

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2868 of 2017

- M/s Estate Infrastructure Co. Ram Mandir Ground Opposite Bus Stand, Ambikapur, Chhattisgarh 497001 Through Its Power of Attorney Holder Sh. Harpal Singh Bhamra S/o Sh. Manjit Singh Bhamra, Aged About 38 Years, Residing At Behind Punjab Garden, Mahendragarh Road Ambikapur Chhattisgarh

---- Petitioner

Versus

- Hindustan Steelworks Construction Ltd. A Company Incorporated Under The Companies Act, 1956, Having Their Registered Office At P34-A, Ghariaghat Road South, Dhakuria, Kolkata- 700031

Also At Nirman Bhawan, Bhilai- 490001 District Durg, Chhattisgarh, Through Its Group Head Projects

-----Respondents

For Petitioner : Shri Manoj Paranjpe and Shri
Prasoon Agrawal, Advocates
For Respondent : Shri N Naharoy, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per PR Ramachandra Menon,CJ

07.01.2020

1. The petitioner is stated as aggrieved by Annexure P1 order dated 05.06.2017 passed by the respondent, whereby the contract awarded to the petitioner was put an end to.
2. Heard Shri Manoj Paranjpe and Shri Prasoon Agrawal, learned counsel for the petitioner and Shri N Naharoy, learned counsel representing the respondent.
3. A tender was floated by the Steel Authority of India Limited (SAIL) for various works. The respondent herein, on proving the credentials,

came to be identified by the SAIL as the successful bidder and was awarded contract for "Hiring of HEMM for Desilting of Iron Ore Slime at Hitskasa Tailing Dam and transportation to the dumping area at Dalli Mech. Mines (Phase IV) for Bhilai Steel Plant" (for short, 'the work').

4. The respondent, however, decided to have the work got executed by awarding a sub-contract. It was accordingly, that a notification was issued and on coming out successful, the petitioner was awarded the contract on 24.11.2015, covering a total value of Rs.11,78,65,618.52 (Rupees eleven crore seventy-eight lakhs sixty five thousand six hundred eighteen and fifty two paisa only). An Agreement was executed between the petitioner and the respondent on 27.04.2016 and the work was being pursued accordingly.

5. The case of the petitioner is that, in the course of the execution of work, various hurdles came to be placed on the way of the petitioner. The dumping site was allegedly not made available; there was delay in the payment; and there was some labour strike as well. The labour unions in the area demanded to deploy excess workers (coming to a total of 125) as against the alleged requirement of 50 labourers. Engagement of the vehicles of choice of the petitioner was also sought to be obstructed and the vehicles belonging to Tipper Owners' Association were required to be engaged for performing the work, which was not acceptable to the petitioner. It is contended that the work came to be interrupted because of the reasons as above, which is not attributable to the conduct of the petitioner in any manner. According to the petitioner, an alternate dumping area was requested to be allotted which was not exceeded to. As per

letter dated 16.02.2017 and subsequent communications, the petitioner informed the position to the respondent and requested for extension of time till the end of August, 2017. Instead of making any attempt to resolve the issues as requested by the petitioner, the respondent, vide letter dated 21.02.2017, informed the petitioner that the contents of the letter written by the petitioner were baseless and that the petitioner had failed to discharge the duties including the payment to be made to the workers and also to the Tipper lorries. Another letter was issued to the petitioner on 22.03.2017 to clear all the dues and a final notice was issued to complete all the contractual obligations within 48 hours, alerting that the contract would stand terminated at the risk and cost of the petitioner, in case of any failure in this regard.

6. The letter of the respondent was sought to be replied by the petitioner as per communication dated 28.02.2017, referring to the sequence of events. Instead of taking proper remedial action or considering the matter in the right spirit and prospective, the issues raised by the petitioner were rejected and the application for extension of time was also rejected. The request made by the petitioner on 27.01.2017 (Annexure P10) to effect the measurement of the work already done and to release the payment accordingly was also turned down by the respondent. Ultimately, the contract awarded to the petitioner came to be terminated as per the procedure dated 05.06.2017 vide Annexure P1, which in turn is put to challenge in this Writ Petition.

7. The learned counsel for the petitioner submits that Annexure P1 is *per se* wrong and illegal in all respects, being totally arbitrary and hence

interference of this Court is sought for, in exercise of power under Article 226 of the Constitution of India.

8. The learned counsel for the respondent submits with reference to the contents of the reply, that there is absolutely no basis for the insinuation levelled against the respondent. The petitioner turned to be a defaulter right from the beginning and despite alerting the petitioner on different occasions and granting several opportunities, it was not properly availed. With reference to the contents of the reply in response to paragraph 8.4 to 8.7 of the Writ Petition, it is pointed out by learned counsel that the petitioner had dumped the Silt during the relevant periods, the particulars of which have been given in Annexure R2. Similarly, various payments were also made by the respondent, details of which have been given in the form of a table. The above particulars are extracted and reproduced herein below :

(i)	December, 2015	:	2016 trips
(ii)	January, 2016	:	427 trips
(iii)	February, 2016	:	9572 trips
(iv)	March, 2016	:	11163 trips
(v)	April, 2016	:	11493 trips
(vi)	May, 2016	:	11652 trips
(vii)	June, 2016	:	7902 trips
(viii)	December, 2016	:	2909 trips
(ix)	January, 2017	:	6364 trips

Sl No.	Bill No.	Amount	Date of Payment
1.	1 st RA Bill	Rs.13,51,700.00	17.05.2016
2.	2 nd RA Bill	Rs.1,16,80,433.00	26.05.2013
3.	3 rd RA Bill	Rs.37,34,099.00	02.08.2016
4.	4 th RA Bill	Rs.10,00,000.00	25.10.2016
5.	5 th RA Bill	Rs.86,59,125.00	16.12.2016
6.	Advanced payment	Ra.40,00,000.00	06.05.2016

9. It is the contention of the respondent that the contract awarded to the petitioner being a sub-contract and since the principal contract was awarded by the SAIL/BSP (Bhilai Steel Plant), it was clearly stipulated in the agreement that payment to be affected to the petitioner will be subject to obtaining payment from the SAIL/BSP. Having agreed to such term, it is not correct or proper for the petitioner to turn round and say that payment has to be affected to the petitioner, as and when demanded; which has no basis, either legal or factual. It is only because of the lapse and failure on the part of the petitioner in completing the work, that respondent was constrained to put an end to the contract. More so, since the respondent is answerable to the principal awarder of the contract ie SAIL/BSP, who had assigned the work to the respondent herein, which was given on sub-contract to the petitioner.

10. After hearing both the sides, this Court finds that there are serious disputes with regard to the factual aspects which cannot be resolved in the Writ Petition filed under Article 226 of the Constitution of India. On raising a query as to the remedy/further course of action available, the learned counsel for the respondent submits that there is no Clause for Arbitration and that Civil Suit alone can be the remedy. Since specific pleadings have to be raised and evidence has to be adduced in support of the contents to establish the case, it may be necessary for the petitioner to move other appropriate forum for further redressal of the grievance.

11. Clause 28 of Annexure P5 Agreement reads as follows:

“28. In the event of any dispute and/or difference whatsoever arising under this agreement or in connection therewith, including any question relating to meaning and interpretation of this agreement or any alleged breach thereof, the same shall be settled as far as possible by mutual discussions and consultation between the parties of this agreement. In the event of such disputes/or difference not being settled in aforesaid manner, the dispute shall be referred to the Court of Law at Durg jurisdiction over the matter and not through “Arbitration”.

12. In the above circumstance, interference is declined and the Writ Petition is dismissed without prejudice to the rights and liberties of the petitioner to pursue other appropriate remedy in accordance with law.

13. The Writ Petition stands dismissed accordingly.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge