

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 24.04.2024

DELIVERED ON: 24.04.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 2264 of 2023
With
I.A. No. CAN 1 of 2023**

**Steel Authority of India & Ors.
Vs.
M/s. Amit Mines Private Limited**

Appearance:-

**Mr. Sarathi Dasgupta
Mr. Arijit Basu**

.....for the appellants

**Mr. Kishore Datta, Sr. Adv.
Mr. Billwadal Bhattacharya
Mr. Rajdeep Majumdar
Mr. Srijib Chakraborty
Mr. Moyukh Mukherjee
Mr. Aditya Mondal**

.....for the respondent/writ petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal is preferred by the Steel Authority of India Limited and others, who were the respondents in W.P.A. 18564 of 2023 being aggrieved by the order and direction dated 12th October, 2023. issued in the writ petition.

2. We have elaborately heard Mr. Sarathi Dasgupta, learned advocate appearing for the appellants and Mr. Kishore Datta, learned senior advocate appearing for the respondent/writ petitioner. Though the facts are shown to be very complicated, the dispute lies in a very narrow campus.
3. The respondent/writ petitioner was awarded a contract by the Steel Authority of India Limited (SAIL). By a letter dated 1st June, 2023, the writ petitioner sought for a completion certificate. This completion certificate has been sought for in terms of clause 9.8 of the General Conditions of Contract entered into between the appellants and the respondent/writ petitioner. For better appreciation, clause 9.8 is quoted below:

“Certificate completion of work

9.8 As soon as in the opinion of the Engineer the Works shall have been virtually completed, the Engineer shall on receiving a written undertaking by the Contractor to finish any outstanding work during he period of maintenance issue of a Certificate of Virtual Completion in respect of the Works and the period of Maintenance of the Works shall commence from the date of such certificates Provided that 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 as and when any such certificate is given in respect of a part of the Works such part shall be considered as completed and the period of Maintenance of such part shall commence from the date of such certificate, provided that always a certificate of Virtual Completion given in accordance with the foregoing provisions of and part of the works occupied and use as aforesaid shall not be deemed to certify completion of any ground or surfaces requiring reimbursement unless such certificate shall expressly so state.”

4. As could be seen from the above clause, it is the Engineer of the Works concerned shall be empowered to give a completion certificate when the work

has been virtually completed on receiving a written undertaking by the Contractor to finish any outstanding work during the period of maintenance issue of a Certificate of Virtual Completion in respect of the works and the period of maintenance of the Works shall commence from the date of such certificate, provided the Engineer may give such a certificate with respect to any substantial part of the work, which has been completed to the satisfaction of the Engineer and can be used by the employer. There are other stipulations contained in clause 9.8.

5. As noted above, by a letter dated 1st June, 2023, the appellants requested for a completion certificate and release of the bank guarantee in view of the completion of the work.
6. The appellants have drawn a certificate titled "TO WHOMSOEVER IT MAY CONCERN" dated 21st June, 2023. In paragraph 1 of the said certificate, it is stated that as per their Consortium Agreement, the performance certificate is being issued @ 97.2% of contract value to the writ petitioner and 2.8% of contract value to other consortium member. The writ petitioner was aggrieved on account of paragraphs 4, 5 and 6 as mentioned in the certificate. In the last line of the certificate it is stated that it is a performance certificate and it has been issued on specific request by the writ petitioner vide letter dated 1st June, 2023.
7. As pointed out above, the request dated 1st June, 2023, is not for a performance certificate but for a completion certificate in terms of clause 9.8 of the General Terms and Conditions. Therefore, the appellants could not have included other information, which is not required to be disclosed or mentioned in a completion certificate to be drawn in terms of clause 9.8.

Therefore, the appellants had exceeded or acted beyond the scope of clause 9.8, which has been rightly noted by the learned Single Bench.

8. Admittedly, the penalty imposed and the violations pointed out in paragraphs 4, 5 and 6 of the performance certificate dated 21st June, 2023 is during the period when the contract was being performed and the penalty has been imposed and whatever recoveries have been made, have already been made and this obviously, cannot impinge upon the completion certificate to be issued and as and when a need arises for issuance of a performance certificate, probably the appellants would be justified to mention about the past conduct of the writ petitioner.
9. So far as the suspension and banning of business is concerned, we are informed that the same was subject matter of challenge by the writ petitioner in W.P.A. 14533 of 2023 and the said writ petition was allowed and the orders were quashed. However, there is a direction that the said order will not prevent the respondents in the said writ petition i.e. the appellants herein from proceeding with any investigation against the respondent/writ petitioner and take consequential steps in accordance with the guidelines.
10. We are informed by Mr. Sarathi Dasgupta, learned advocate appearing for the appellants that the appellants are in the process of preferring an appeal as against the said order. Be that as it may, when the General Terms and Conditions of Contract contemplate issuance of a completion certificate, the certification by the competent authority should be restricted and remained within four corners of clause 9.8 and any other information to be incorporated in the completion certificate beyond as required to be mentioned in terms of clause 9.8 should be construed to be superfluous and required to be deleted.

11. As observed earlier, if there is a need for issuance of a performance certificate, nothing prevent the appellants from mentioning about the performance of the writ petitioner during the entire process of the contract, but the terminology used in clause 9.8 is 'Completion Certificate'. Therefore, we are of the that the learned Single Bench was right in interfering with the completion certificate, which has been issued.
12. The learned advocate for the appellants would contend that the writ petition was not maintainable. It is no doubt true that the agreement between the parties is purely within the realm of a private contract. However, what is to be borne in mind is the fact that the appellants are the public sector undertaking and the observations made in paragraphs 4, 5 and 6 of the performance certificate will not definitely impinge upon the rights of the writ petitioner, when the writ petitioner had only sought for a completion certificate.
13. It will be well-open to any tender inviting authority to call upon the writ petitioner to disclose as to whether they have come to any adverse notice by any other organisation or a Government undertaking etc. and it is for them to exercise the doctrine of *caveat emptor*.
14. Therefore, we are of the view that the impugned order does not call for any interference. However, in the event, any appeal is preferred by the appellants as against the judgment and order passed in W.P.A. 14533 of 2023 dated 23rd February, 2024, any observation made in this judgment and order will not in any manner prejudice the appellants in the said appeal.
15. The direction issued by the learned Single Bench for issuance of a fresh completion certificate be complied with within a period of six weeks from date.

16. With the above observations/directions, the appeal along with the connected application stand disposed of.
17. No costs.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)