THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.13323 of 2012

25.06.2015

Between:

R.Gangaiah & Co., Hyderabad

…**Petitioner**

And

A.P.GENCO, Hyderabad and others

…**Respondents**

Counsel for the petitioner: Mr.P.Girish Kumar

Counsel for the respondents: Mr.Resu Mahender Reddy, standing counsel for T GENCO

The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* (1) to declare that the petitioner is not liable for payment of any amount towards labour cess relating to the works executed under agreement Nos.39/2007-08.SE/CC/KTPP/Chelpur and 53/2007-08.SE/CC/KTPP/Chelpur; (2) to declare the action of respondent No.3 in directing respondent No.4 to recover labour cess at the rate of 1% relating to the works executed by the petitioner under the aforesaid agreements from out of the bills payable for the work of "KTPP-Stage-I-Construction of Indoor Games Shed in the colony area at KTPP" as arbitrary, illegal and without jurisdiction, and (3) consequently, to direct respondent No.3 to return to the petitioner, bank guarantee, dated 30.01.2012, for Rs.6,81,400/- furnished by it.

I have heard Mr.P.Girish Kumar, learned counsel for the petitioner and the counsel representing Mr.Resu Mahender Reddy, standing counsel for Telangana Power Generation Corporation Limited (T GENCO).

At the outset, the learned counsel for the respondents submitted that though the Andhra Pradesh Power Generation Corporation Limited (AP GENCO) and its functionaries were impleaded in the writ petition, in view of the division of the State and constitution of a separate GENCO for Telangana State, the said company has become the successor of AP GENCO and that therefore, he is representing the said organization in the writ petition. In view of this fair submission, the need for the petitioner to make a formal amendment of the cause title relating to respondent Nos.1 and 2 is obviated.

The facts leading to the filing of this writ petition, in brief, are as under:

The respondents entrusted two contract works to the petitioner under the aforesaid agreements involving construction of ADE-type quarters and E-type quarters respectively. It is not in dispute that the construction was completed by 31.07.2009 and the guarantee period also expired by 30.07.2011. The petitioner filed W.P.No.15322 of 2009 against various departments including the respondents herein questioning the deduction of 1% amount from its bills towards labour cess under various contracts executed/being executed by it. Respondent Nos.1 and 2 herein were impleaded as respondent Nos.23 and 24 respectively in the said writ petition. It is the pleaded case of the petitioner that the respondents have orally informed it that they are willing to release the labour cess and that, therefore, they may be deleted from the array of parties and that accordingly, the petitioner has given them up by filing W.P.M.P.No.31239 of 2010 in the said writ petition. That due to the said understanding, the amount of 1% withheld towards labour cess was released to the petitioner. Thereafter, respondent No.1 filed W.P.No.23068 of 2010 against the State of Andhra Pradesh, the Director of Factories and the Joint Commissioner of Labour and Cess Assessing Officer for a *mandamus* to direct the respondents therein not to insist on payment of amount demanded through letter, dated 13.04.2010, of the Joint Commissioner of Labour and Cess Assessing Officer, Warangal. Pending the said writ petition, this Court, by order, dated 20.09.2010 in W.P.M.P.No.29437 of 2010, while granting interim stay of recovery of money from the petitioner therein (AP GENCO), directed that while making payments to its contractors, the principal employer shall ensure that 1% of the contract value demanded by the labour department shall be deducted from the bills payable to the contractors, but the same will not be made over to them.

Following the aforementioned interim order, respondent No.3 addressed letter, dated 23.12.2011, to the petitioner herein, wherein it was informed that as final bills on the aforementioned two contracts were already released to it, except two bank guarantees furnished by it, no other security is available with them and that, therefore, the petitioner shall extend the bank guarantees for another period of one year. The petitioner was also requested through the said letter to deposit a sum of Rs.6,81,388/- towards labour cess payable to the labour department at the rate of 1% of the contract value pending finalization of W.P.No.23068 of 2010. In response to the said letter, the petitioner informed respondent No.3, vide its letter, dated 10.01.2012, that it will submit a separate bank guarantee for the aforesaid amount towards 1% labour cess. While stating that as the works were completed in all respects and the maintenance period was also over, the petitioner requested for release of the two bank guarantees furnished by it towards EMD and security deposit. As could be culled out from the record, the petitioner furnished bank guarantee bearing No.0456121GFIN0011, dated 30.01.2012 for Rs.6,81,400/- towards 1% labour cess payable by it to the labour department in respect of the aforementioned two contracts. Respondent No.3 through his letter, dated 22.02.2012, accepted the said bank guarantee subject to the condition that the same does not absolve the petitioner of its responsibility of due performance of the contract in line with the terms of the specifications and that the petitioner shall keep the validity of the bank guarantee till completion of all the contractual obligations. Having thus accepted the bank guarantee, respondent No.3 appeared to have changed his mind within a few days thereafter, which is reflected in the impugned letter, dated 09.03.2012 addressed to respondent No.4. This letter was addressed in response to the petitioner's letter, dated 10.01.2012, whereunder it requested for refund of the bank guarantees submitted towards EMD and security deposit. Respondent No.3 informed respondent No.4 in the said letter that as 1% labour cess amount is required to be recovered from the petitioner, the same shall be recovered from the bills payable to it relating to other works, preferably from the bills for the work of KTPP-Stage-I-Construction of Indoor

Games Shed in the colony area at KTPP.

From the facts noted above, it is clear that on the demand made by respondent No.3, the petitioner furnished bank guarantee for the sum of Rs.6,81,400/- towards 1% labour cess, which was allegedly payable by it. By furnishing the said guarantee, the petitioner requested respondent No.3 to return the bank guarantees furnished by it towards EMD and security deposit. Respondent No.3, in unmistakable terms, accepted the said request and also received the bank guarantee furnished by the petitioner as evident from his letter, dated 20.02.2012. When the alleged liability of the petitioner is firmly secured through the bank guarantee furnished by it, the action of respondent No.3 in directing respondent No.4 to recover the said sum from the bills payable to the petitioner on another contract does not stand to any reason and the same is not only wholly irrational but also patently arbitrary.

Though the prayer in the writ petition is couched in wide terms, which include the declaration that the petitioner is not liable to pay the labour cess, the learned counsel for the petitioner has submitted that as his client himself has voluntarily furnished bank guarantee pending the writ petition filed by respondent No.1, he is not pressing the said relief. None of the respondents have filed any counter-affidavit to justify the impugned action of respondent No.3 in seeking to recover from the petitioner, the sum of Rs.6,81,388/- in respect of which bank guarantee has already been furnished by it. In this regard, the learned counsel for the petitioner submitted that in the absence of any power reserved with the respondents, they are not legally entitled to withhold any amount, towards dues, allegedly payable to the petitioner on other contracts.

It is unnecessary for me to deal with this aspect as I am of the firm opinion that respondent No.3 is not justified in directing recovery of the amount of Rs.6,81,388/- from the bills payable to the petitioner on another contract as the said sum is duly secured by way of bank guarantee furnished by it. Though the petitioner does not seem to be a party to the writ petition filed by respondent No.1, as the petitioner itself agreed to and furnished bank guarantee, which was accepted pending disposal of the said writ petition, bank guarantee so furnished shall remain with the respondents and the same shall be kept valid by the petitioner, till the disposal of the said writ petition i.e., W.P.No.23068 of 2010. The petitioner shall be free to implead itself in the said writ petition, if so advised.

Subject to the observations made hereinbefore, the impugned letter, dated 09.03.2012 of respondent No.3 is quashed and the Writ Petition is allowed.

C.V.NAGARJUNA REDDY, J

25th June, 2015
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