

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.37235 OF 2016

ORDER:

Heard Mr.C.Raghu for petitioner and Mr.S.S.Verma, learned Government Pleader for respondents 1 to 5.

The petitioner challenges Notice No.AEE1/NRDWP/Calamity/Restoration/2300 lakhs/2016, dated 24.10.2016, as illegal, arbitrary and prays for consequential direction to 4th respondent to consider representation dated 22.10.2016 for extension of time for completing the work entrusted to petitioner under agreement No.59/2011-12 dated 13.10.2011.

The petitioner and the respondents on 13.10.2011 concluded agreement for providing restoration works of damaged infrastructure due to floods in 2009 to 29 habitations in Kurnool District. Time for execution of work is extended from time to time and admittedly the last extension expired on 31.08.2016. The 4th respondent issued communication/notice cancelling the agreement dated 13.10.2011. The communication impugned in the writ petition reads thus:

“ The work, “Providing Restoration Works of damaged Infrastructure due to floods in 2009 to 29 Habitations in Kurnool District” with an agreement value of Rs.1261.07 Lakhs entrusted at 9.00% less than the estimate contract value on tender basis in the name of M/s.Singan Projects, Limited, Hyderabad, vide in the reference 2nd cited. The time fixed for completion of the work is 31.08.2016 i.e., 6th EOAT. But, you have not executed the work even though several notices issued vide in the references 3rd and 9th cited by the under signed and in spite of many instructions, the firm has not executed the work as per the agreement conditions. Further vide

reference 11th cited, the Executive Engineer, RWS&S Division, Kurnool has recommended for cancellation of work duly forfeit the deposits as the agency is not responding for completion of the work even after six EOATs granted.

In this connection, the agreement pertaining to the work "Providing Restoration Works of damaged Infrastructure due to floods in 2009 to 20 Habitations in Kurnool District with an agreement value of Rs.1261.07 Lakhs entrusted at 9.00% less than the estimate contract value on tender basis in the name of M/s.Singan Projects, Limited, Hyderabad is herewith cancelled as per clause 60(a) of APDSS."

Hence the writ petition.

The case of petitioner briefly stated is that on 17.10.2016, the 4th respondent inspected the petitioner to submit a report on the works executed by petitioner, after the inspection of Technical Advisor, Government of Andhra Pradesh, particularly, to know the efforts made by petitioner to complete the scheme and instructed petitioner to approach the 5th respondent for devising a cohesive planning to complete the work and submit EOAT proposals. Through the instant letter reference to quality control inspection, proposal through proper channel is made and informed that such clearance is essential. Representation dated 22.10.2016 was acknowledged by the office of 4th respondent on 24.10.2016. The petitioner has given the details sought through communication dated 17.10.2016. It is in this background, the challenge to communication/notice dated 24.10.2016 is laid by the petitioner. The case of the petitioner is that the cancellation of agreement is completely based on the report dated 15.10.2016 i.e. prior to communication dated 17.10.2016. Though the action plan, the further road map for completion of the project and the quality

control verification etc. were requested through communication dated 22.10.2016, without adverting to any of the valid and tenable reasons given by the petitioner, the impugned communication was issued and liable to be set aside. Hence, the petitioner, as already noted, prays for consideration of representation 22.10.2016.

On 08.11.2016, while granting time to respondents to file counter affidavit, the following interim order was passed:

“At request of learned Government Pleader, the matter was adjourned from 01.11.2016 to 08.11.2016. The respondents request further time of 10 days to file counter affidavit.

The request is accepted.

After considering the submissions of Mr. Raghu for petitioner and also the statement of Mr. Varma, the following statement is placed on record:

“That the subject work will not be entrusted to 3rd party and/or that the bank guarantee given by petitioner will not be presented for encashment for a period of two weeks from today.”

Post on 21.11.2016.”

The respondents filed petition to vacate the interim order dated 08.11.2016.

The respondents to impress upon the Court on the tardy progress the petitioner is making in the subject work, have annexed letters addressed on various occasions, having seen the progress and the indifference of petitioner for timely completion, it is stated that the communication impugned in the writ petition was issued and no exception can be taken.

On the failure to consider the reply dated 22.10.2016 and exclusively relying upon report dated 15.10.2016, on instructions, the learned Government Pleader has contended that the petitioner

does not have time limit for completion of project and the respondents are very serious about getting the balance of work executed through a third party agency.

The petitioner by way of reply affidavit has undertaken to complete the work and the averments in paragraph 17 of the reply affidavit are required to be excerpted having regard to the directions this Court proposes to issue in this behalf.

“I respectfully submit that for the reasons stated above, this Hon’ble Court may be pleased to allow the writ petition by directing the respondents to conduct quality inspection immediately and permit us to complete the work within four months from the date of completion of QC inspection. We hereby undertake to complete the work within four months from the date of completion of QC inspection.”

The learned Government Pleader, on further instructions, submits that the respondents are prepared and ready to complete the quality inspection within seven days from the date of intimation of availability of all the materials by petitioner. Mr. Raghu requests seven days time from today to put everything in place and inform the respondents.

Having regard to the statements made by learned counsel appearing for the parties, the writ petition is disposed of by this order:

The reply affidavit dated 25.11.2016 and undertaking given by the petitioner for timely completion are accepted and placed on record. Having regard to the time schedules consented by the parties and to avoid further litigation in completing an old project, the petitioner is directed to inform the respondents about the

arrival/availability of materials for quality inspection within seven days from today by RPAD/e-mail. The respondents thereafter are directed to complete the procedure of quality control verification within eight days therefrom. The petitioner shall complete the balance of 27% work within the time agreed in the reply affidavit dated 25.11.2016. Having regard to the time schedules, now agreed between the parties particularly, on the ground that the cancellation is effected without considering the reply dated 22.10.2016, the communication impugned in the writ petition is set aside.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

Date: 06.12-2016

Note:

C.C. forthwith.

B/o.

Sp

S. V. BHATT, J

