

ORISSA HIGH COURT: CUTTACK

CRLMC No. 1234 of 2021

An application under section 482 of the Code of Criminal Procedure, 1973.

BBTA RCPL (JV) & Ors. Petitioners

-Versus-

State of Odisha and Ors. Opp. Parties

Advocate(s) appeared in this case :-

For Petitioners : Mr. Ajaya Kumar, Advocate

For Opp. Parties : Mr. P.K. Maharaj,
Addl. Standing Counsel

M/s. Ambika Prasad Mishra &
J.P. Tripathy
(Opp. Party No. 4)

**CORAM
JUSTICE SASHIKANTA MISHRA**

**ORDER
4th January, 2022**

SASHIKANTA MISHRA, J.

In the present application filed under Section 482 of Cr.P.C., the petitioners seek to challenge the notices issued by the Investigating Officers of Sundargarh Police Station and Kaniha Police Station and the order passed by the Chief Manager, State Bank of India,

Jamtara Branch in putting on hold the amount received by the petitioner no.1-Company from M/s. Mahanadi Coal Fields Ltd. towards execution of the work contract.

2. Sans unnecessary details, the facts of the case are that the petitioner no.1-Company was awarded a work contract by Mahanadi Coal Fields Ltd. (MCL) on 23.12.2015 and for the purpose of executing such work, the petitioners executed a Memorandum of Understanding (MOU) on 16.03.2016 with one Prakash Chandra Mohanty (opposite party no.6). Because of certain disputes relating to performance arising between the petitioner no.1-Company and opposite party no.6, the MOU was terminated in accordance with law and he was duly intimated of such fact by letter dated 13.09.2018. In course of execution of the MOU, opposite party no.6 was authorized to operate the bank account of the petitioner-company but after termination of the MOU, such authority was withdrawn with due intimation to the concerned bank. The opposite party no.6 thereafter filed a complaint being ICC Case No.7 of 2019 in the court of learned S.D.J.M., Sundargarh, which was sent to IIC Town Police Station Sundargarh for registration and investigation under Section 156 (3) of Cr.P.C. The said order is under challenge before this Court in CRLMC No. 1203 of 2020. However, by such time, the IIC, Town Police Station, Sundargarh basing on the order of learned

S.D.J.M., Sundargarh, treated the complaint as FIR and registered Town P.S. Case No. 61 of 2019 under Sections 168/406/424/506/34 of IPC and conducted investigation.

3. The sum and substance of the complaint is that on 21.01.2019 when the complainant-opposite party no.6 was checking the balance in the joint account in SBI, Sundargarh Branch, he found that a sum of Rs. 24 lakhs had been transferred to other accounts without his signature. In course of investigation, the I.O., Sundargarh Police Station (opposite party no.2) issued notice dated 23.03.2021 (Annexure-1) to the Chief Manager, State Bank of India, Jamtara Branch, Jharkhand (opposite party no.4) as also to the Chief Manager, State Bank of India, Sundargarh Branch (Annexure-2) purportedly under Section 102 Cr.P.C. directing the said Bank authorities to stop withdrawal of payment made in the bank accounts of the petitioner no.1-Company by Mahanadi Coal Fields Ltd. Subsequently, the IIC, Kaniha P.S. also issued similar notice. Consequently, the Bank authorities vide their decision dated 24.03.2021 kept on hold the withdrawal of amounts as aforesaid. The notices issued by the Investigating Officers of Sundargarh P.S. and Kaniha P.S. and the decision taken by the Chief Manager, State Bank of India, Jamtara Branch as above are impugned in the present application.

4. Heard Mr. Ajay Kumar, learned counsel for the petitioners, Mr. P.K. Maharaj, learned Addl. Standing Counsel, who appeared for opposite parties no. 1, 2 and 3; and Mr. Ambika Prasad Mishra, learned counsel appearing for opposite parties no. 4. Be it noted here that despite sufficient service of notice, there was no appearance from the side of opposite parties no. 5 & 6

5. In course of hearing, Mr. Ajay Kumar learned counsel appearing for the petitioners drew attention of the Court to the order passed by a Division Bench of this Court on 22.04.2021 in a writ petition being W.P.(C) No. 21989 of 2020, wherein the order passed by MCL blocking payments of the petitioner pursuant to instructions received from the I.O. in P.S. Case No. 61 of 2019 was challenged. After hearing, the following order was passed:-

“The matter is taken up by video conferencing mode.

2. The Petitioner filed this petition at the stage when Mahanadi Coalfields Ltd. (MCL) had issued the impugned order dated 14th July, 2020 blocking payments of the Petitioner on the basis of some instructions received from the investigating officer in a criminal case in Town Police Case No.61 of 2019.

3. That order was stayed by this Court on 5th October, 2020 as a result of which MCL released payments to the Petitioner.

4. It appears that the disputes between the Petitioner on the one hand and Opposite Party No.5 on the other are subject matter of

arbitration in the proceedings arising from which certain other interim orders have been passed.

5. Since the purpose of filing the present petition has been served as far as the Petitioner is concerned, no further directions are required to be issued. It would be open to the Petitioner and Opposite Party No.5 to approach the arbitrator for any other interim reliefs that either of them may seek in accordance with law.

6. The writ petition is disposed of in the above terms.

7. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No. 4798, dated 15th April, 2021."

Mr. Ajay Kumar has further submitted that pursuant to such order and having regard to the arbitration clause in the work contract in question, the petitioner no.1-Company has invoked the said arbitration clause by filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Calcutta High Court, which was disposed of vide order dated 24.03.2021 appointing Mr. Mainak Bose, Advocate as the sole Arbitrator. In the said Arbitration Proceeding, the present opposite party no.6 filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 for appropriate orders and after hearing both sides at length, the learned sole Arbitrator disposed of the said application by passing the following order:

“In view of the aforesaid, the present application filed by the Prakash Chandra Mohanty under Section 17 of the Act of 1996 is disposed of by directing the BBTA-RCPL (JV) to furnish a authenticated copy of the bank statement of Account No. 35529821520 lying with State Bank of India, Jamtara Branch, Jharkhand, from June 14, 2021 till September 15, 2021 to the petitioner within a fortnight from the date of receipt of this order. The Respondent, BBTA-RCPL (JV), shall continue to furnish bank statements of the said bank account to the Petitioner for every month on the 7th day of the subsequent month subject to the result of the arbitration proceeding. The Respondent, BBTA-RCPL (JV) is further directed to keep all receipts credited to Account No. 35529821520 after June 14, 2021 either in the said account or in a separate interest bearing account whichever is earlier. Respondent is given liberty to utilize such funds with prior leave of the Tribunal.”

Mr. Ajay Kumar further argues that the dispute between the parties is purely civil in nature having arisen out of a contractual obligation and therefore, has been rightly agitated as per the provisions of the Arbitration and Conciliation Act. The dispute is being adjudicated by the learned sole Arbitrator wherein the above referred order has already been passed on an application filed by the opposite party no.6. The said order has not been challenged as yet. Further, the order of learned sole Arbitrator is unable to be given effect to because of the impugned notices issued by the Investigating Officers of Sundargarh Police Station and Kaniha Police Station under Section 102 of Cr.P.C. as also the decision taken by the Bank to act in pursuance of such notices.

6. Mr. P.K. Maharaj, learned Addl. Standing Counsel contends that since investigation is in progress, the Investigating Officer

was well within his rights to issue notice under Section 102 of Cr.P.C. because allowing the amount to be withdrawn in favour of one party may not only cause prejudice to the other party but also may adversely affect the ongoing investigation.

7. Mr. Ambika Prasad Mishra, learned counsel appearing for opposite party no. 4 (Bank) submits that the Bank has got no role to play in the matter and has simply acted upon the instructions received from the Investigating Officer.

8. The facts as they stand at present are that there is a dispute between the petitioner company and opposite party no.6 arising out of a contract executed between them, which is presently the subject matter of an arbitration proceeding before the sole Arbitrator. It also appears that the purported grievance of the opposite party no.6 relates to withdrawal of the amounts remitted by MCL to the petitioner's account. While the opposite party no.6 claims that the amounts were credited and withdrawn without his knowledge, it is the stand of the petitioner no.1-Company that having terminated the MOU, and thereby the authority to operate the joint bank account, the petitioner no.1-Company is not obliged any longer to inform him. The above dispute is being adjudicated by the sole Arbitrator appointed by the Hon'ble High Court of Calcutta, wherein an order has been passed as quoted above relating

to operation of the bank account in question. In the writ petition filed by the petitioner no.1-Company, this Court granted liberty to the parties to approach the Arbitrator, which they have done. In the above fact scenario, this Court fails to comprehend as to what benefit would accrue by keeping the bank accounts on hold as instructed by the concerned Investigating Officers. Since learned Arbitrator has passed orders issuing appropriate instructions to the petitioner no.1-Company to furnish authenticated copy of the bank statements for the relevant period as also to furnish such statements every month with liberty to the petitioner no.1- Company to utilize such funds with prior leave of the Tribunal, this Court is of the view that the impugned notices are no longer necessary so as to be kept operative.

9. Though some argument was also made by Mr. Ajay Kumar questioning the legality of the notice issued under Section 102 Cr.P.C., yet having regard to the fact situation as narrated above, this Court does not deem it necessary to consider such aspects. Moreover, despite query by the Court, it is not forthcoming from the side of the State as to what purpose is sought to be achieved by keeping the bank accounts on hold indefinitely. Therefore, without expressing any opinion as to the legality or otherwise of the impugned notices, this

Court finding the same to be factually unnecessary, deems it proper to quash the same.

10. For the forgoing reasons therefore, the CRLMC is disposed of by quashing the impugned notices and orders under Annexures-1, 2 3 and 4 subject to the condition that the parties concerned shall abide by the order passed by the sole Arbitrator as referred to hereinbefore.

Orissa High Court, Cuttack
The 4th January, 2022/ A.K. Rana

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Sashikanta Mishra,
Judge

