

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.7462 OF 2012

ORDER :

The case of the petitioner is that it has participated in the tender dated 29.06.2010 issued by the respondents in respect of two items cited at Sl.Nos.5 & 6 of the tender notice namely, engaging of Security Guards for Uppal Circle, GHMC, Hyderabad, and engaging of House keepers for Uppal Circle, GHMC, Hyderabad. Accordingly, the petitioner was awarded and allotted with item No.5 i.e., engaging of security guards in Uppal Circle, by the 1st respondent for a period of twelve months vide its letter dated 09.07.2010. Consequently, the petitioner has engaged security guards commencing from the period stipulated in the agreement i.e., 01.07.2010. While so, the petitioner sought clarification in respect of certain aspects of the work allotted to him, but the 2nd respondent without reference to the same, issued impugned proceedings dated 25.09.2010 stating that since the petitioner has not turned up either to submit the bill nor payment of wages to the Security Guards, the work entrusted to the petitioner was cancelled duly forfeiting the EMD paid by the petitioner. Aggrieved by the same present writ petition is filed. It is also stated in the affidavit that no prior notice was issued to the petitioner as per Condition No.27 of the contract agreement dated 09.07.2010 entered into by the petitioner with the respondents, before passing the impugned order, as such the same is in violation of principles of natural justice.

The 2nd respondent filed counter affidavit admitting that the petitioner was entrusted with the work of engaging security-guards

in Uppal Circle for the period from 01.07.2010 to 30.06.2011 by the respondents and that petitioner addressed a letter to the Executive Engineer on 26.08.2010 seeking some clarification regarding implementation of assigned minimum wages and duties entrusted to the deployed employees. It is also stated in the counter that the rates included in the agreement are as per the existing minimum wages and for implementing the said minimum wages the contractor would have been asked for difference of wages after paying the salaries to the employees in the first instance for consideration. It is also stated that the Corporation has allowed sufficient time to make payments for the employees deployed and inspite of several requests made by the Corporation vide letter dated 31.08.2010, there is no response from the petitioner even after lapse of two months for which the outsourcing employees suffered a lot for want of salaries and that they have pressurized the corporation through their unions. It is stated that since the petitioner deliberately failed to respond to the notices, the 1st respondent issued the impugned proceedings dated 25.09.2010 cancelling the work entrusted to the petitioner.

The petitioner filed reply reiterating the contents in the writ affidavit once again and also states that there are no complaints whatsoever nature either by the workmen or any other person whose services are engaged by the petitioner with regard to non-payment of wages. It is also denied that the petitioner has received notice dated 31.08.2010; and that any tenderer who suffered forfeiting of EMD, is not entitled for participating in the further tenders, which amounts to a stigma on the part of the petitioner; and that it is also violative of fundamental right guaranteed under Article 19(1) (g) of the Constitution of India.

Heard both sides.

In the present case, awarding of work to the petitioner is not in dispute. Though the petitioner denied that they have not received any notice prior to issuance of impugned proceedings wherein the respondent Corporation cancelled the work entrusted to the petitioner duly forfeiting the EMD paid by the petitioner, the learned standing Counsel produced a notice dated 31.08.2010 issued by the respondent Corporation wherein the petitioner was requested to pay the salaries to Security Guards, immediately. But the said notice does not indicate that the same is acknowledged by the petitioner and it does not indicate that it is a show cause notice for termination of contract as per the Clause No.27 of the Contract agreement dated 09.07.2010 entered into by the petitioner with the respondents. Petitioner also states that because of cancellation of EMD, petitioner will not be allowed to participate in future tenders.

Now since the agreement is cancelled and the work contract was already entrusted to third parties, question of setting aside the impugned proceedings does not arise. As such, the only point that has to be considered by this Court is whether the respondents followed condition No.27 of the agreement while forfeiting the EMD paid by the petitioner or not?

Since there is no acknowledgment of the petitioner on the notice dated 31.08.2010, which is said to have been served on the petitioner by the respondents before passing the impugned order, it cannot be said that notice was issued to the petitioner before passing the impugned order as per condition No.27 of the agreement. Even in the said notice it is not stated that petitioner's

contract will be terminated, if he failed to pay the salaries. More so, no copy of complaint from the workers was received with regard to non-payment of wages as stated by the respondent corporation.

In view of the above, the impugned order is set aside only to the extent of forfeiture of EMD paid by the petitioner to the respondent Corporation.

Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

17.07.2015
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