



IN THE HIGH COURT OF ORISSA, AT CUTTACK

W.P.(C) No. 18646 of 2020

*M/s. Gannon & Dunkerly Co. Ltd
and another*

.....

Petitioners

Mr. Bibhu Prasad Das, Advocate

Vs.

*Central Board of Director Taxes
and others*

.....

Opposite Parties

Mr. D.K. Sahoo, CGC

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE G. SATAPATHY**

ORDER

01.05.2024

Order No.

31.

This matter is taken up through hybrid mode.

2. Heard Mr. Bibhu Prasad Das, learned counsel for the petitioners and Mr. D.K. Sahoo, learned Central Government Counsel for the opposite parties.

3. The petitioners have filed this writ petition seeking to quash the letters dated 28.01.2020 and 20.04.2020 issued by the opposite party no.2 under Annexures-2 and 7 respectively and the consequential letter dated 28.04.2020 issued by the opposite party no.1 under Annexure-8. The petitioners have further prayed to direct the opposite party no.1 to refund the withheld amounts and the pending bills within a stipulated period.

4. Mr. Bibhu Prasad Das, learned counsel appearing for the petitioners vehemently contended that the petitioners had entered two distinct agreement for execution of works with two different units of Railways, such as South East Central Railway and East Coast Railway. So far as South East Central Railways is concerned, there is allegation of some default on the part of the petitioners and for that



purpose certain amount has to be recovered from him in terms of the agreement executed between the parties. But instead of following due procedure, the opposite parties have directed to recover the amount from the running bill of different and distinct contract with the different unit, i.e. East Coast Railways. Therefore, it is contended that recovery of alleged defaulted amount of one unit cannot be made from other unit and, as such, the same is illegal and arbitrary. But the opposite parties are forcibly recovering the amount from the running bill of the petitioners in respect of the work undertaken under East Coast Railways, which is arbitrary, unreasonable and contrary to the provisions of law. Though reference has been made to Clause 52 and 52 A of the agreement executed with South East Central Railways, but no similar clause is available in the contract with East Coast Railways. Therefore, if any amount is to be recovered from the petitioners, first the same has to be determined and opportunity should be given to the petitioners and thereafter the amount should have been recovered from him by following due procedure. But without doing so, forcibly direction has been given for recovery of the amount from the running bill of a different contract altogether with East Coast Railway, which has no connection with South East Central Railway. Therefore, the running bill of the petitioners in respect of East Coast Railways is diverted towards recovery of the defaulted amount in respect of South East Central Railway, which cannot be sustained in the eye of law.

5. Mr. D.K. Sahoo, learned Central Government Counsel vehemently contended before this Court that the liability rests on the petitioners, which has to be recovered by following Clause 52 and 52 A of the General Conditions of Contract pursuant to the agreement executed between the petitioners and South East Central Railway.



Thereby, no illegality or irregularity has been committed by the authorities by issuing instruction to the East Coast Railway to recover the amount from the running bill of the petitioners for the work undertaken under East Coast Railway. He further contended that the matter is pending before the arbitrator as per the agreement executed between the petitioners and South East Central Railway for adjudication.

6. Having heard learned counsel for the parties and after going through the records, prima facie, it appears that petitioners have two separate and distinct contracts with two separate and distinct units of the Railways, i.e. South East Central Railway and East Coast Railway. For default on the part of the petitioners in connection with the contract under South East Central Railway, now recovery is made from the running bill of a separate contract in respect of East Coast Railway without determining the liability of the petitioners in accordance with law. The contention of the opposite parties is that power has been vested under Clause 52 and 52 A of the General Conditions of Contract for recovery of the amount from different unit. But fact remains there is no such clause available in the agreement executed between the petitioners vis-à-vis East Coast Railway. Therefore, any liability of the petitioners, in respect of a contract of South East Central Railway, which is now being recovered by East Coast Railways without determining the same cannot have any justification. More so, the dispute between the parties is still pending before the arbitrator by invoking arbitration clause under the agreement executed between the petitioners and East Coast Central Railways. Once the matter is subjudice, therefore, the recovery from the running bill of the petitioners by the East Coast Railways cannot be sustained.



7. In view of such position, the opposite parties are directed to pursue the remedy in the arbitration proceeding itself, determine the liability against the petitioners and thereafter recover the same by following due procedure of law and not by the procedure which has been adopted now to recover the same from the running bill of the petitioners in connection with a distinct contract with a distinct unit, i.e. East Coast Railway.

8. With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun

(G. SATAPATHY)
JUDGE

Signature Not Verified

Digitally Signed
Signed by: ARUN KUMAR MISHRA
Designation: ADR-cum-Addl. Principal Secretary
Reason: Authentication
Location: High Court of Orissa
Date: 03-May-2024 12:16:17

