

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(SPECIAL ORIGINAL JURISDICTION)

FRIDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.3007 of 2015

BETWEEN

M/s. Raghava Constructions.

... PETITIONER

AND

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

...RESPONDENTS

Counsel for the Petitioner: MR. T.C.D. SEKHAR

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court made the following:

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ORDER:

This writ petition is directed against the order passed by the

Executive Engineer, R&B Division, Nizamabad dated 22.01.2015 wherein the work allotted to the petitioner with respect to the formation of bypass road to Nizamabad was withdrawn on the ground that he has failed to complete the work relating to KM 0/0 to KM 10/3. The said order also mentions that the work is required to be urgently completed in view of the forthcoming Godavari Pushkaralu - 2015 and it further states that till the date of passing of the order, the petitioner had not submitted the programme of work nor resumed the work in the reach KM 0/0 to KM 10/3, which stated to be hurdle free.

Hence, the department is constrained to withdraw the work by invoking the power under clause 60 (C) of APDSS and clause 26.2 of the agreement. Petitioner was also requested to resume the work in the rest of the stretch by submitting the programme of the work.

2. Petitioner filed a representation dated 04.02.2015 bringing to the notice of the Executive Engineer, R&B, Nizamabad Division that the said stretch remained incomplete on account of the obstacles like removal of electric poles, irrigation sluice and lorry stand encroachment is still not completed till today and as such, the petitioner is unable to complete the work. Thereafter, apprehending that the said work would be allotted to some other contractor, the present writ petition is filed.

3. On 12.02.2015, when the writ petition was heard, the contention of the petitioner that he has completed 90% of the work was recorded and further proceedings in pursuance of the impugned order was stayed by calling upon the learned Government Pleader to file counter affidavit. Thereafter, the learned Government Pleader has filed counter affidavit and the petitioner has also filed a reply affidavit. In view of the urgency, the writ petition is heard on priority basis.

4. Petitioner has made various averments in the affidavit and has placed strong reliance upon the report of the of Executive Engineer, R&B Sub-

Division, Nizamabad dated 29.05.2014 addressed to the Executive Engineer, R&B Division, Nizamabad and based on that it is contended that still the shifting of electric poles is not yet completed by the electricity authorities and placing reliance upon that report, petitioner further contends that he is unable to complete the work because of non-shifting of the electric poles as one among the many reasons and also claims that his bills remained unpaid etc.

5. Counter affidavit filed on behalf of the respondents, sworn by the Superintending Engineer, specifically states that the formation of bypass road work was entrusted to the petitioner under LS Agreement No.56/2008-2009 dated 19.02.2009 and that all the obstructions such as electric poles, transformers were shifted by the end of December 2013 and as such, the submission of the petitioner that he completed 90% of the work is seriously disputed. It is also stated that in spite of time granted to the petitioner by the end of September 2014,

as the petitioner failed to complete the work, his request for extension was considered and extension was granted up to end of April 2015 without imposing liquidation damages. It is stated that since the Godavari Pushakeralu-2015 is schedule to be held in July 2015,

the completion of work is essential and there are no hurdles in completing the work from KM 0/0 to KM 10/3. To the extent of the contention of the petitioner based upon the report, referred to above, it is stated that the same is an internal communication and even otherwise the working width of the road formation is available and hurdle free and as such, there is no impediment for the petitioner not to complete the work. On account of inaction of the petitioner in completing of the work, the impugned proceedings are, therefore, justifiably passed, as respondents could not indefinitely wait for the petitioner to complete the work.

6. I have heard the learned counsel for the petitioner and learned Government Pleader.

7. It is evident that the petitioner was required to complete the work by 31.03.2014 and even after granting two extensions up to end of September 2014 and up to end of April 2015, still the work is not completed. Reliance placed by the petitioner on the proceedings dated 29.05.2014, refer to the utilities in the width and even as per the counter affidavit of the Superintending Engineer, the working width of the road is hurdle free, hence, there is no reason as to why the petitioner could not complete the work assigned to him on or before 30.04.2015. On the facts and circumstances of this case, therefore,

I do not see any justification to interfere with the decision taken by the respondents as per the impugned order dated 22.01.2015.

8. During the hearing of this writ petition, however, it was noticed that allotting the work to some other contractor and requiring him to complete the same would necessarily take considerable time.

Hence, alternatively since the petitioner had offered to complete the work before 30.04.2015, he was directed to file an undertaking affidavit to that effect. The authorized signatory of the petitioner has, therefore, filed an undertaking affidavit on 04.03.2015, para 3 whereof states as follows:

“3. I further submit that the matter has come up for hearing before this Hon'ble Court on 03-03-2015 and after hearing both parties directed the petitioner herein file an undertaking that the petitioner is ready and willing to complete the work as extended by the respondents herein i.e. on or before 30-04-2015 by referring to the letter No.DB/T2/Byepass road/NZB/20131918 dated 28-03-2014. Hence the present affidavit is being filed before this Hon'ble Court. The petitioner hereby giving this undertaking before this Hon'ble Court that it shall complete the work entrusted to it under a Written LS Agreement/contract dated 19-02-2009 on or before 30-04-2015 as extended by the respondents vide letter dated 09-01-2015. Hence, this affidavit.”

9. In view of the willingness of the petitioner to complete the work including the work withdrawn from him as per the impugned order, it is expedient to grant one opportunity to the petitioner by keeping the

impugned order in abeyance till 30.04.2015. Petitioner is directed to adhere to his undertaking and complete the all the remaining works on or before 30.04.2015. The petitioner shall also file the programme of work on or before 10.03.2015 and shall also file the progress report relating to the work every 15 days commencing from 10.03.2015.

It is made clear that in default of the petitioner complying with any of the aforesaid conditions, the order impugned shall be enforced against the petitioner giving liberty to the respondents to get the work executed through any other agency. It is also made clear that if the petitioner does not complete the work by 30.04.2015, the respondents shall be at liberty to get the work executed either departmentally or through any other agency without further reference to the petitioner.

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

VILAS V. AFZULPURKAR, J

March 6, 2015

Note: Furnish C.C. of the order by 10.03.2015.

(B/o) DSK