

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

WRIT PETITION Nos.4838 and 16583 of 2011

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17.06.2015

Between:

M/s.ECI Engineering & Constructions Company Limited,
Ranga Reddy District and another

...Petitioners

And

The Government of Andhra Pradesh,
represented by its Principal Secretary,
Hyderabad and others

...Respondents

Counsel for the petitioners: Mr.Ashok Reddy Kanathala

Counsel for the respondents: Assistant Government
Pleader

for Irrigation and Command Area
Development

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The Court made the following:

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COMMON ORDER:

These writ petitions have been filed feeling aggrieved by the action of the respondents in not allotting escalation as per the terms of the agreement and G.O.Ms.No.94, Transport, Road and Building (R-I) Department, dated 16.04.2008.

The facts of the cases are not in dispute. Therefore, the necessity of recording the detailed facts is obviated. The only aspect which requires consideration in these writ petitions is whether the petitioners are entitled to full escalation in respect of cement and steel prices if there is increase by more than 5% over the prevailing market rates of Rs.2,700/- per metric ton and Rs.28,000/- per metric ton for cement and steel respectively. The agreement clauses relating to escalation for cement and steel, and fuel read as under:

“46.2 However, in respect of cement and steel escalation of prices will be made for the actual quantity used in the work if the prices increase by more than 5% over prevailing market rates of Rs.2.700 per M.T. and Rs.28.000 per M.T. for cement and steel respectively. For the purpose of assessing the increase in prices, the actual market price of cement and steel communicated by the Engineer-in-Chief.Admn.Wing. I & CAD Dept., will be adopted.

46.3 In respect of fuels the rates prevailing in the nearest fuel station/stations to work spot on the last day of filing the bids will be adopted as base rates. Any hike beyond 5% over the base rates will be compensated in accordance with the following formula.

$$VF=0.85XPF/100XRIX(FI-FO)/FO$$

Where

RI=Value of work done during the quarter.

VF=increase or decrease in the cost of work during the quarter under consideration due to change in rates for fuels and lubricants.”

The grievance of the petitioners is that while purporting to

construe the abovereproduced agreement clauses, the respondents are not allowing escalation in respect of the initial 5% over the basic rates of cement and steel. In other words, it is the plea of the petitioners that the formula which is made applicable in respect of increase in fuel rates under Clause 46.3 is sought to be applied in case of cement and steel.

At the hearing, the learned Assistant Government Pleader for Irrigation and Command Area Development has fairly agreed that the formula under Clause 46.2 relating to escalation of cement and steel varies with the formula under Clause 46.3. While under Clause 46.3, the contractor is entitled to be compensated for the component beyond 5% over the base rate of fuel, under Clause 46.2, increase of 5% is made a condition for the contractor to claim escalation and no limit is imposed by the said Clause for reimbursement of hike unlike in Clause 46.3. This interpretation of Clause 46.2 is not seriously disputed by the Assistant Government Pleader. He, however, submitted that under Clause 46.2, the petitioners will be entitled to escalation of prices, subject to the proof adduced by them to the effect that they have utilized the quantities of cement and steel for which they claim enhancement.

For the aforementioned reasons, the Writ Petitions are allowed with the direction to the respondents to allow escalation of prices of cement and steel on the entire component of such escalation if the same exceeds 5% over Rs.2,700/- per metric ton of cement and Rs.28,000/- per metric ton of steel subject, however, to the petitioners adducing proof of use of such material in the contract.

As a sequel to allowing the writ petition, interim orders, dated 01.03.2011 in W.P.M.P.No.5993 of 2011 in W.P.No.4838 of 2011 and 17.06.2011 in W.P.M.P.No.19903 of 2011 in W.P.No.16583 of 2011 are vacated and all the W.P.M.Ps. and W.V.M.Ps. in these writ

petitions shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

17th June, 2015
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