

D/L. 21.
October 12, 2023.
MNS.

WPA No. 18564 of 2023

M/s Amit Mines Private Limited
Vs.
Steel Authority of India Limited and others

Mr. Kishore Datta,
Mr. Srijib Chakraborty,
Mr. Rajdeep Majumdar,
Mr. Mayukh Mukherjee,
Mr. Pritam Roy,
Mr. Aditya Mondal

... for the petitioner.

Mr. Arijit Basu,
Mr. Sarathi Dasgupta

...for the respondent-authorities.

1. In view of the issue involved pertaining to the documents already annexed to the writ petition, further affidavits are not directed. It is deemed, however, that none of the allegations made in the writ petition are admitted by the respondents.
2. Learned senior counsel appearing for the petitioner contends that the present challenge has been preferred against a “performance certificate” issued on June 21, 2023 by the respondent authorities, that is, the Steel Authority of India Limited (SAIL), on the request of the petitioner. However, the said

certificate contains several extraneous allegations/facts, which are *de hors* Clause 9.8 of the agreement between the parties, which empowers the respondent authorities to issue a completion certificate.

3. For example, it is contended that Clause 4 of the said certificate speaks about penalty imposed against the petitioner, Clause 5 about alleged violation of provisions of contract by the petitioner and Clause 6 about suspension and banning action against the petitioner.
4. It is pointed out that, in any event, the suspension is under challenge in a separate writ petition, which is now pending and an order of stay of operation of the said suspension has already been granted by the court, which is still subsisting.
5. Learned senior counsel places reliance on the provisions of Clause 9.8 of the said agreement and argues that the same does not contemplate mention of such extraneous factors in a completion certificate/performance certificate.
6. Learned counsel appearing for the respondent authorities raises an objection as to the

territorial jurisdiction of this Court. By pointing out to the address of the SAIL as depicted in the impugned certificate itself, it is argued that the territorial jurisdiction lies with the High Court at Jharkhand and not this Court, since the decision was taken and the certificate issued by the authorities at Jharkhand.

7. It is further argued that when the order of stay was obtained in connection with the suspension of the petitioner in a separate writ petition, the performance certificate under challenge was already served on the petitioner, but the petitioner never raised such issue before the court while moving the application for stay.
8. Thirdly, learned counsel argues that Clause 9.8 merely speaks about the issuance of a completion certificate and does not specify any specific format for such certificate. Thus, the petitioner does not have any statutory or other right to compel the respondent authorities to issue the certificate in a particular format.
9. Upon considering the arguments of learned counsel, the cynosure of attention with regard

to the present dispute appears to be Clause 9.8 of the agreement between the parties.

10. The said provision is captioned as “Certificate completion of work”.

11. As per the said provision, as soon as in the opinion of the Engineer the works have been virtually completed, the Engineer shall, on receiving a written undertaking by the contractor as stipulated therein, issue a certificate of virtual completion in respect of the works.

12. It is indicated that the Engineer may give such a certificate with respect to any substantial part of the works, which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer.

13. Thus, the only indication of the contents of the certificate in Clause 9.8 pertains to the factum of the work-in-question having been completed to the satisfaction of the Engineer as well as the same being occupied or used by the employer.

14. However, in the instant case, in the garb of performance certificate, the respondent authorities have virtually issued a legal biography of the petitioner inasmuch as the

authorities have mentioned every instance of penalty and perceived violation as well as suspension which has operated against the petitioner.

15. Evidently, legal malice, as argued by the petitioner, is involved on the part of the authorities since there is nothing in Clause 9.8, which indicates that the entire history of actions taken against the petitioner has to be mentioned in a completion certificate.

16. A 'completion certificate' which has been interchangeably used with the expression 'performance certificate' in the present case, contemplates, as the names suggests, the extent of work which has been completed and the same having been completed to the satisfaction of the concerned Engineer and the fact that the said work is occupied or used by the employer.

17. Nothing extra, beyond the above components, can be or needs to be incorporated in a completion certificate. Moreover, the suspension, which has also been mentioned in the certificate, has since been stayed in a *sub judice* matter.

18. Even apart from the same, the penalties, perceived violations and suspension of the petitioner previously cannot comprise a part of the completion certificate. Evidently, such mention shall adversely prejudice the petitioner whenever the petitioner seeks to participate in a subsequent tender or seek business.

19. Even if the allegations made in the impugned paragraphs of the certificate are partially correct, it does not necessarily imply that those will have to be incorporated in a mere completion certificate.

20. A completion certificate has to be in terms of Clause 9.8 of the contract and the same can only contain, as indicated above, the quantity and/or extent of the work, the fact that the same has been done to the satisfaction of the Engineer and the component of occupation or user by the employer.

21. In such view of the matter, the impugned performance certificate cannot but be set aside.

22. As far as territorial jurisdiction is concerned, the petitioner has pleaded that the correspondence between the parties with

regard to the present cause of action, which is also a part of the bundle of facts which comprise the cause of action, took place in and from Kolkata. Moreover, the impugned certificate was received by the petitioner at Kolkata. The genesis of the issuance of the certificate was a request by the petitioner, which was also made from Kolkata. That apart, the petitioner's work within the territorial jurisdiction of this Court shall also be adversely affected in the event the impugned performance certificate is used by the petitioner. Lastly, the petitioner's office is situated in Kolkata.

23. Hence, this court has territorial jurisdiction within the contemplation of Article 226 (2) of the Constitution of India, since at least a part of the cause of action arises within the territorial jurisdiction of this court.

24. Accordingly, WPA No. 18564 of 2023 is allowed, thereby setting aside the impugned performance certificate dated June 21, 2023 (Annexure P3 at page 228 of the writ petition) issued to the petitioner and directing the respondent-SAIL to issue a fresh completion certificate in terms of Clause 9.8 of the

agreement between the parties in the light of the observations made above, within a period of four weeks from date.

25. There will be no order as to costs.

26. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)