

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7327 of 2022

***JRT UH JV, a joint venture
of M/s. Jalaram Transport
& M/s. Utkal Highways,
Bilaspur & Anr.***

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Petitioner

*Mr. A.K. Parija, Sr. Advocate
along with Mr. V. Mahapatra,
Advocate*

Vs.

***Mahanadi Coalfields Ltd.,
Sambalpur & Anr.***

.....

Opposite parties

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

21.03.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Parija, learned Senior Counsel appearing along with Mr. V. Mahapatra, learned counsel for the petitioners.

3. The petitioners have filed this writ petition seeking direction to the opposite parties for extension of time to complete the awarded quantity under NIT No.MCL/SBP/GM (CMC)/NIT-783 (RT)/2019/707 dated 01.01.2019, taking into consideration the representation dated 25.02.2022, in terms of the agreement executed between the parties.

4. Mr. A.K. Parija, learned Senior Counsel appearing for the petitioners contended that the work order was issued under Annexure-4 dated 15.05.2019, for extraction of Coal/Coal measure strata by deploying surface Miner on

hiring basis & Mechanical Transfer of the same into tipping trucks and transportation from face to different destinations at Ananta OCP, Jagannath Area, within a stipulated period of 1095 days. Pursuant to such work order, a time bound programme was issued under Annexure-6 stating the date of commencement of work as 06.05.2019 and the date of completion of work as 04.05.2022. Accordingly, an agreement was executed vide Annexure-7. As per Clause-5.8(a) & (b) of the Conditions of Contract, General Terms and Conditions, the management may allow the time extension for completion of the contracted quantity which are due to department's failure at the existing rate, and in all other extensions of time or quantity or both, the management may allow time extension for completion of the contracted quantity/extended quantity at the existing rate or the rate finalized in next tender whichever is lower. Clause-6.6 of the conditions of contract states that when the period fixed for completion of the contract is about to expire, the question of extension of the contract may be considered at the instance of the Contractor or the Company or the both. The extension will have to be by party's agreement, expressed or implied. In case the Contractor does not apply for grant of extension of time within 15 (fifteen) days of hindrance occurring in execution of the work and the Company wants to continue with the work beyond the stipulated date of completion for reason of the work having been hindered, the engineer-in-charge at his sole discretion can grant provisional extension of time even in the absence of application from the Contractor. It is further contended that in accordance with

time bound programme at Annexure-6, the work was commenced on 06.05.2019, but by January, 2022 the petitioners could be able to extract around 34.5% having shortfall of 65.47% due to faults attributable to O.P. No.1. the above fact would be evident from the performance certificate dated 08.01.2022 annexed as Annexure-8 and also Hindrance Register filed as Annexure-9 starting from page-136 to 177. For better appreciation, the petitioners have also prepared a statement, which has been placed in paragraph-8 of the writ petition, and at page-9 it has been indicated that against the targeted quantity of 100%, the petitioners have achieved the quantity of 34.53% with a total shortfall of 65.47%, out of which, shortfall on account of contractor is 0.76% and shortfall on account of the opposite parties is 64.72%. It is contended that if the shortfall is attributable to the opposite parties and was beyond the control of the petitioner-contractor, then the petitioner-contractor is entitled to get extension of time as per terms of the agreement itself. As such, without extending the time, even though the opposite parties have issued tender call notice, during subsistence of agreement, on 05.12.2021 and 25.02.2022, that itself will not affect the right of the petitioner-contractor as it will continue till 05.04.2022 and during subsistence of agreement if any short fall is attributable to the opposite parties, then the petitioner-contractor is entitled to get extension of time. It is further contended that to that extent, the petitioners have already moved a representation to opposite party no.2 vide Annexure-10 dated 25.02.2022, which is still pending for consideration. Learned Sr. Counsel

appearing for the petitioners therefore prayed that without entering into the controversy, if the petitioners' grievance by way of Annexure-10 can be considered, no prejudice will be caused to either party.

6. Considering the contentions raised by learned Senior Counsel appearing for the petitioners and keeping in view the limited nature of grievance made, this Court, without issuing notice to the opposite parties, disposes of the writ petition directing opposite party no.2 to consider the representation filed by the petitioners vide Annexure-10 and pass appropriate order taking into consideration the terms and conditions of the agreement itself, as have been recorded above in the contentions raised by learned Senior Counsel appearing for the petitioners, as expeditiously as possible, preferably within a period of four weeks from the date of production of certified copy this order.

6. Issue urgent certified copy as per rules.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE