

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1101 OF 2015

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ORDER:

The writ petition is filed for a *Mandamus* declaring the action of the 2nd respondent in issuing proceedings vide RC.D2-2247/12, dated 14.01.2015, terminating the agreement vide L.S.Agreement No.18/2013-2014, dated 07.02.2014, entered with the petitioner, under clause 60(a) of Andhra Pradesh Standard Specifications (*for short* 'APSS'), by forfeiting the deposit of Rs.14,11,500/- and also black listing the petitioner in participating any tenders of the 2nd respondent authority for a period of one year, as illegal and arbitrary and in violation of principles of natural justice and for a consequential direction to the respondents to refund the deposits to the petitioner.

The case of the petitioner is that the 3rd respondent invited tenders for the work of Development of ZDP road connecting Autonagar, terminal road and Kakani Venkata Ratnam, UDA Link Road (Chaitanya College Road/Pantakalava) in Kanuru Village, Vijayawada. In pursuance of the same the petitioner submitted its tender for the said work and the same was accepted for a value of Rs.5,58,30,914.27 and the period of completion of the said work was 12 months from the date of agreement. The agreement was concluded between the 3rd respondent and the petitioner on 07.02.2014. While so, since the election code for the local bodies is in vogue, the petitioner could not commence the work in view of

the election notification and he informed the same to the 3rd respondent by its letter dated 05.03.2014. After completion of elections, the petitioner approached the respondents to get the boundaries fixed by the Revenue Department. Accordingly, the boundaries were fixed by the Revenue Department on 30.06.2014 and 03.07.2014. Thereafter, the petitioner by its letter dated 15.07.2014, represented the Vice Chairman to instruct the Officers to fix the alignment for the road. When the petitioner inspected the site for the purpose of commencing the work on 20.07.2014, along with officers of the 2nd respondent, it was found that the proposed site for formation of road is full of encroachments with A/c sheds, R.C.Buildings, Mini OHSR, Electrical Transformers and poles. Immediately, the petitioner addressed a letter dated 22.07.2014, to the Vice Chairman of the 3rd respondent stating that unless the encroachments are evicted and electrical poles are removed, the work cannot be started and also requested to take necessary action. The petitioner by its letter dated 26.07.2014, submitted the details of encroachments existing in the reach from KM 0/0 to Km.2/2. But, the respondents did not respond to the above letters. While the things stood thus, surprisingly, the 3rd respondent by a notice vide RC.No.D2-2247/12, dated 16.12.2014, without referring any of the petitioner's letters, called upon the petitioner to commence the work in seven days and complete the work within the stipulated period of contract, otherwise, the contract will be terminated as per APSS. On receipt of the said notice, the petitioner submitted its reply on 18.12.2014. But, without considering the same, the impugned letter dated 14.01.2015 was

issued, by the 2nd respondent, terminating the agreement vide L.S.Agreement No.18/2013-2014, dated 07.02.2014, entered with the petitioner, under clause 60(a) APSS, forfeiting the deposit of Rs.14,11,500/- and also black listing the petitioner in participating any tenders of the 2nd respondent authority for a period of one year. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioner submits that though a reply dated 18.12.2014 was submitted by the petitioner to the notice dated 16.12.2014, without considering the same and without referring the earlier letters addressed by the petitioner, the 2nd respondent has issued impugned proceedings dated 14.01.2015, which action of the respondents is in violation of principles of natural justice. He also submits that even before forfeiting the deposits and before passing the order of black listing, the 2nd respondent would have put the petitioner of notice. In support of his contentions he relied on the Judgment in ***Gorkha Security Services v. Government of NCT of Delhi and others*** [\[1\]](#).

On the other hand, learned Standing Counsel for the 2nd and 3rd respondents submitted written instructions wherein it is stated that the petitioner had entered into agreement with the 3rd respondent on 07.02.2014; that as the road consists of encroachments on one side and free on the other side, the petitioner was requested to commence the work from other end so as to take steps for evicting the encroachments meanwhile; and that accordingly, the petitioner commenced the work on

24.11.2014. She further submits that suddenly, the petitioner suspended the work after carrying execution of side drain, and that inspite of several reminders the petitioner has not resumed the work, hence, a final notice was issued to the petitioner on 16.12.2014, requesting him to commence the work within seven days and make arrangements to complete the work within the time stipulated and that the said notice was delivered on 20.12.2014 to the petitioner. She further submits that even after lapse of 15 days from the date of receipt of the said notice, the petitioner had neither commenced the work nor addressed any letter to its office duly appraising any of his problems or objections. She further submits that as per Clause 60(a) of APSS, if the contractor neglects to comply to resume the work within seven days after receipt of the notice, it shall then or at any time thereafter be lawful to determine the contract, which determination shall carry with the forfeiture of security deposits.

The impugned proceedings were passed without referring the explanation dated 18.12.2014 and the earlier letters submitted by the petitioner stating its problems. More so, the notice dated 16.12.2014 does not show that it is a show cause notice issued to the petitioner before passing the order for black listing the petitioner. The said notice only shows that if the petitioner does not commence the work within seven days and make arrangements to complete the work within the time period stipulated the contract will be determined as per APSS. Since the petitioner continuously representing with the respondent authorities that it is unable to proceed with the work because of

encroachments, the respondent authorities should have consider the same and pass appropriate orders. Primafacie, a reading of the impugned proceedings dated 14.01.2015, does not indicate that the reply dated 18.12.2014 submitted by the petitioner was considered.

In view of the above, without going into the merits of the case, the impugned order dated 14.01.2015 is set aside on the ground of violation of principles of natural justice. However, it is open for the 2nd respondent to issue a fresh notice to the petitioner and on such notice the petitioner can file explanation within two weeks from the date of receipt of the said notice. Thereafter, the 2nd respondent is directed to pass appropriate orders after considering the explanation filed by the petitioner.

Accordingly, the writ petition is disposed of. 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

02.02.2015

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With the above direction

Clause 60 of the A.P. Standard Specification

P.S.60. Delay in commencement or progress or neglect of work and forfeiture of earnest money, security deposit and withheld amounts:- (a) time shall be considered as of the essence of the contract. If, at any time the Executive Engineer shall be of the opinion that contractor is delaying commencement of the work or violating any of the provisions of the contract or is neglecting or delaying the progress of the work as defined by the tabular statement "Rate of progress: in the 'Articles of agreement', he shall so advise the contractor in writing and at the same time, demand compliance. If the contractor neglects to comply with such demand within seven days after receipt of such notice, it shall then, or at any time thereafter, be lawful for the Executive Engineer to determine the contract, which determination shall carry with it the forfeiture of the Security deposit and the total of the amount withheld under Clause 68 below, together with the value of such work as may have been executed and not paid for, or such proportion of such total sums, as shall be assessed by the Executive Engineer.

(However, any authority higher in rank than the Executive Engineer may, in his absolute discretion, waive or modify any penalty or forfeiture imposed by the Executive Engineer, under the provisions of the clause.)

b) If, however, the Executive Engineer notwithstanding the failure of the contractor to comply with the demand referred to in sub-clause (a) of this clause or failure to maintain the 'Rate of Progress' specified in the 'Articles of Agreement' plus any extension of time that may have been allowed to the contractor as

defined in Clause 59, shall permit the contractor to proceed with the whole or part and continue and complete the whole or such part of the work, such permission shall not be deemed to be a waiver in any respect by the Executive Engineer of the right of forfeiture under this clause:

Provided however that any such forfeiture under this sub-clause shall not exceed 5 per cent of the total of the contract amount:

Provided however that any authority higher in rank than the Executive Engineer may in his absolute discretion waive or modify any penalty or forfeiture imposed by the Executive Engineer under the provision of this clause.)

It is reported by the learned counsel for the petitioners that subject matter of the Writ Petition has become infructuous.

In view of the said submission of the learned counsel, the Writ Petition is dismissed as infructuous. However, it is open for them to avail common remedies. No order as to costs.

[\[1\]](#) 2014(7)SCJ 641