

THE HONOURABLE SRI JUSTICE RAJA ELANGO

W.P.No.28145 of 2015

ORDER

This writ petition is filed challenging the letter dated 30.05.2015 issued by the second respondent, where-under the contract between petitioner and second respondent was terminated and participation of petitioner in the business was banned for a period of five years.

2. The brief facts of the case are that the second respondent invited bids for construction of berths WQ7 and WQ8 in the Inner Harbour of Visakhapatnam Port on 02.08.2013 and the petitioner was successful bidder and accordingly, the second respondent issued work order to petitioner. While so, on the ground of delay in performing the work, the second respondent vide letter dated 18.04.2015 terminated the contract of petitioner, which was challenged in W.P.No.19738 of 2015. Petitioner states that after termination, second respondent issued the impugned letter informing that the business of petitioner with the second respondent is banned for a period of five years. The said letter dated 30.05.2015 reads as under:

“In continuation of this office letter 2nd cited, it is hereby informed that VPT Board resolved to ban business with M/s.D.B.M.Geotechnics & Constructions (P) Ltd., for a period of 5 years with effect from 05.05.2015 considering the gravity of failure in executing the subject contract.

Therefore, please be informed that the business of M/s.D.B.M.Geotechnics & Constructions (P) Ltd., with VPT stands banned for a period of 5 years with effect from 05.05.2015”.

Challenging the said letter, the present writ petition is filed.

3. The second respondent filed counter, wherein it was stated as under:

“It is humbly submitted that the case of the petitioner was fit into the above said stipulation as is evident from the facts explained by this respondent No.2 with the support of the documents and correspondence between this respondent No.2 and the petitioner not only with regard to the total failure in executing the work as per schedule but also the failure in complying with the condition relating to submission of Bank guarantee towards performance guarantee. It is submitted that the petitioner company was required to submit 10% of the contract amount which was Rs.195,30,00,000/- which was called contract prices but the petitioner herein above had only submitted 5% Bank Guarantee towards performance guarantee and failed to furnish the balance amount of 5% even though he had assured repeatedly for furnishing the said balance of Bank Guarantee. The petitioner was aware of the provisions under Clause-52(2) of the contract and the clarifications furnished in regard to pre-bid queries raised by the bidders in the conference held on 21.08.2013 vide SI.No.106 with regard to submission of Performance Guarantee. The respondent No.2 informed the petitioner company vide letter dated 26.06.2014 to submit the performance guarantee as per the conditions of the contract. It is submitted that the petitioner company had consciously and deliberately violated the above said terms in spite of issuing the said letter and had not furnished the performance bank guarantee even till the date of termination of the contract in spite of receiving the letters dt.02.8.2014, 08.12.2014 and 24.12.2014 issued by respondent No.2. The petitioner company had also made false promises and false assurances to this respondent No.2 with regard to payment of balance amount of 5% performance guarantee during the monthly progress review meetings but the petitioner company had deliberately avoided to deposit the same even though it was well aware that such violation of the terms of the contract would certainly lead to termination of the contract and also invocation of clause-3 of notice inviting tenders, providing for debarring/banning, the defaulter company from the business transactions with this respondent No.2, Visakhapatnam Port Trust. It is therefore humbly submitted that the impugned proceedings issued vide Ref.No.IENG/MW/DWQN/WQ7&WQ8/PTVIII/66 dated

30.05.2015 was valid by all means in view of the fact that the petitioner company was very well aware of the terms of the contract as having signed and received the same under the acknowledgment as stated above. The petitioner company has absolutely no scope to make any such allegation with regard to issue of the said proceedings banning the petitioner company for a period of five years from participating in future tenders by respondent No.2, Visakhapatnam Port Trust or to raise a flimsy ground that it was again required to issue a notice before issuing such proceedings in view of the fact that every proceeding issued by the 2nd respondent Visakhapatnam Port Trust to the petitioner company pointing out the failure in execution of the contractual work was itself in the form of pointing out every time the lapses and failures of the business of the petitioner company in gross violation of the terms of the contract. It is therefore humbly submitted that the grounds whatsoever are stated by the petitioner in the affidavit filed in W.P.No.28145 of 2015 are not tenable and are of no help to the petitioner company in contesting or questioning the above said act of this respondent No.2 port trust. It is especially so in view of the fact that the entire issue relating to the termination of the contract itself was upheld by this Hon'ble High Court and the issue now raised in the present writ petition with regard to the banning of the petitioner company for doing business with the port trust for a period of five years also constitutes a part of the main issues raised by the petitioner in the previous W.P.No.19738 of 2015 which all were sufficiently and satisfactory reply and explained by this respondent port trust.

In the light of the above facts and circumstances, this respondent No.2 humbly submits that the petitioner company has filed the subject writ petition on the basis of flimsy and untenable grounds and the petitioner company is having due authority besides the petitioner company being bound by the terms of the contract. The writ petition as filed by the petitioner deserves to be dismissed and therefore, this respondent humbly prays this Hon'ble High Court to pass orders dismissing the same and to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case".

According to the respondents, there is no need of issuance of notice to the petitioner in view of the clause mentioned in the

contract. Hence, the second respondent issued impugned letter banning the business of petitioner for a period of five years.

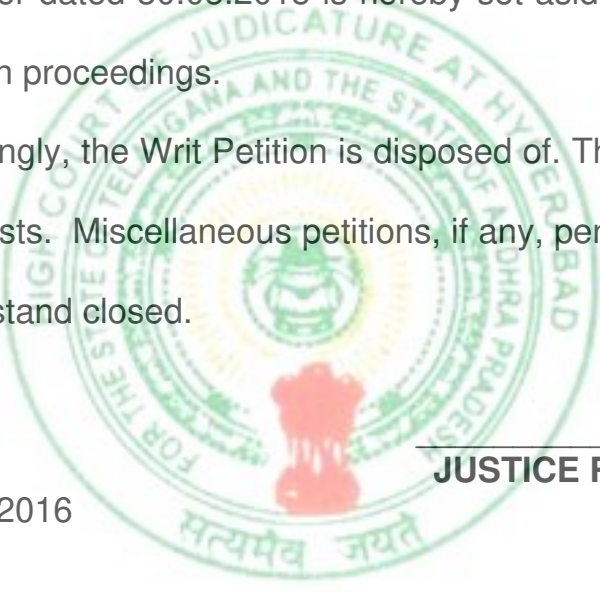
4. Learned counsel for petitioner submits that arbitration proceedings are pending in connection with termination of contract of petitioner.

5. Considering the facts and circumstances of the case and in view of the submission of learned counsel for petitioner that arbitration proceedings are pending between the parties, more particularly, in connection with the termination of contract, the impugned letter dated 30.05.2015 is hereby set aside till disposal of said arbitration proceedings.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

24th October, 2016

sj



JUSTICE RAJA ELANGO