindly be pleased to quash the termination-orders/notice of contract dated 15.06.2019 passed by the respondent.

10.2 That, any other relief may granted to the petitioner as the Hon'ble Court thinks appropriate.”

4. The learned counsel for the Petitioner points out that the work concerned involved three different parts mainly:

- i. Casting of segment at site – 25% of work contract,
- ii. Launching of Precast segments and other finishing works under Power Block – 8% of work contract,
- iii. Post work Approach Road & Drain – 67% of work contract.

5. According to the Petitioner, the first part was completed by him; but with regard to the second part, the work involved close monitoring with crane owners and operating department for blocks. Though the cranes were arranged by the service providers; they did not turn up on the relevant date; by virtue of which the Petitioner was not in a position to complete the work as scheduled. It was unfortunately beyond the control of the Petitioner and in the said circumstance, the Petitioner sought for extension of time, to arrange the same by 18.06.2019.

However, without with regard to the said request, the contract came to be terminated, which is under challenge, as mentioned above.

6. When the matter came up for consideration before this Court on 19.07.2019, the learned counsel representing the Respondent submitted that there was total failure/lapse on the part of the Petitioner and huge losses had resulted because of the laxity; particularly, involving the clearances and such other sanctions to be obtained and given with regard to stoppage of running trains, to facilitate the work. It is stated that a reply statement has been filed explaining the facts and figures. This Court does not find it necessary to go into such details, as the admitted facts given in the writ petition, alongwith the materials produced, are sufficient to draw an inference as to the course and events.
7. As mentioned already, the Petitioner was awarded the contract on 05.09.2018, stipulating the last date for completion of the work as 08.04.2019. The lapse on the part of the Petitioner in not completing the work stands admitted. It is seen from Annexure P/2 dated 02.04.2019, that the application submitted by the Petitioner for extension of time was considered and the same was granted till 31.12.2019, without penalty, under Clause 17(A) of the General Conditions of the Contract. The Petitioner was also required to attend the office within three days and to sign the amendment to the principal agreement, to ensure the completion of the work within the extended parameters.
8. In the course of time, with regard to the different sections of work as required to be completed on time, it is stated that the Petitioner was informed as per Annexure P/3 dated 06.06.2019, as to the setting of blocks at the different sites, as mentioned there. The poor progress in the work performed by the Petitioner was taken note of by the awarder, who issued Annexure P/4 dated 01.06.2019, specifically advertng to the lapse and failure on the part of the Petitioner in executing the work mentioned therein on 24.07.2019. However, considering the

facts and figures, the awarder granted further time and the next date was rescheduled for execution on 04.06.2019 and this was communicated to the Petitioner as per letter dated 27.04.2019. It was observed that, till date of issuance of Annexure P/4 on 01.06.2019, no confirmation was received from the part of the Petitioner for execution. Thereafter, a reminder of seven days' notice was issued to the Petitioner on 09.05.2019, which was acknowledged by the Petitioner on 10.05.2019, but still, no confirmation was stated as received from the part of the Petitioner regarding the blocking of trains and excavators for lodging the work. Deprecating the course and conduct of the Petitioner and also alerting him that the awarder may be constrained to proceed with further steps in terms of the Clause 62 of the General Conditions of the Contract to terminate the contract, the Petitioner was required to execute the work on 04.06.2019 itself.

9. On receipt of the said letter, the Petitioner sent a reply on 03.06.2019, stating that the lapse was because of the reasons beyond his control and sought to grant time till 11.06.2019. The Respondent issued Annexure P/5 dated 10.06.2019 referring to all the communications and correspondence insofar and gave a further period of '48 hours' to commence the work, lest adverse consequences in terms of Clause 62 of the standard General Conditions of Contract should be resulted. The Petitioner sent a letter / reply dated 13.06.2019 seeking further time upto 18.06.2019 and another letter on the next date i.e. on 14.06.2019 to withdraw the notice issued earlier and to extend the time as sought for. This was considered and turned down by the awarder as per Annexure P/6 proceedings dated 15.06.2019 terminating the contract because of the failure on the part of the Petitioner, forfeiting the 'EMD' and the 'performance guarantee' as mentioned therein; which is challenged herein.
10. The primary question to be considered is whether the course of action pursued by the Respondent is justified or not and whether there is any valid and

sustainable reason not attributable to the Petitioner, by virtue of which the Petitioner was not in a position to perform the work on time. This is a matter where evidence is necessary, which cannot be done in exercise of the power of this Court under Article 226 of the Constitution of India. It is also brought to the notice of this Court by learned standing counsel for the Respondent / Railway that 'Clause 63' of the General Conditions of the Contract clearly stipulates and provide the remedy by way of 'Arbitration'.

11. In the said circumstances, without prejudice of rights and liberties of the petitioner to pursue appropriate remedies in terms of Clause 63 of the General Conditions of Contract, interference is declined and the writ petition stands dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge