IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9059 of 2015
and
W.M.P.No.1 of 2015

M/s.URC Construction (P) Ltd.,
Rep. by its Managing Director S.Palanisamy,
H-102, Periyar Nagar,
Erode-638 001. ... Petitioner

Vs.

1.The Food Corporation of India,
rep. by General Manager,
Head Quarters,
No.16-20, Barakhamba Lane,
New Delhi-110 001.

2.The Food Corporation of India,
Regional Office,
Rep. by its General Manager,
Civil Engineering Branch,
No.8, Mayor Sathyamoorthy Road,
Chennai-600 031. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents herein to consider the petitioner's representations dated 05.08.2014, 15.09.2014 and 31.10.2014 by following / adopting the National Litigation Policy, 2010 and agree for appointment of an Arbitrator to resolve the dispute between the petitioner and the 2nd respondent relating to the work completed by the petitioner under Agreement No.AGM (Civil)-II/8/ROB/2009-10, dated 07.12.2009.

For Petitioner : Mr.V.P.Sengottuvel

For respondents : Mr.J.Madanagopal Rao, SCGSC (For R1)

Mr.S.Vijayakumar (For R2)

* * * * *

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, directing the respondents herein to consider the petitioner's representations dated 05.08.2014, 15.09.2014 and 31.10.2014 by following / adopting the National Litigation Policy, 2010, and to agree for appointment of an Arbitrator to resolve the dispute between the petitioner and the 2nd respondent relating to the work completed by the petitioner under Agreement No.AGM (Civil)-II/8/ROB/2009-10, dated 07.12.2009.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner-Company is a pioneer Engineering Contractors/Infrastructure Developers in the South India. The petitioner-Company was established in the year 1956 by Late Thiru.U.R.Chinnasamy Gounder, a reputed Civil Engineering Contractor. Ever since the establishment of the said company, they had undertaken several major and important works both under the Government Sector and the Private Sector. As a Blue Chip Company in the Construction/Infrastructure development industry in South India, it has successfully undertaken and completed several prestigious projects.

2-2.The 2nd respondent invited tenders for the work of construction of multistoried regional office/District Office building with ancillaries and services including internal / external electrification, Public Address System and Fire Alarms at FSD, Egmore, Complex, Chetpet, Chennai. The petitioner submitted its tender on 31.08.2009 and furnished Earnest Money deposit of Rs.16,83,454/- by way of demand draft. The 2nd respondent, on behalf of the 1st respondent by its proceedings dated 16.11.2009, accepted the tender submitted by the petitioner, after negotiation. The Contract for the said construction was awarded to the petitioner-Company for the tender amount of Rs.10,74,34,551.63. Pursuant to the order of acceptance of tender, the 2nd respondent by its proceedings dated 02.12.2009 issued work order to the petitioner herein. Subsequently, the petitioner and the respondents herein entered into an agreement on 07.12.2009 vide Agreement No.AGM (Civil)-II/8/ROB/2009-10. According to the said Agreement, the work under the contract shall be completed within a period of 18 months from the date of commencement. The date of commencement was 07.12.2009 and date of completion was 06.06.2011. The petitioner submitted Bank Guarantee for Rs.53,76,730/- being Performance Guarantee as mentioned in the order of acceptance of Tender dated 16.11.2009 and agreed that the balance performance guarantee deposit of Rs.36,93,276/- after adjusting the EMD, shall be recovered from the bills payable. During the progress of work under the contract, the 2nd respondent recovered the balance performance guarantee amount and therefore, the performance guarantee deposit lying with the 2nd respondent under the contract is Rs.56,76,730/-.

2-3.While so, according to the petitioner, the progress of the work was affected due to scarcity of steel materials, abnormal rainfall, delay in releasing drawings, changes in brand of materials due to non-availability, extra-additional lead for procuring good quantity of moorum, non finalisation of specialized agencies etc. Therefore, the petitioner on 19.05.2011 applied to the 2nd respondent for extension of time upto 30.09.2011. The 2nd respondent in its proceedings dated 03.06.2011 granted extension of time (EOT) till 31.08.2011. However, there was huge delay in the 2nd respondent furnishing details relating to Air Conditioning Duct and completion of ducting. The petitioner periodically represented to the 2nd respondent for grant of extension of time along with reasons for delay in executing the work. The 2nd respondent also granted periodical extension of time. Due to various hindrances, the petitioner could not complete the work within the time frame mentioned under the agreement. However, the petitioner completed the work on 16.01.2013.

2-4.After completing the said work, the petitioner on 25.02.2013 submitted a representation for grant of Extension of Time for 654 days by giving detailed explanation and statements as to how the delay has happened. In the said representation itself, the petitioner sought for extension of time of 138 days required for the extra work; in total, the petitioner had sought for extension of time of 792 days.

2-5.The 2nd respondent in its proceedings dated 18.02.2014, while holding the petitioner responsible for delay of 58 days, has admitted that the respondents are responsible for the remaining period of delay. The 2nd respondent has not only levied compensation by invoking Clause 2 of the Agreement, but also failed to follow the principles of Natural Justice to put the petitioner on Notice and without giving reasons for shifting the responsibility for some intermittent 58 days delay on the petitioner. When the reason for delay was due to the fact that the work front was made available to the petitioner in a piecemeal manner, inspite of the hindrances due to the obstacles enumerated in the letters dated 11.02.2012 & 04.03.2013. The 2nd respondent ought to have considered the recommendations made by the Sight Engineer for grant of extension of time, before deciding on levy of compensation. The fact remains that the persons in charge of the project Manager (CE)-I & II, AGM (CE), AGM (Elec) and DGM (Engg) recommended for grant of extension of time upto 16.01.2013. Therefore, the petitioner represented to the General Manager (Engg) on 21.04.2014 to review the proceedings dated 18.02.2014 and issue revised orders by granting Extension of Time upto 16.01.2013 without levy of penalty.

2-6.The petitioner on 23.04.2013 submitted its final bill. When the 2nd respondent by its letter dated 08.10.2013 listed out certain works to be completed, the petitioner took up the work and completed the same and thereafter, wrote to the 2nd respondent on 29.01.2014 for early settlement of Rs.1,07,37,747/- along with return of retention money of Rs.51,04,328/-. While that being so, the 2nd respondent in its proceedings dated 18.02.2014 levied a sum of Rs.43,01,382/- as compensation by exercising his power under Clause 2 of the Agreement holding that the petitioner is responsible for 58 days delay in executing the work. The petitioner on 20.02.2014 represented to the 2nd respondent that the entire delay in executing the work was due to various factors attributable to the respondents and requested the 2nd respondent to review its order dated 18.02.2014 imposing compensation. The contract does not contemplate Settlement of disputes through Arbitration or any other alternate Dispute Resolution.

2-7.The Government of India, Ministry of Law and Justice released a National Litigation Policy on 23.06.2010 to reduce the cases pending in various courts in India. In the National Litigation Policy, the Government of India proposed Alternated Dispute Resolution (ADR) through Arbitration as an effective method of settlement of disputes. The respondent being a public sector undertaking is expected to follow the National Litigation Policy, 2010 to agree for referring a dispute relating to the contracts for Arbitration. The object of National Litigation Policy is to reduce cases pending in various courts in India. The vision of the National Litigation Policy is as follows_

a)The National Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in Courts and tribunals in the country. Its aim is to transform Government into an efficient and responsible Litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of the Citizens to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

b)Government must cease to be a compulsive litigation. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, “Let the court decide,” must be eschewed and condemned.

c)The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such arbitration will be cost effective, efficacious, expeditious, and conducted with high rectitude. In most cases arbitration has become a mirror of court litigation. This must be stopped.

2-8.The petitioner made a representation to the 1st respondent through the 2nd respondent on 21.04.2014 requesting the respondents to review the order dated 18.02.2014 and to grant extension of time upto the date of completion i.e, 16.01.2013 without levy of compensation. In the said representation itself, the petitioner alternatively requested the respondents to resort to Arbitration as an alternate dispute resolution by following the National Litigation Policy of the Government of India. But, the said representation of the petitioner was rejected by the 2nd respondent. Subsequently, the petitioner made several representations to the respondents seeking to refer the dispute for Arbitration by following the National Litigation Policy of India. Since the petitioner's representations were not considered, the petitioner has come forward with the present writ petition for the relief as states supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner relied upon the judgment reported in (2014) 13 SCC 666 (Punjab State Power Corporation Limited, Patiala and others Vs. Atma Singh Grewal) and submitted that the the Central Government has formulated the National Litigation Policy, 2010 with the vision/mission to transform the Government into an efficient and responsible litigant and also to curtail unwanted government litigation. By relying upon the said decision, the learned counsel for the petitioner sought for a direction to the respondents to refer the matter to the Arbitration.

4.Heard the learned counsel appearing for the respondents also and perused the materials available on record.

5.Considering the facts and circumstances of the case, without going into the merits of the claims made on either side, this Court directs the petitioner to give a fresh representation to the 2nd respondent within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent is directed to consider the same, in the light of the judgment in (2014) 13 SCC 666 (Punjab State Power Corporation Limited, Patiala and others Vs. Atma Singh Grewal) and to pass appropriate orders, after affording an opportunity to the petitioner, on merits and in accordance with law, within a period of eight weeks thereafter.

With the above direction, this writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

ssv

To
1.The General Manager,
Food Corporation of India,
Head Quarters, No.16-20, Barakhamba Lane,
New Delhi-110 001.

2.The General Manager,
Food Corporation of India,
Regional Office,
Civil Engineering Branch,
No.8, Mayor Sathyamoorthy Road,
Chennai-600 031.

+1 cc to Mr.J.Madanagopal Rao, Advocate sr.25245/16
+1 cc to Mr.V.P.Sengottuvel Advocate sr.25052/16
+1 cc to Mr.S.Vijayakumar Advocate sr.25198/16

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