IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 31.03.2016

Pronounced on : 02-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 7064 of 2015

KCP Engineers Pvt Ltd.,
rep. by its Managing Director
K. Chandraprakash
Son of Krishnakumar
117-B, Periyar Nagar
Puliyakulam
Coimbatore - 641 045 .. Petitioner

Versus

The Superintending Engineer
Highways Department (C&M)
D.No.1653, Highways Compound
Trichy Road
Coimbatore - 641 018 .. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order of rejection passed in T.R.P. No. 92/Paguthi-II/2013-14/Va.A-1/dated 29.01.2015, quash the same and direct the respondent to pay 5% Entry Sales Tax amount paid by the petitioner; to pay the 1% bonus by applying G.O. Ms. No.60 for the Works viz., (i) Kinathukadavu Highways (C&M) Sub-Division Highways Road Expansion and Development Sippam - PK1 and (ii) Coimbatore Highways North (C&M) Sub-Division Development of Government Highways Road Sippam CN-2) for the works executed by the petitioner.

For Petitioner : Mr. S. Doraisamy

For Respondents : Mrs. P. Rajalakshmi
Government Advocate

ORDER

The petitioner has filed this writ petition challenging the proceedings dated 29.01.2015 of the respondent, in and by which, the respondent rejected the claim for certain amount towards the work executed by him.

2. The petitioner claims to be a Class-I contractor with the respondent. According to the petitioner, he has completed three road works namely (i) Suloor Highways Road (C&M) Expansion and development - Sippam - CSU-1 (ii) Kinathukadavu Highways (C&M) Sub-Division Highways Road Expansion and Development Sippam - PK1 and (iii) Coimbatore Highways North (C&M) Sub Division Development of Government Highways Road Sippam CN-2). According to the petitioner, the above works have been executed by him as per the award passed by the respondent in favour of the petitioner on the basis of the tender floated by the respondent on 05.11.2012 for Rs.8,25,73,351/-; 23.09.2013 for Rs.7,38,88,310/- and 23.09.2013 for Rs.6,90,353,627/- respectively. It is the contention of the petitioner that he has executed the three items of work to the fullest satisfaction of the respondent and on 16.08.2014, the respondent has issued a certificate for having completed the works. However, after completion of the work, while preparing the price escalation report, the respondent has only added two percent of Central Sales Tax (CST) payable to the Central Government without including the 5% of entry sales tax payable to the Tamil Nadu Government, which in fact was already paid by the petitioner. The petitioner also relied on GO Ms. No.60, Public Works (G2) Department dated 14.03.2008 wherein it was ordered that those contractors who have completed the contract work within the time shall be awarded 1% contractual amount as bonus. According to the petitioner, even though he had completed all the three works within the time schedule, the respondent failed to award 1% bonus as ordered in GO Ms. No.60 dated 14.03.2008 for two works and such bonus was awarded only for one item of the work. The petitioner therefore sent a representation dated 11.12.2014 to the respondent praying to pass orders for repayment of 5% entry sales tax paid by him and 1% bonus for two items of works completed by him as per GO Ms. No.60 dated 14.03.2008. On receipt of such representation, the respondent passed the order dated 29.01.2015 rejecting the claim of the petitioner. It is as against the order dated 29.01.2015 of the respondent, the petitioner has come up with this writ petition before this Court.

3. The learned counsel appearing for the petitioner would contend that when the petitioner has completed the entire work within the time schedule, the respondent is bound to award 1% bonus as per G.O. Ms. No. 60 dated 14.03.2008 for all the three items of work executed by him. However, for the reasons best known, the respondent awarded the bonus only in respect of one item. It is further contended that the respondent has not assigned any reasons for rejecting the claim of the petitioner for price escalation and did not assign any reason for not paying the amount already paid to the State Government towards Entry Sales Tax. The learned counsel for the petitioner would mainly contend that the respondent has passed the impugned order

without affording an opportunity of hearing to the petitioner. Had an opportunity been given to the petitioner, the petitioner would have appraised the respondent about the genuineness of the claim made by him. In any event, the reasons assigned in the impugned order of the respondent is contrary to the terms and conditions of the contract and therefore he prayed for allowing the writ petition.

4. The learned Government Advocate, relying on the counter affidavit of the respondent, would contend that the petitioner has taken the first item of work during 2012-2013 and the remaining two works during 2013-2014. According to the learned Government Advocate the price amount quoted by the petitioner in the tender is inclusive of all taxes and charges payable by the contractor such as tolls, insurance, duties and other charges to the local body or Municipality etc., When the petitioner has submitted the tender knowing fully well the terms and conditions of the contract, it is not open to him to file this writ petition. As far as payment of bonus is concerned, the agreement executed by the petitioner with the respondent in respect of first item of work alone had a clause relating to payment of 1% bonus and such a clause has not been included in the other agreements. Therefore, the respondent is justified in paying 1% bonus amount only in respect of one item of work out of the three works executed by the petitioner. Since there is no clause incorporated in the agreements relating to the other two items of work, the petitioner was rightly not paid the bonus and she prayed for dismissal of the writ petition.

5. I heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent. I had carefully perused the material records made available.

6. It is seen from the impugned order that the respondent has rejected the claim of the petitioner for payment of bonus as well as the claim for reimbursement of 5% of the entry sales tax paid by him without affording him an opportunity of hearing. In other words, the respondent has straightaway passed the impugned order of rejection without hearing the petitioner. According to the petitioner, his claim for payment of bonus is well founded on the basis of the order passed by the Government in GO Ms. No.60, Public Works (G2) Department dated 14.03.2008. This is denied by the respondent on the ground that the terms and conditions in the agreement entered into between the petitioner and the respondent does not contain a clause for payment of 1% bonus as claimed by the petitioner. As regards the claim of the petitioner for reimbursement of entry sales tax paid by him, it is stated by the respondent that it is the contractor who has to incur such expenses as per the terms and conditions of the contract and it cannot be reimbursed by the respondent.

7. Be that as it may, when an adverse order is passed against the petitioner, rejecting his claim for award of bonus and reimbursement of amount paid by him towards entry sales tax, the respondent ought to have given an opportunity of hearing to him. In the absence of any such opportunity having been given to the petitioner, this Court is of the view that the impugned order cannot be sustained. Therefore, only on the ground of non-adherence to principles of natural justice, the impugned order of the respondent is set aside. The matter is remanded back to the respondent for fresh consideration of the claim of the petitioner. The respondent is directed to afford an opportunity of hearing to the petitioner and thereafter pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any opinion as regards the merits of the case and this order is passed only on the ground of non-adherence of principles of natural justice by the respondent. Accordingly, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Superintending Engineer,
Highways Department (C&M),
D.No.1653, Highways Compound,
Trichy Road,
Coimbatore - 641 018.

+1cc to M/S.S.Doraisamy, Advocate sr.29451

WP No. 7064 of 2015

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srg 15/06/2016