

(2014) 11 JH CK 0033

Jharkhand High Court

Case No: Writ Petition (Civil) No. 1983 of 2014

Nand Lal Pandey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Nov. 11, 2014

Citation: (2016) 1 AJR 502 : (2015) 1 LJLR 88

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Rajiv Ranjan, Advocate for the Appellant; Prabhat Singh, J.C. to A.A.G, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

Challenging order contained in letter dated 27.01.2014, the petitioner has filed the present writ petition.

2. In the writ petition it is stated that agreement No. 13 SBD/2008-09 for widening of Hazaribagh-Barkagaon-Tandwa Road between 37 K.M. to 47.05 K.M was executed. The work was to commence on 10.10.2008 and the schedule completion period was one year that is, 09.10.2009. Due to various reasons beyond the control of the petitioner, the work could not be completed. During the intervening period there were Parliamentary Elections and election for Legislative Assembly. The area is infested with the Maoist activities due to which the work was tendered/re-tendered many times. The petitioner wrote letters to the respondents seeking extension of time for completing the work however, it was not granted. The bills remained pending with the respondents and the petitioner was not paid the amount against the running bills and thus, due to financial crunch the petitioner could not complete the work. Lastly, vide letters dated 02.05.2013 and 02.01.2014, the petitioner sought extension of time for completing the work and vide letter dated 03.09.2013 requested for executing the supplementary agreement however, it was not granted to the petitioner-Company. The stretch of Hazaribagh-Barkagaon-Tandwa Road between 37 K.M. to 47.05 K.M was under encroachment which was removed only on

15.06.2011.

3. It is submitted that, in these facts the impugned order contained in letter dated 27.01.2014 could not have been issued terminating the contract and forfeiting the earnest money deposited by the petitioner. It is submitted that the letters written to the respondents bringing to their notice the difficulties faced by the petitioner, have not been discussed and taken into account before issuing order in the letter dated 27.01.2014 and therefore, the impugned letter is liable to be quashed. It is further submitted that though in letter dated 27.01.2014 it is stated that in the last two years, the progress has remained "nil", the information revealed through R.T.I would disclose that the petitioner has completed about 81.85% of the work and thus, the order has been passed on wrong factual premises.

4. I have considered the contention of the learned counsel for the petitioner and perused the documents on record.

5. In the impugned letter dated 27.01.2014 it is mentioned that though the schedule completion date was 09.10.2009 and the petitioner-company was given directions for completion of the work however, the work was not completed. In compliance of the direction issued vide letters dated 23.03.2013 and 15.04.2013, the agreement was directed to be cancelled and final measurement was to be taken however, on the instruction of the Principal Secretary on 27.06.2013, the petitioner was granted one more opportunity to complete the work. Accordingly, vide letters dated 28.06.2013 and 23.07.2013, the petitioner was directed to file an affidavit under-taking to complete the work within a period of one month however, the petitioner did not undertake to complete the work within one month. In the mean-time show-cause dated 05.06.2013 was issued to the petitioner however, it did not submit its reply. The impugned letter dated 27.01.2014 refers to various letters and press communication issued in this regard.

6. Referring to the letters dated 02.05.2013 and 02.01.2014, I find that the petitioner had sought 15 days" time in letter dated 02.05.2013 for completing the work whereas, in letter dated 02.01.2014, it sought 3 month"s time-extension. As noticed above, vide communications dated 28.06.2013 and 23.07.2013 the petitioner was directed to undertake to complete the work within "one month" however, it did not submit its undertaking. I further find that vide letter dated 20.04.2012, the petitioner was directed to execute supplementary agreement and furnish security deposit, however, it raised claim for price escalation and did not execute the supplementary agreement. Adverting to the contention that the letter dated 27.01.2014 suffers from serious errors of fact in as much as, it has been recorded that in the last two years the progress of the work has remained "Nil", I find that the R.T.I information has been given to the petitioner-company on 27.05.2013 which discloses that about 81.85% of the work was complete however, it is not indicated when 81.85% work was completed. In its letter dated 02.05.2013, the petitioner has claimed that it has completed 90% work whereas, in letter dated 02.01.2014 it is claimed that 82 % work

was complete. The reference to the progress of work as "Nil" in letter dated 27.01.2014 refers to the initial period of 2 years. Moreover, this would not have any material bearing on the decision taken vide letter dated 27.01.2014, because it is not denied that the work was not complete within time and thus, there was breach of terms of the agreement. According to the petitioner itself the encroachment was removed on 15.06.2011 and thus, after 15.06.2011, in terms of the agreement, the work should have been completed by 14.06.2012 however, it has not been done in the present case. In view of these facts there was no necessity to discuss the communications of the petitioner in the impugned letter dated 27.01.2014. I do not find any infirmity in communication dated 27.01.2014 whereby the agreement has been cancelled and security deposit forfeited.

7. Accordingly, this writ petition stands dismissed.