

Court No. - 40

Case :- WRIT - C No. - 13174 of 2023

Petitioner :- M/S Yash Construction

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shiva Karan Vishwakarma, Ashok Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondent.
2. The present writ petition was entertained on 2.5.2023 and this Court has proceeded to pass a detailed order with following observations.

"Heard Sri Shiva Karan Vishwakarma, learned counsel for the petitioner and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondent.

Petitioner-M/s. Yash Construction through its Proprietor Shiv Prakash Mishra is before this Court for a mandamus directing the respondents to release the security and balance amount of Rs. 6,04,764/- in its favour within stipulated time with interest.

The matter was taken on 19.4.2023 and the Court has asked learned Additional Chief Standing Counsel to seek instructions.

In response thereof, detailed instructions dated 29.4.2023 sent by Executive Engineer, Minor Irrigation Division, Prayagraj is being placed by learned ACSC, which is taken on record. It has been claimed that the State Government had constituted a Technical Advisory Committee (TAC) on 21.11.2014 to investigate the matter. While placing the instructions, plea has been taken that till date TAC has not sent the report, therefore, the petitioner cannot be reprieved. The moment, the respondent Authority receives the report, needful would be done. The said plea is objected by learned counsel for the petitioner on the basis of averments contained in paragraph 10 of the writ petition, wherein, it has been claimed that the TAC has submitted its investigation report issuing a clean chit to the contractor and the engineers of minor irrigation department. The disclosure of the report in public domain has been intentionally kept in abeyance.

In view of the above, we deem it appropriate let the respondents file their response/affidavit in the matter.

Put up this matter again on 22.5.2023 as fresh. "

3. In response thereof, the Principal Secretary of the Department concerned filed

his personal affidavit on 21.8.2023, which is already on record.

4. Today, when the matter is taken up, learned ACSC has placed the detailed instructions dated 7.11.2023 sent by Chief Engineer, Minor Irrigation Department Uttar Pradesh, Lucknow and submits that certain new facts have been surfaced after filing of the personal affidavit, as such, the instructions may be taken on record. On the basis of instructions, he submits that as per Condition of Contract (Annexure No. 4 of the instructions, Pg. 24 & 25) Clause 34-A(i) provides for arbitration. He further raised an objection as there are certain disputed facts, which cannot be adjudicated under Article 226 of the Constitution of India and once the efficacious alternative remedy is available to the petitioner to press the relief before the Arbitrator, there is no reason or occasion to bypass the statutory forum and the writ petition is liable to be dismissed on the ground of statutory alternative remedy. The said instruction is taken on record.

5. Considering the factum of controversy, we are not inclined to adjudicate the issue on merit. However, we leave it open to the petitioner to press the relief in view of Clause 34-A(i) of the Condition of Contract before the Arbitrator. In case, any such proceeding is initiated before the Arbitrator within 10 days from today, we hope and trust that the same would be concluded to its logical end expeditiously.

6. With the aforesaid observations, the writ petition stands disposed of.

Order Date :- 21.11.2023

A.K.Srivastava