

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.25461 OF 2015

ORDER:

Heard learned counsel for the petitioner and Sri P. Bhaskar, learned Standing Counsel for the respondent Railways.

The petitioner questions the proceedings issued against it proposing to recover Rs.2,52,36,448.96 ps. from its Running Bills for the existing works as per the agreements, dated 25.03.2015 and 16.04.2014, as mentioned in the prayer. The petitioner states that the said amount is sought to be recovered on the ground that, that was given excess to it for the works already executed by it under agreement, dated 01.02.2012.

A counter affidavit is already filed on behalf of the respondent Railways, which, *inter alia*, states that the quantification of the said excess payment was made by the Vigilance Branch of SC Railway and the said amount is sought to be recovered and as is existing, the Contractor is executing two works with the respondent Railways worth about more than Rs.14.00 crores. The recoveries are sought to be affected from the petitioner's bills.

Learned Standing Counsel for the respondent Railways, *inter alia*, places reliance upon the letter addressed by the petitioner to the Chief Engineer, South Central Railway, Secunderabad, dated 26.06.2015. A copy thereof is annexed to the counter affidavit, wherein the petitioner expressed its hardship to pay the aforesaid excess amount and has requested the respondent Railways to accept adjustment of EMD of security Deposits available with the respondent Railways relating to the said work of 2012 and thereby a total amount

of Rs.1,35,47,262/- would stand adjusted against the recovery of the amount as aforesaid. In addition to that, the petitioner also requested the respondent Railways to recover the left over amount of Rs.1,11,13,533/- @ 10% from the Running Bills, which are to be paid to the petitioner for the two existing works, which carry the value of Rs.14,15,68,264/-.

The petitioner states that accepting the said request, 10% recovery was already made from the Running Bills of the said work, but later the entire amount is sought to be recovered. It is evident that the petitioner does not disown the liability and, in fact, accepted to repay the amount as sought to be recovered. However, he only suggested that the balance of Rs.1.00 crore and odd may be adjusted @ 10% from its Running Bills.

Learned Standing Counsel, however, expresses difficulty in accepting the said request, as there would not be security available with the respondent Railways.

During the hearing, however, there was considerable consensus in the modalities for security in securing the said amount of Rs.1.00 crore and odd from the petitioner, if its proposal for adjustment @ 10% on the Running Bills is accepted.

In view of that, it is evident that the dispute between the petitioner and the respondent Railways is narrowed down only with regard to the security for the respondent Railways for repayment of the said balance amount, if petitioner's proposal for installments is to be accepted.

In my view, it would therefore be just and appropriate that the petitioner is directed to provide a security in the shape of bank guarantee to the extent of 50% of the balance amount in favour of the respondent Railways and thereafter the respondent Railways shall be

entitled to recover the balance amount at 10% from each of the Running Bills as per the proposal as recorded above. The petitioner shall accordingly furnish the bank guarantee of nationalised bank within four weeks to the satisfaction of the 4th respondent.

With the above directions, the Writ Petition is, therefore, disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

VILAS V.AFZULPURKAR, J

01.09.2015
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