IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 7281 of 2023

1. HCPL-MBPL(JV), a joint venture between Hardev Construction Private Limited and Mehrotra Buildcon Private Limited having its registered office at Station Road, Deoghar PO+PS- Deoghar Dist - Deoghar 814112, Jharkhand through its authorized person Mr. Avtar Singh, S/o Sri Hardev Singh, R/o House No. 1928, Sector 45, Gurugram, PO PS Sector 45, District Gurugram, Haryana.
2. Avtar Singh, Age-51 years S/o Sri Hardev Singh, R/o House No.1928, Sector 45, Gurugram, PO+ PS Sector 45, District Gurugram Haryana.

…… Petitioners

Versus

1. Rail India Technical and Economic Service Ltd. (RITES Ltd.), a Central Public Sector Enterprise and a company incorporated under the Companies Act and having its registered office at Shikhar, Plot no. 01, Sector 29, PO+PS- Sector 29 Gurugram 122 001, Haryana through its General Manager Mr D.S Negi S/o not known to the petitioner having his office at 146/C Mandir Marg , P.O. + P.S. Argora, Dist Ranchi
2. Mr. D.S. Negi, General Manager in the Respondent no. 1 posted at C/PU-Ranchi and Engineer-in-Charge, RPO - Ranchi, having his office at 146/C, Mandir Marg, P.O. & P.S. Ashok Nagar, PO+PS Argora District Ranchi, Jharkhand.
3. Patratu Vidyut Utpadan Nigam Ltd., through its Chairman-cum-managing Director, a public sector enterprise company formed as a joint venture between NTPC Ltd. and Jharkhand Bijli Vitaran Nigam Ltd. and incorporated under the Companies Act, having its registered office at PTPS. Patratu, PO- Patratu PS-Patratu Dist-Ramgarh-829 119, Jharkhand.

…. Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners: Mr. Kiran Kumar Patra, Advocate
Mr. Niranjan Kumar Sinha, Advocate

For the Respondents: Mr. Biren Poddar, Sr. Advocate
Mr. Piyush Podar, Advocate
Mr. Deepak Kumar Sinha, Advocate
Mr. Manav Poddar, Advocate

Reserved on: 23.04.2025 **Pronounced on: 05 /06/2025**

***Per* M.S. Ramachandra Rao, C.J.**

The Back ground facts:

1. The 1st petitioner is a joint venture between M/s Hardev Construction Private Limited and M/s Mehrotra Buildcon Private Limited in which the former is the lead partner with 80% share and the latter holds 20% share.

2. The 1st petitioner is engaged in works pertaining to construction of infrastructure and EPC projects in several States in India including the State of Jharkhand. The 2nd petitioner is a shareholder and Director of the lead partner of 1st petitioner.

3. The 1st respondent is a Central Public Sector Undertaking under the Ministry of Railways, Government of India and is a multi-disciplinary Engineering and Consultancy Organisation providing comprehensive range of services from the concept to commissioning in facets of transport infrastructure and related technologies.

4. The 2nd respondent is a General Manager of the 1st respondent and is the Engineer-in-charge of the project works of the 1st respondent.

5. The 3rd respondent is a Public Sector Enterprise Company formed as a joint venture between NTPC Limited and Jharkhand Bijli Vitran Nigam Limited for installing of 4000 MW Thermal Power Plant.

6. On 4.9.2021, the 2nd respondent acting on behalf of the 3rd respondent, issued an NIT inviting tenders for the work of *"Railway formation work including construction of bridges, supply of all P.way materials excluding rails, dismantling of existing tracks, laying of new track, supply and installation of in-Motion weigh-bridge and other* *ancillary works in connection with the proposed Railway Siding system for Patratu STPP, Phase-1 (3x800MW) Project of PVUNL in Dist. Ramgarh, of Jharkhand State*" at estimated cost of Rs. 100.94 crores.

7. The 1st petitioner submitted its bid on 6.10.2021 with all supporting documents.

8. The 1st respondent considered the bids and declared the 1st petitioner as a successful bidder and issued Letter of Acceptance dt. 8.4.2022 to the petitioner for a contract price of Rs. 89,09,10,076/-.

9. The 1st petitioner submitted performance guarantees of Rs. 2,67,27,301/- and commenced the works. It also submitted stamp paper for execution of the contract on 18.5.2022.

10. Petitioners contend that there were difficult conditions at the site including poor law and order and on several occasions there were dangerous situation including armed firing.

11. On 2.6.2022, an F.I.R. was registered by the SPE, CBI (ACB), Ranchi under Section 120-B IPC and Sections 7 and 8 of the Prevention of Corruption Act, 1988 against the General Manager (Projects) and the DGM (Projects) of the 1st respondent alleging *inter alia* that they had entered into a conspiracy with the 2nd petitioner and an employee of the lead partner of the 1st petitioner for collection/payment of illegal gratification, and that the accused had assured the awardee for smooth execution of work and facilitating the awardee in day to day post tender works by manipulating measurement books, variation of bills and early clearing of bills submitted by the awardee.

12. Thereafter a charge-sheet was submitted to the Special Judge, CBI Cases, Ranchi on 30.7.2022 against both the accused. The 2nd petitioner was also arrayed as an accused.

13. Notwithstanding the said F.I.R. and proceedings initiated pursuant thereto, on 21.10.2022, the 1st petitioner and 1st respondent executed a contract for execution of the works awarded to the 1st petitioner.

14. Thereafter, a supplementary charge-sheet was filed on 29.12.2022 by the CBI wherein it gave a clean chit to the minority shareholder of the 1st petitioner joint venture i.e. Mehrotra Buildcon Private Limited.

15. But on 8.2.2023, Annexure-7 notice was issued by the 1st respondent to the 1st petitioner contending that it is authorized to suspend business dealings with the 1st petitioner in the event it's conduct is under investigation; that allegations against the 1st petitioner are of serious nature which are being investigated, and an F.I.R. dt. 2.6.2022 has already been lodged against the lead partner of the 1st petitioner; and therefore, the competent authority had decided to discontinue future business dealings with it due to pending investigation/court proceedings. The said letter further stated that the competent authority has decided to suspend future business dealings with the 1st petitioner with immediate effect for six months with effect from 8.2.2023.

16. The petitioners contend that this notice dt. 8.2.2023 was issued eight months after lodging of the F.I.R. and four months after the signing of the contract between the parties on 21.10.2022 *after* the said F.I.R. was lodged, and that the action of the 1st respondent is arbitrary.

17. The 1st respondent also got issued a show cause notice dt. 9.2.2023 under Clause 8 of Guidelines on Banning of Business Dealings asking the 1st petitioner to show cause as to why business dealings with the 1st petitioner should not be banned.

18. On the next day i.e. 10.2.2023 another notice was issued by the 1st respondent to the 1st petitioner under Clause 3(v) of the contract entered into between the parties on 21.10.2022 asking the petitioner to show cause why action under the said clause cannot be contemplated against the 1st petitioner for determination of the contract and forfeiting the earnest money deposit, security deposit and performance guarantee.

19. A reply was issued on 16.2.2023 by the 1st petitioner to the notice dt. 10.2.2023 stating that the matter in issue is subjudice before the court of competent jurisdiction and the allegations were yet to be investigated and tried.

It was also pointed out that in the charge-sheet filed in the criminal case there was no reference to the allegation made in the F.I.R. that the contract was awarded to the 1st petitioner pursuant to a criminal conspiracy with the employees of the 1st respondent; and the basis for issuance of the 10.2.2023 notice was no longer subsisting and it should be recalled.

It was also pointed out that in the absence of any allegation in the charge-sheet filed in the criminal Court that any wrongful action was done by the 1st petitioner in obtaining or execution of the contract or any other contract, Clause 3(v) of the contract which applies only to cases of wrongfully obtaining a contract from the employer could not have been invoked.

It was also pointed out that there were no details of misconduct or misbehaviour appended to the show cause notice nor evidence in that regard was enclosed to the 10.2.2023 notice; that if they have to defend themselves on merits, they would be compelled to disclose their defence in the criminal case even before framing of charges; and such disclosure of their line of defence would prejudice their case in the trial before the Court. They pleaded that there was a presumption of innocence in Indian law which cannot be ignored until and unless proven guilty by the Court.

20. On 5.3.2023 the 1st petitioner also filed a reply to the 1st respondent's show cause notice dt. 9.2.2023 giving a detailed response as to why the future business dealings with the 1st petitioner should not be banned at that juncture.

21. The lead partner of the 1st petitioner even filed W.P.(C) No. 1910 of 2023 before this Court for quashing the order dt. 8.2.2023 passed by the 1st respondent suspending future business dealings with the 1st petitioner for the period of six months.

The Writ Petition was however, dismissed holding that suspension of business dealings done by the 1st respondent did not warrant interference because a charge-sheet has already been submitted to the criminal Court, but an observation was made that the dismissal of the Writ Petition should not prejudice the 1st petitioner in other proceedings.

22. On 20.6.2023 the 1st respondent issued a notice to the 1st petitioner calling upon the 1st petitioner to mobilize manpower and resources to expedite the execution of works in the quarter April to June, 2023.

23. But within two weeks thereafter Annexure-14 order dt. 3.7.2023 was issued terminating the contract dt. 21.10.2022 between the parties with effect from 3.7.2023.

In the said order there is a reference to the F.I.R. dt. 2.6.2022 filed by the SPE, CBI, ACB, Ranchi and also the filing of a charge-sheet on 30.7.2022 in the Court of Special Judge, CBI Cases in which the 2nd petitioner was also arrayed as an accused and quoting Clause 3 of the contract while forfeiting earnest money deposits, security deposit, and performance guarantee given by the 1st petitioner.

It is also stated that the work which remained unexecuted would be got executed by another contractor and the 1st petitioner will not be allowed to participate in the tendering process for the balance work. It is also stated that no claim to compensation for any loss will be entertained from the 1st petitioner.

24. On 3.8.2023, a month later, Annexure-15 order was issued by the 1st respondent banning all business dealings with the 1st petitioner for two years with effect from 8.2.2023 on the pretext that there were allegations made in the FIR and charge-sheet which were of serious nature.

Reference is made therein to Sub-clause 6.3 and Sub-clause 6.9 in the Guidelines on Banning of Business Dealings which stipulated that if there is a strong justification for believing that the director/proprietor/partner/owner of the agency has been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation etc. (Sub-clause 6.3) or on the basis of findings of investigation report of CBI/Police against the agency for malafide/unlawful acts for improper conduct on his part in matters relating to the 1st respondent or even otherwise (Sub-clause 6.9), there can be a ban.

25. Thereafter, the 1st petitioner preferred an Appeal on 16.8.2023 to the Chairman and Managing Director of the 1st respondent challenging the ban on business dealings for a period of two years imposed against him, but this was also rejected by the said Appellate Authority on 27.10.2023.

26. In the Appellate Authority's order it is stated that the findings of the investigation report and charge-sheet submitted by the CBI disclose that there is a strong justification to believe that the agency was involved and guilty of malpractices such as bribery and corruption *prima facie* and it leaves no ground to believe that the joint venture was not involved in such unlawful act irrespective of the fact that the matter is subjudice in Court; and the fact that the matter is subjudice before the Court does not bar the authority to take the action of banning the agency when there is a strong justification of involvement of the agency in unlawful activities.

27. Assailing both these orders, the Writ Petition is filed.

<u>The contentions of petitioner</u>

28. Counsel for the petitioners contended that:-

(a) the 1st respondent entered into the contract on 21.10.2022 though it was fully aware of the registration of the F.I.R. dt.

2.6.2022 and the charge-sheet dt. 30.7.2022; and therefore, it was bad in law to subsequently terminate the contract solely on the basis of the F.I.R. dt. 2.6.2022 which was not considered an impediment to the execution of the contract in the first place.

(b) the action of the respondents in determining the contract is in violation of the principles of natural justice.

(c) the action of the 1st respondent in terminating the contract and banning the 1st petitioner from participating in future business for two years infringes the rights conferred on the petitioners guaranteed under Part-III of the Constitution of India.

(d) determining an ongoing contract on the basis of unproven allegations is not tenable since the damage and loss caused to the 1st petitioner would be irretrievable particularly when the allegations contained in the F.I.R. are not even existing presently because such allegations made in the F.I.R. were dropped at the time of filing of the charge-sheet.

(e) the 1st respondent has given the same reason in the impugned order dt. 3.7.2023 and also in the prior notices without considering the reply dt. 16.2.2023 of the petitioner.

(f) it is settled law that an F.I.R. under Section 154 Cr.P.C. is not a substantive piece of evidence and it's only used to contradict or corroborate the matter thereof and so the termination of the contract on the basis of only the allegations made in the F.I.R. is bad in law.

(g) the 1st petitioner has already completed 25% of the works by the date of termination of the contract and the said termination as well as the subsequent banning had adversely impacted the work done by the 1st petitioner.

(h) it is stated that after the contract was awarded to the petitioner, the 1st respondent on 20.6.2023 had asked the petitioner to expedite the works and so the 1st petitioner ordered further raw material for the work, but the abrupt termination of the contract on 3.7.2023 caused great loss to the petitioner.

The stand of the respondents 1 and 2

29. The respondents 1 and 2 contended primarily that all the actions taken by the 1st respondent in the matter of termination of the contract, banning of business dealings and invocation of bank guarantee are strictly within the terms and conditions of the contract.

30. It is also contended that the 1st petitioner cannot absolve itself of the actions of one of the members of the joint venture who is a lead member. Reference is made to the provisions in the contract.

31. Counsel for the respondents supported the stand taken by the respondents and contended that there is no illegality in the action taken by the respondents either for terminating the contract granted to the 1st petitioner or banning the 1st petitioner for a period of two years and it does not warrant any interference by this Court in exercise of it's power of judicial review.

Consideration by the Court

32. From the contentions of the 1st petitioner, the principal contention appears to be that though the allegations in the F.I.R. dt. 2.6.2022 implicated both the partners of the joint venture, but in the supplementary charge-sheet filed, the charges against the minority share holder/ partner of the 1st petitioner joint venture were dropped, and this change in the final charge-sheet dt. 29.12.2022 coupled with the presumption of innocence available to an accused under criminal law should result in grant of relief to the 1st petitioner in the Writ Petition.

33. The variation between the F.I.R. and the supplementary charge-sheet filed on 29.12.2022, in our opinion, *prima facie* does not exonerate the 2nd petitioner of any wrong doing since the 2nd petitioner is admittedly a shareholder and Director of the lead partner of 1st petitioner and the prosecuting agency has not let go of the prosecution against the said lead partner even in the final supplementary charge-sheet filed in the criminal Court.

34. The criminal prosecution is still ongoing and it may not be proper for this Court to express any opinion as to the innocence or guilt of the 1st petitioner or the lead partner of the 1st petitioner in the criminal case, since any such observation would prejudice the fair trial in the criminal case.

35. It is not disputed that in the tender floated by the 1st respondent there was an Annexure-6 (Integrity Facts) supposed to be given by the 1st petitioner stating that it would take all measures necessary to prevent corruption; in Annexure-A dealing with the Guidelines on Banning of

Business Dealings, Sub-clause 6.3 permits banning of business dealings if there is strong justification for believing that the Directors of the agency have been guilty of malpractices such as bribery, corruption, fraud etc. Also Sub-clause 6.9 provides that based on findings of the investigation report of the CBI/Police against an agency for malafide/unlawful acts or improper conduct on his part in matters relating to the 1st respondent or even otherwise, banning can be done.

36. In our opinion, having accepted these terms and the contract document by signing the contract dt. 21.10.2022, it is not open to the 1st petitioner to question either the termination of the contract or the banning of it's business by way of this Writ Petition under Article 226 of the Constitution of India. This is because the action of the respondents against the petitioners is on the basis of the final supplementary charge-sheet filed in the criminal case initiated against the 2nd petitioner, notwithstanding the presumption of innocence in the criminal law in his favour.

37. We may also point out that disputes regarding termination of the contract under Clause 25 of the tender document are subject to arbitration and it is open to the 1st petitioner to invoke the said remedy for seeking appropriate relief against the 1st respondent if it is so advised.

38. As regards the banning/blacklisting order passed against the petitioner for a period of two years with effect from 8.2.2023 is concerned, the period of ban has ended on 7.2.2025, and the prayer for relief in that regard has thus become infructuous.

39. We hasten to add that any observations made in the judgment shall not in any way affect the criminal prosecution against the 2nd petitioner or influence the arbitration proceedings if such proceedings are initiated by the 1st petitioner against the 1st respondent in future for any relief in relation to the termination of the contract in question by the 1st respondent.

40. Therefore, the Writ Petition is disposed of with the above observations.

41. Pending Interlocutory Application, if any, stands disposed of.

(M. S. Ramachandra Rao, C.J.)

(Rajesh Shankar, J.)

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