

(2012) 07 JH CK 0134

Jharkhand High Court

Case No: Writ Petition (C) . No. 5846 of 2006

M/s Pabscon

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision: July 5, 2012

Citation: (2012) 4 JCR 578 : (2012) 3 JLJR 550

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: A.K. Sahani, for the Appellant; Nehala Sharmin, J.C. to Sr. S.C.-II, for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. The instant writ petition has been preferred for a direction upon the respondents to pay the admitted balance amount by way of difference due to escalation of price of bitumen, chips and the security money lying in deposit with the respondents with interest till date of actual payment.

2. Learned counsel for the petitioner submitted that on account of the policies of the respondent- government as contained in notification dated 21.1.2004 the petitioner was entitled for the escalated cost of bitumen for execution of the work as per the work order dated 9.10.2002(Annexure-1). As per the counsel for the petitioner by the communication contained at annexure-6 dated 4.1.2006 from the Superintending Engineer, Road Construction Department Circular, Hazaribag to the Executive Engineer, Road Construction Division, Giridih, recommendation was made for payment of Rs. 42,22,440/- as difference amount of escalation cost of bitumen, but only a sum of Rs. 37,28,872/- was sanctioned for payment. It is stated on his behalf that in the counter affidavit it has been indicated that this amount has already been paid, but the petitioner has refuted it by filing supplementary affidavit dated 27.11.2009.

3. It is further case of the petitioner that although as per annexure-7 dated 14.9.2004 issued by the Executive Engineer, Road Construction Divison, Giridih it is clear that the respondents have found that the petitioner has completed the work in schedule time on 15.8.2004 with high degree of workmanship, however, it is submitted on behalf of the petitioner that in spite of the said completion of work, the refund of security money of the petitioner, which is supposed to be paid within 6 months from the date of completion of work as per clause 16 of the agreement has not been released.

4. Learned counsel for the petitioner further submitted that it would appear from the document brought on record by way of annexure-D of the counter affidavit dated 20.11.2003 as also annexure-E dated 7.4.2006 the respondents have indicated that certain amounts of Rs. 11 lakhs and odd are required to be recovered from the petitioner to be adjusted from the security deposit of the petitioner.

5. Respondents have appeared and filed their counter affidavit wherein they have stated that against the difference of the escalated amount of bitumen a sum of Rs. 37,01,310/- was found admissible and the same has also been paid. However, the respondents have denied any claim relating to the fluctuation of rates of labour and material during the execution of the work. It is also stated that out of the security money of Rs. 50,82,024/- a sum of Rs. 11,32,435 is required to be adjusted/recover from the petitioner on account of excess money being paid to the contractor in connection with carriage of metal and chips.

6. From the aforesaid facts it appears that certain issues of fact relating to the amount in question on account of difference of escalated price of bitumen is in dispute between the parties. Further, the petitioner has also submitted that respondents are not entitled to recover the amount of Rs. 11 lakhs and odd as he has already complied with the necessary formalities by filing challans etc. This issues being disputed question of fact, this court does not consider it desirable to enter into the disputed question of facts in exercising its writ jurisdiction. In the circumstances, petitioner prays for liberty to approach the respondent no. 3, Chief Engineer(Road), Road Construction Department, Jharkhand, Ranchi with a representation for the redressal of his grievances relating to the payment of escalated cost of bitumen, refund of security money as also the contention of the respondents relating to recovery of a sum of Rs. 11 lakhs and odd.

7. In that view of the matter, petitioner is at liberty to approach the respondent no. 3 by filing a representation with all the necessary facts and documents in support of his claim within a period of 3 weeks. In case such representation is made, respondent no. 3 shall consider the same in accordance with law by giving opportunity to the petitioner and pass a reasoned and speaking order within period of 12 weeks, thereafter, which shall be communicated to the petitioner.

8. Needless to say that if claim of the petitioner is found to be genuine and legally admissible and he is entitled for any further payment, the same should be made within a period of 8 weeks, thereafter. With the aforesaid observation, this writ petition is disposed of.