

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No. 27665 of 2012

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the action of the respondents in not adhering to the amendment issued to Clause 13 (ii) of Annexure-I of G.O.Ms.No.94 Irrigation and CAD (PW-COD) Department, dated 01.07.2003, *vide* G.O.Ms.No.17 Irrigation and CAD (PW-COD) Department, dated 06.02.2004, in respect of enhancement of percentage from 15 to 25 less than the estimate value of the work contract.

Heard learned counsel for the petitioner and learned Government Pleader for Panchayat Raj & Rural Development for the respondents.

The petitioner is a Civil Contractor. The State Government issued G.O.Ms.No.94, dated 01.07.2003. Clause 3 (ii) of Annexure-I of the said Government Order stipulated that tenders up to 15% less than the estimate may be accepted, but for tenders which are less by more than 15% of the estimate, a bank guarantee or demand draft for the difference between the tendered amount and 85% of the estimate value should be taken so that the tenderer leaves the works midway and the department is forced to call for tenders for the work once again, the bank guarantee or demand draft shall be used to finance the re-tendered work. Subsequently,

the Government of Andhra Pradesh substituted the said Clause, which reads as under:

“Tenders up to 25% less than the estimate may be accepted, but for tenders which are less by more than 25% of the estimate, a bank guarantee or demand draft for the difference between the tendered amount and 75% of the estimated contract value should be taken so that the tenderer leaves the work midway and the department is forced to call for tenders for the work once again, the bank guarantee or demand draft shall be used to finance the re-tendered work.”

In the present writ petition, the petitioner herein seeks implementation of the said amended clause.

This Court on 05.09.2012, granted interim direction in W.P.M.P.No.35235 of 2012 directing the respondents not to insist on the petitioner to furnish Additional Security Deposit (ASD) contrary to Clause 13 (ii) of Annexure-I of G.O.Ms.No.94, dated 01.07.2003, as amended *vide* G.O.Ms.No.17, dated 06.02.2004. The said interim order has been in existence since then.

No counter-affidavit is filed by the respondents denying the averments and allegations made in the affidavit filed in support of the writ petition nor it is the case of the respondents that the amendment made, as stated supra, *vide* G.O.Ms.No.17, dated 06.02.2004, is superseded by later orders of the Government. So long as the said Clause is in existence, it is mandatory on the part of the authority to adhere to the same.

For the aforesaid reasons, the writ petition is allowed directing the respondents to adhere to the amended Clause 13 (ii) of Annexure-1 as per G.O.Ms.No.17, dated 06.02.2004, if the same is in existence.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of. No order as to costs.

A.V.SESHA SAI, J

Dt: 29.11.2016.
kdl

