IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.27912 of 2014
and M.P.Nos.1 and 2 of 2014

ELGI Equipments Limited
Rep. By Mr.Shyam Vasudevan
Head - Legal & Secretarial
Singanallur,
Coimbatore-641 005. .. Petitioner

Vs.

1. The Union of India
   Rep. by the Chairman - Railway Board,
   Room No.256-A, Rail Bhavan,
   Raisina Road, New Delhi-110 001.

2. The General Manager,
   Southern Railway,
   Park Town,
   Chennai-600 003.

3. The Chief Administrative Officer/Construction,
   Southern Railway,
   Office of CAO, Construction,
   Egmore,
   Chennai-600 008.

4. MM Associates,
   Rep. By Mr.Muruganandam,
   3/140, Gopinathapuram,
   Vellalapatti Post,
   Omalur Taluk,
   Salem-636 012
   Tamil Nadu. .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents 1 to 3 culminated in DRG No.SR/CN/24155 dated 07.01.2014 and the note therein and quash the same and consequently direct the respondents 1 to 3 to construct the Road Under Bridge as per DRG No.CN/23117 accepting the differential cost from the petitioner.

* * *

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.P.V.Balasubrmaniam
for M/s.BFS Legal

For Respondents: Mr.P.T.Ramkumar
Standing Counsel for RR1 to 3

O R D E R

This writ petition has been filed praying to set aside the proceedings in DRG No.SR/CN/24155 dated 07.01.2014 and direct the respondents 1 to 3 to construct the Road Under Bridge as per DRG No.CN/231117 accepting the differential cost from the petitioner.

2. The petitioner is a company indulged in manufacture of air compressors with broad line of innovative and technologically superior compressed air systems. The petitioner is also an ISO 9001, 14001 and 18001 certified company and is well-known in the industry as a leader in its field with a turnover of Rs.1350 crores in the year 2013, of which, more than half the income was from export sales.

2.1. The petitioner company purchased a land between 2009 and 2010 and started construction of its factory and foundary in all having an extent of more than 100 acres at the cost of Rs.220 Crores and has been operating from the above said location. The vehicles like trucks and trailers, which come to the petitioner factory via NH 209 that connects Coimbatore with Pollachi, have to take turn left at Kinnathukadavu in Singarampalayam to Kondampatti Road.

2.2. There is a Level Crossing LC 138 on the Singarampalayam to Kondampatti Road close to the factory and foundary of the petitioner. The original Meter Gauge Rail Line was put to disuse from 2005 onwards and the official respondents were planning to lay a Broad Gauge Rail Track in the said route and also construct a Limited Usage Subway (LUS) at the unmanned Level Crossing - LC 138. The LUS will have a small width and height about 3.66 meters, by which it would not be possible for Container Trucks and Buses to pass through, besides the road also would become narrow and the same would render it difficult for having two way trucks movement. In addition, the petitioner in its affidavit stated that there are several other factories located past the Level Crossing and there are huge container traffic. Apart from that, there is a scope for development of industrial activities in the area and prospect of further industrialization.

2.3. While so, the petitioner wrote a letter dated 23.11.2010 to the third respondent impressing upon the fact that LUS proposed will not be sufficient to permit the containers to pass through. Therefore, the petitioner requested the official respondents to have the height of the proposed LUS at 6.15 meters in order to facilitate easy flow of the container traffic. The petitioner also had indicated that they are willing to bear the differential cost of the construction of the Road Under Bridge (RUB) of the desired height, over and above the cost of the LUS proposed to be built.

2.4. In response to the request of the petitioner, the third respondent also had agreed for RUB in lieu of LUS and sought for payment of the necessary centage charges. However, on 25.03.2011, the third respondent had sent a communication stating that as there was no sanction for LUS, the competent authority has not agreed to accept the petitioner's proposal to bear the differential cost, as sought for by the petitioner.

2.5. After exchange of several communications between the petitioner and the official respondents, a letter from the third respondent was sent on 12.01.2012 stating that the detailed estimate for the proposed RUB had been vetted and certified by its Associate Finance for an amount of Rs.1,88,83,896/-, of which, the third respondent - Railways would bear an amount of Rs.50,48,816/- and that the petitioner would have to bear the balance of Rs.1,38,35,080/-, being the differential cost of the RUB, as deposit.

2.6. Though the petitioner was ready to agree for the said arrangement of paying the differential cost of Rs.1,38,35,080/- vide letter dated 16.03.2012, the third respondent communicated to the petitioner that the AGM of Southern Railways did not agree for the differential cost. As the officials respondents had been changing their stand on and off, the petitioner had to knock the doors of this Court via this writ petition and has sought for the relief of direction to construct the RUB and accept the differential cost of the petitioner.

3. At the time of passing interim order on 24.11.2014, this Court had directed the petitioner to deposit Rs.1.88 Crores, upon which, the official respondents shall immediately proceed to call for tenders, award the contract and have the work executed and after the completion of the work, the official respondents shall file a reply into the Court about the total cost involved. When the respondents files a report after completion of the project, the actual difference between the estimated cost and the actual cost involved would be known, upon which, whether the difference should be paid by the petitioner or not can be decided. Even on the said date, the estimated cost for construction of RUB during 2014 was said to be Rs.2,45,49,065/-.

4. Learned counsel for the Railways pointed out that even in the order dated 24.11.2014, it is stated that the Railways had estimated the cost at Rs.1.88 Crores and communicated that if the petitioner bears Rs.1.38 Crores, the Railways will bear Rs.50,00,000/- which represents the cost of construction of LUS. But as mentioned earlier, the AGM did not agree for that on the ground that if the petitioner wanted a RUB, then they should deposit the entire amount, which would now mean Rs.2,45,49,065/-. However, this Court had directed the petitioner to deposit only Rs.1.88 Crores. It is admitted by both the parties that the bridge works were completed and it is operational.

5. The only question that remains to be answered is whether the petitioner is entitled for the difference in cost after adjusting the contribution cost, that has to be met by the respondents, which would originally sanctioned for construction of LUS, i.e. Rs.50,48,816/-.

6. For a better understanding, the cost of construction of RUB by the Railways was pegged at Rs.1,88,83,896/- based on the estimates made, after the proposal by the petitioner for converting the LUS into a RUB, of which the Railways had to bear Rs.50,48,816/-. Thereafter, the cost for construction was revised in November, 2014, as per which, for LUS it was Rs.65,63,461/- and for RUB, it was Rs.2,45,49,065/-. As per the interim direction of this Court, the petitioner had deposited Rs.1.88 Crores, based on which, the construction of the bridge was commenced and completed. Now the petitioner was demanding the balance, after deducting the contribution, which was sanctioned for Railways to construct the LUS.

7. As directed in the interim order, the report was filed by Railways dated 27.02.2015, which mentions about value of the tender received by them. There is yet another

additional report filed by the third respondent dated 16.06.2017, as per which, the total cost of construction was only Rs.1,87,34,649/-. The report further stated that the sum of Rs.56,20,395/- has to be borne by the petitioner as maintenance charges of the bridge, i.e., 30% of the total cost. Therefore, the Railways makes a claim that as the petitioner had deposited only Rs.1.88 Crores, the balance of cost of construction and maintenance charges have to be paid by them, since the bridge construction work was undertaken only for the convenience of the petitioner company to facilitate the free movement of the trucks and trailers to reach the petitioner company.

8. As the petitioner had admitted in its affidavit that the turnover for the preceding year before filing of the writ petition was Rs.1350 Crores, it falls within the purview of Section 135 of the Companies Act, 2013, which speaks of the Corporate Social Responsibility (CSR). The said provision provides that the Board of the Company shall endeavour to ensure that at least 2% of the average net profits of the company made during the three immediately precedent financial years shall be spent for such policy. Schedule 7 of the said Act enumerates the activities, which may be included by the companies in their CSR policies. One such activity is Rural Development Projects.

9. Though the petitioner had not specifically mentioned either in the affidavit or at the time of argument about the activities of the CSR Committee of the Board, the above contribution for the construction of the RUB can also be included by the company under the CSR Policy, as it is an infrastructure facility, which would be beneficial for every category of the public, including the students, general public, industrial workers and companies of the rural locality, besides the petitioner themselves.

10. As it is mandatory that every company has to disclose its contents of the CSR policy in its report and place them on website, a perusal of the CSR report of the petitioner company indicates that the petitioner has been performing very well in the field of CSR and their actual contribution is more than double of the prescribed CSR.

11. In such view of the matter, it can be very well be accepted by the petitioner company to give up their demand of refund and allow the same for having utilized for a public cause. The petitioner is at liberty to adjust the escalated amount, which they have spent on the subject project of construction of RUB, in their CSR Fund. It is also made clear that if the contribution made for the said

project cannot be adjusted under the CSR Funds in the books of accounts of the relevant Financial Year, it can be adjusted during the later years, if the CSR Committee and the Board feels so.

12. In fact, against the demand of Rs.55,55,044/- towards the cost of construction and maintenance charges, which is 30% of the total cost, learned counsel for the official respondents - Railways contended that it was already expended by the Railways and they are willing to give up the same, provided the petitioner does not demand the refund of the differential cost. Though it is only by virtue of the interim direction, the petitioner had deposited the entire cost of the construction of RUB, their intention is to make it a RUB even at the initial stage itself is to be appreciated, as widening LUS at a later point of time would only incur additional expenditure and unnecessary inconvenience for all and it is at the instance of the petitioner, who had made deposit, a public bridge has come out successfully.

13. In the light of the above, neither the petitioner nor the Railways need to pay / reimburse any amount to the other. As the RUB is operational even from the year 2015 by virtue of the interim orders of this Court, no further order needs to be passed in this writ petition.

14. Accordingly, with the above observations, this writ petition stands disposed of. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To

1. The Chairman
Railway Board, Union of India,
Room No.256-A, Rail Bhavan,
Raisina Road, New Delhi-110 001.

2. The General Manager,
Southern Railway,
Park Town, Chennai-600 003.

3. The Chief Administrative Officer/Construction,
Southern Railway,
Office of CAO, Construction,
Egmore, Chennai-600 008.

W.P.No.27912 of 2014

SV(CO)
CB(14/08/2020)