

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2946 OF 2015
WITH
NOTICE OF MOTION (L) NO.771 OF 2015

AND
WRIT PETITION NO.2947 OF 2015
WITH
NOTICE OF MOTION (L) NO.772 OF 2015

Mathew Mammen	Petitioner
versus	
Indian Institute of Technology, Mumbai	Respondent

Mr.Devvrath Singh with Ms.Priyanka Pawar for Petitioner in both petitions.

Mr.Vikas Y. Murudkar for Respondent in both petitions.

CORAM : S.C.DHARMADHIKARI AND
G.S.PATEL, JJ.

DATE : 25 January 2016

PC :

1. We have heard the learned counsel appearing for the Petitioner. The only contention raised before us is that the Indian Institute of Technology, Mumbai ('IIT, Mumbai') issued a tender notice for supply and installation of pre-coated metal sheet cladding system to the existing ends of outdoor sports facility structures inside IIT, Mumbai. The Petitioner was one of the bidders. The Petitioner's bid was accepted. The contract

work was being performed and during the course of the same, IIT, Mumbai communicated to the Petitioner to complete the work within three calendar months. The Dean (IPS) shall be the Engineer-in-charge for this work and shall be executed under the supervision of the authorized representative deputed by the Dean. A payment of Rs.5,85,053/- against irrevocable performance guarantee was made by the Petitioner.

2. It is stated that in compliance with all terms and conditions, the Petitioner commenced the work. The Petitioner engaged one Anand Metal Roofing and arranged for supply of all the contracted material. It is stated that a third party material testing report was also forwarded. The Petitioner received a letter dated 5 May 2015 in which it was informed that by virtue of a prior letter of the Petitioner dated 21 April 2015, it is reaffirmed that the Petitioner had procured aluminum alloy metal sheet as per item description given in the tender. That sheet was sent for testing to a third party material testing laboratory and it was found that the yield strength of the sheet as per BOQ should be 550 MPa but the test result would show the strength of the sheet is 293 MPa. Secondly the coating of the sheet showed that the mass of the coating of the sheet is much less than that specified in the tender/IS Code. The test certificates were handed over to Mr.Kurian of the Petitioner in a progress review meeting dated 30 April 2015. The letter at page 199 of the paper book dated 5 May 2015 states that IIT,

Mumbai will take the matter very seriously and initiate further action as it deem fit.

3. Then, the Petitioner was informed on 13th and 15th May 2015 that it has not taken any action on the replacement of the sheets but on the contrary, the work on the site has been stopped. It was stated that since the Petitioner has used inferior material to complete the work when the structure requires protection against rain water and as the Petitioner has stopped the work, the IIT, Mumbai is suffering and its sports complex is unsafe. By letter dated 16 May 2015, the Petitioner does not dispute, prima facie, that the supplier of the sheets has not supplied the contracted material of the required standards. The Petitioner therefore, suggested IIT, Mumbai that the contractual work be allowed to be completed with the existing sheets, which were found to be of substandard in testing. The Petitioner further suggested that he will procure fresh sheets pursuant to the technical specifications and will replace the sheets against substandard sheets after Monsoon-2015. The Petitioner further stated that he has not procured substandard sheets intentionally but noticed that the material was substandard while testing at third party laboratory.

4. Upon such a response of the Petitioner by letters of 16 and 18 May 2015, IIT, Mumbai intimated to the Petitioner that it is a clear case of breach of tender specifications in the

matter of supply substandard cladding sheets. The Petitioner was also coming forward and agreeing to accept payment on reduced rates, but this and other efforts were found by IIT Mumbai to be unacceptable and by communication dated 11 September 2015, at page 212, the Petitioner was called upon to show cause within 15 days as to why an action under clauses 3(a) and 3(b) of the Agreement no.Nil, dated 23 January 2015 be not taken against him on account of breach of contract. It was further clarified in the said communication dated 11 September 2015 that if the Petitioner fails to show cause within the stipulated period or to the satisfaction of the Dean (IPS), actions under clauses 3(a) and 3(b) of the agreement and/or other clauses thereof or under prevalent law in force will be initiated against the Petitioner.

5. The Petitioner replied to it on 3 October 2015. But by communication of 6 November 2016, all that the Petitioner was informed that its offer and now made belatedly is unacceptable. The following has been communicated :

"I, therefore, in exercise of powers conferred on me by the aforesaid contract, for and on behalf of Director, Indian Institute of Technology, Bombay, hereby inform you that, after going through the documents and your contentions in above said letter dated 03.10.2015, on account of breach of contract on your part, that you (M/s.Renjin Constructions) shall be debarred for 3 (Three) years from participating in tender for the works, in IITB, Powai, Mumbai-400076."

This action shall come into effect from 6th November 2016."

6. It is the contention of the Petitioner's counsel that it is nothing but blacklisting of the Petitioner and, therefore, for any other work in IIT, Powai, Mumbai, the Petitioner's offer or bid will not be considered.

7. It is with regard to this contention essentially that we have perused the petition and all annexures thereto so also the affidavit-in-reply.

8. We are clearly of the view that insofar as subject contract is concerned, the claims and counter claims of the parties cannot be gone into in our limited jurisdiction. The dispute is factual and it cannot be resolved in writ jurisdiction. If the contract has been wrongfully terminated, according to the Petitioner, then he has other adequate remedies available in general law. The Petitioner can seek such reliefs thereunder including compensation/damages for any alleged wrongful termination.

9. In the event IIT, Mumbai feels that the action taken is not enough and therefore recoveries have to be effected of any money, they are at liberty to resort to such remedies as are permissible in law.

10. However, upon perusal of all the materials including affidavit-in-reply, we are unable to agree with the contention of learned counsel for the Petitioner that it is a case of blanket blacklisting of the Petitioner and for all future works in IIT, Mumbai.

11. The letter impugned in the petition at Exhibit-R, page 215 must be read in its entirety. It refers to name of the work, the work order, the reference to show cause notice and again repeats that with reference to the subject work, the Petitioner was informed about the details with regard thereto. Therefore, the last sentence that "you (the Petitioner) shall be debarred for 3 (Three) years from participating in tender for the works in IITB, Powai, Mumbai-400076" should not be read in isolation or torn from the context. If read in proper context and harmoniously, the last sentence only reiterates the conclusion that for similar works namely for supply and installation of pre-coated metal sheet cladding system to existing gable ends of outdoor sports facility structures inside IIT, Mumbai, the Petitioner will not be considered as eligible or the Petitioner's bid will not be considered by IIT. The conclusion is based on the experience of the IIT in relation to the breach of specifications by the Petitioner in the subject contract.

12. Even otherwise, we do not find that the Petitioner's grievance is correct. The Respondent in its affidavit has

explained that true it is that it was decided not to accept any further tenders from the Petitioner for any other work but some work had to be carried out for the institute. Respondent no.3 invited three tenders and they were displayed on the notice board. The Petitioner also submitted its tender for that work. However, due to the past performance and pending show cause notice, the Respondent has opened one tender namely interior work of the institute. After opening the Petitioner's tender, it was found that the Petitioner's tender was lower than the limit fixed by the Respondent and therefore, the consultant appointed by the Respondent recommended that the said tender of Petitioner should not be considered. The two other tenders which remained to be opened, were opened recently after final notice was issued and in relation thereto, the Petitioner has not pressed his tender/bid further. The Petitioner has, as pointed out in the affidavit and orally by Mr.Murudkar, withdrawn his earnest money as well.

13. We do not enter into this controversy but this understanding and as reflected in the affidavit-in-reply filed by the Acting Estate Officer would reveal that the Respondent has understood the communication at Exhibit-R, page 215 of the paper book, as not a blanket blacklisting or a complete bar on the Petitioner bidding for any work at IIT, Mumbai.

14. Once this clarification is obtained and from the materials produced and relied upon by the Respondent so also confirmed by the Petitioner, then, the controversy need not detain us further. The Petitioner's apprehension has no basis in the light of the above. If this apprehension has no basis, the writ petition need not be entertained. Both the writ petitions are accordingly disposed of. No order as to costs.

15. In view of disposal of writ petitions, Notice of Motion (L) No.771 of 2015 and Notice of Motion (L) No.772 of 2015 do not survive and stand disposed of as such.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)

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