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D.D. Builders Limited Vs. Union of India (Uoi), Represented by the General Manager, South Eastern Railway and anr.

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Court : Orissa

Decided On : Feb-12-2002

Reported in : 43(2002)CLT490

Judge : P.K. Balasubramanyan, C.J. and ;A.S. Naidu, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : O.J.C. No. 900 of 2002

Appellant : D.D. Builders Limited

Respondent : Union of India (Uoi), Represented by the General Manager, South Eastern Railway and anr.

Advocate for Def. : D.C. Mohanty, Standing Counsel (Central)

Advocate for Pet/Ap. : Bijan Ray, B. Mohanty, B.K. Dash & Vijayashree

Disposition : Writ petition dismissed

Judgement :

P.K. Balasubramanyan, C.J.

1. The petitioner entered into a contract with South Eastern Railway for execution/construction of earth work in formation, minor bridges etc. in Section Norla Road-Lanjigarh Road. The contract was valued at Rs. 2,78,57,157/-. The agreement was entered into on 31.1.2001. The date of completion of the work was fixed as 12.2.2002. It was found by the Railways that the petitioner had not taken adequate steps to complete the work within the time fixed. In the Review Meeting held on 20.7.2001, it was noticed that though 40% of the time allowed for completion of the work was exhausted, the petitioner had only done 6-7% of the work. The petitioner was, therefore, given notice including notice of 48 hours calling upon it to take up the work early and complete the same within time. Ultimately it is seen that in the meeting held on 20.7.2001, a decision was taken and the details of such decision are indicated in paragraph 14.1 of the writ petition, and also are seen in Annexure-5, the minutes of the Review Meeting. As per the decision of the Review Meeting, the contractor had to submit a revised schedule for execution of each item of work by 27.7.2001. The allegations in the writ petition do not show that the contractor complied with that requirement or that it submitted a revised schedule for execution of each item of work by 27.7.2001. In that situation, another notice was issued on 24.9.2001 terminating the contract in terms of Clause 62 of the General Conditions. The petitioner was again served with a notice dated 8.12.2000 by the Railways that the work was being re-tendered at the risk and cost of the petitioner and with the said notice the fresh tender notice was also enclosed. It is at that stage that the petitioner has come up with this writ petition.

2. The petitioner has prayed for quashing the notice dated 24.9.2001 contained at Annexure-2 and fresh tender notice contained at Annexure-7 and for declaring that the contract of the petitioner subsists. The writ petition was filed on 23.1.2002 and the same is placed before the Bench for the first time today, the 12th February, 2002.

3. It is contended on behalf of the petitioner that the contract was liable to be terminated by the Railways only in compliance with Clause 62 of the Agreement. But, it is not dispute, as has been indicated in Annexure-5, that earlier notices of seven days and 48 hours were issued to the contractor in terms of the General

Conditions. It was thereafter that a review meeting took place in which a decision was taken to give an opportunity to the petitioner-contractor. But, the Railways wanted the contractor to submit the revised schedule for execution of each item of work by 27.7.2001. There is no pleading in the writ petition that such a revised schedule was in fact submitted by the contractor. In this situation, we think that sufficient opportunity was given to the contractor before its contract was terminated. In fact a reference to Annexure-2, the notice dated 24.9.2001 shows that earlier letters were sent to petitioner on 6.7.2001, 3.8.2001 and 14.8.2001. Obviously the Railways were trying seriously to see that the work is taken up and completed soon. On an overall assessment of the situation, we are not satisfied that there is any scope for interference in this writ petition. We do not find that there was any procedural irregularity committed by the Railways so as to warrant the exercise of our extraordinary jurisdiction under Article 226 of the [Constitution of India](#). It is no doubt true that in an appropriate case or when the circumstances clearly justify it, we do have jurisdiction to issue directions or interfere with the rights and obligations flowing out of the contract, especially when there is violation of rules or otherwise. But, on the materials available in this case, we are not satisfied that there is any justification in exercising that jurisdiction. In that view, we decline to admit the writ petition. It is dismissed.

A.S. Naidu, J.

4. I agree.

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