

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF APRIL

TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.6164 of 2015

BETWEEN

Baja Venkateswara Rao

... PETITIONER

AND

State of Telangana, Rep. by its Principal Secretary, Roads & Buildings Department,
Secretariat, Hyderabad and others.

...RESPONDENTS

Counsel for the Petitioner: MR. V. SREE RANGA RAO

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court made the following:

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ORDER:

Petitioner herein questions the impugned order of the Executive Engineer, R&B, Special Division, Kothagudem dated 03.03.2015 whereby the work allotted to the petitioner for formation of a bypass road to Kothagudem Town from KM 41/9 of Thallada – Bhadrachalam road and ending at KM 135/6 of Vijayawada – Jagadapur road (NH-221) in Khammam District on 50:50 cost sharing basis was terminated. The aforesaid order has been passed determining the petitioner's contract as per clause 60 (a) of the Andhra Pradesh Specified Standards by determining the LS agreement No.52/2012 -2013 dated 06.03.2013.

2. Petitioner states in the affidavit that he entered into agreement dated 06.03.2015 with the third respondent for the aforesaid work value of which was Rs.33 crores and the time for completion was

24 months from the date of agreement. Petitioner states that he procured men, material and machinery for commencing the work from 06.03.2013 and completing it from 06.03.2015. However, due to latches and failure on the part of the respondents in handing over workable site and other obligations, the petitioner states that he could not complete the work. Petitioner, therefore, requested for extension of time on 06.05.2013 pointing out that the respondents have not supplied mark outs and local people are not allowing the petitioner to go ahead with the work and requested the respondents to handover workable site with mark outs. Petitioner, however, states that the fourth respondent straightway terminated the work under his proceedings dated 07.10.2014. Aggrieved thereby, the petitioner approached the third respondent and on sympathetic consideration, the third respondent is stated to have revised the work schedule and not ratified the termination.

3. Petitioner alleges that the respondents are not cooperating with the petitioner to proceed

with the work by removal of high tension lines and handing over the reach by removing the encroachment etc. which hampered the completion of the work. Petitioner states that the third respondent gave him a notice dated 02.04.2014 requiring the petitioner to accelerate the work. Petitioner also alleges that the respondents have not paid the running bills of nearly Rs.300 lakhs

in spite of several requests and are not providing the workable site.

In those circumstances, petitioner filed WP.No.26198 of 2014 and the third respondent again reconsidered the entire matter and asked the petitioner to complete the DBM from KM 0/0 to 2/4 and WMM from

KM 6/4 to 7/4 by end of September 2014 by keeping the termination orders in abeyance.

Petitioner, therefore, had withdrawn the writ petition on 25.09.2014, as the termination orders were not proceeded with. Once again the fourth respondent issued a letter dated 24.02.2014 asking the petitioner to accelerate the work and once again the petitioner is stated to have approached the third respondent by a detailed representation. However, while so, the fourth respondent has issued the impugned proceedings. Petitioner, therefore, questions the same, *inter alia*, on the ground that the Executive Engineer was not competent to terminate the contract and he has not followed due process of law and has passed the impugned order without considering his explanation in a hurry.

4. Respondents have filed a counter affidavit denying the petitioner's averments and it is stated that the petitioner has already availed an amount of Rs.79.54 lakhs in March 2013 for mobilization of men, material and machinery but the petitioner having failed to mobilize the same, the fourth respondent informed him about the failure under letters dated 15.04.2013 and 29.04.2013. That apart petitioner was contacted by the fourth respondent and the field officers on several occasions to commence the work. Hence, the petitioner's contention that he mobilized men and machinery is denied. It is also stated that the petitioner brought machinery to the site to clear the jungle in one kilo meter but after one week shifted the machinery without information to the department, which is evidenced by the photographs taken by the field officers. It is also stated that the site was clear to start the work from KM 0/0 to 2/650 and widening and strengthening from KM 7/6 to 11/200 and even the few electrical lines are situated beyond formation width and beyond centre line of road, which will not effect the execution of bypass road. In paras 7 and 8 it is specifically stated as follows:

'7. I submit that, in reply to para 6, the clear site from Km0/0 to 2/4, km 6/4 to 10/8 is free from any sort of buildings, Singareni Collieries Company limited Structures. The Singareni Collieries buildings, burial ground, residential buildings and teak plantation

are situated in km 2/4 to 3/375. Respondents are not insisting for the work in this stretch. The petitioner agency not commenced the work where the clear length from Km 0/0 to 2/4 and widening of existing road from Km 6/4 to 10/860 is clear site is available for execution of work.

8. I submit that, in reply to para 7 the road boundaries are fixed and clear site is available for execution, but the petitioner has represented that the officials are not supplied mark out and local public not allowing to go ahead the work is baseless and incorrect. The petitioner has not put any progress of work with in 5 months of agreement period, the 3rd respondent called for a joint meeting on dt:15.08.2013 at 2.30 PM with field officer right from Asst Executive Engineer and the petitioner to discuss the hindrances exploited by the agency. Vide Lr. Dt: 08.08.2013. But the petitioner has not attended the joint meeting and deputed his representative Sri M. Narasimha Reddy. The 3rd respondent has informed the petitioner that, out of 10.800 Kms Bye pass road about 7 Kms is front to clear site for taking of the work and balance 3.8 Kms cleared subsequently and also requested to submit revised programme and commence the work immediately duly mobilizing additional men & machinery without seeking any Extension of time, otherwise contract will be terminated as per agreement conditions vide letter dt: 15.08.2013."

5. It is, thereafter, asserted that there is no habitation or public litigation on the road stretches, which are clear and the road stretch from Km 6/4 to 10.860 is an existing (R&B) bypass road, which is a clear workable site. Counter affidavit refers to number of letters given to the petitioner to expedite the work and it is stated that there is no reason for the petitioner not to complete the work in clear reaches from Km 0/0 to 2/4 and Km 6/4 to 10/8 and except Km 3/375 to 5/4 & 5/6 to 6/4 for which land acquisition is pending and rest of the site is clear. After giving further details, counter affidavit states that extension of time was granted to the petitioner without liquidated damages on review of the work by the third respondent but the petitioner failed to keep his commitment to complete the work within the extended time also. It is stated that for breach of contract, the fourth respondent has no option but to terminate the work, as the petitioner cannot go back on his commitment to complete the work by end of April 2014 and has failed to achieve the promised revised programme schedule of the work. It is stated that there is no violation of the principles of natural justice and the petitioner was given many opportunities by giving notices but there is no progress on site.

6. Mr. V. Sree Ranga Rao, learned counsel for the petitioner, has strenuously contended that the petitioner is denied opportunity of making a

representation and termination order is wholly unjustified. Learned counsel further submits that for the fault of the respondents, the petitioner cannot be punished. Learned counsel points out that the previous termination orders issued by the fourth respondent were not ratified and kept in abeyance by the third respondent on more than one occasion and fresh extension of time was granted without liquidated damages, which itself shows that the petitioner was not found at fault.

7. Per contra, learned Government Pleader has filed several documents comprising copies of correspondence between the petitioner and the respondents as well as the photographs of different parts of the site and submits that as is evident from the correspondence and the photographs, the work site is clear without any obstructions but still the petitioner has protracted the work without showing any reasons and anxiety in meeting the deadlines fixed on more than one occasion. Learned Government Pleader also submits that work was awarded with a view to achieve public purpose including Godavari Pushakkaralu but on account of lethargy shown by the petitioner, the work remained incomplete even after granting enough time under the contract and granting several extensions to the petitioner. Learned Government Pleader also states that since the termination is in terms of the contract, no interference is called for.

8. I have examined the contentions of the petitioner with reference to the submissions of the learned Government Pleader. The claim and counter claim made by the petitioner and the respondents clearly show that the petitioner continues to claim that he has not been given clear workable site by removing obstructions. The respondents continue to assert that except for the stretch where the land acquisition is pending, the rest of the site is clear and there is no reason why the petitioner could not complete the said work. A look at the photographs filed along with the counter affidavit shows that the work site is clear and in fact, there is a road completed partly by the petitioner, which clearly shows that there are no obstructions but the road work remains incomplete and looks as if it is only a kaccha road.

The photographs of different sectors of the work show that whatever work is done BT work still remains and that GSB is completed but WMM is to be done (the meaning of such expressions are, however, not clarified).

9. In any case, the contention of the petitioner that clear work site is not handed over to him, *prima facie*, appears incorrect.

The order impugned also refers to the number of times the petitioner being cautioned for not meeting the milestones and not completing the work and extensive correspondence is referred to where the respondents have pointed out to the petitioner that part of stretch of road is clear and workable but the progress is very poor and negligible. It is stated that even after issuing notice dated 24.05.2014 and even after lapse of 2 ½ months, the petitioner has failed to achieve the schedule of progress. The impugned order also refers to a meeting held by the Engineer-in-Chief (R&B), Roads, which was also attended by the petitioner wherein it states that the petitioner expresses that he could not complete the work in spite of clear site due to ill health and financial problems and promised to complete the work in all respects. However, petitioner failed to achieve the progress and it was found that there was no diligence in performance. The questions relating to availability of work site, milestones fixed for completion, mobilization of men, material and machinery by the petitioner and as to which of the parties committed breach of contract etc. are all matters, which necessary involve determination of questions of fact apart from the fact that the petitioner and the respondents are bound by the respective contractual terms. Whether there is any breach committed by any of the parties is a matter, which cannot be determined under extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The sworn affidavits of the petitioner and the third respondent are equally emphatic where one blames the other for breach of obligation. Under extraordinary jurisdiction, therefore, these aspects cannot be adjudicated. Hence, I am not inclined to entertain the writ petition and leave the parties to appropriate remedies in terms of their contract and for redressal of their grievances.

The writ petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

April 29, 2015

DSK