

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM
WRIT PETITION No.15867 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus questioning memo No.3036/M&MI-T-IV/2014 dated 24.04.2014 issued by the first respondent.

As can be seen from the impugned order, it was issued clarifying the position that in terms of the contract the interest on mobilization advance is liable to be collected as there cannot be any interest free mobilization advance.

Heard the learned counsel for the petitioner and the learned Government Pleader.

Learned counsel for the petitioner, by drawing specific reference to clause 49.4 of the agreement entered into between the petitioner and 3rd respondent, submits that in cases where extension is granted for execution of the contract on account of the circumstances beyond the control of the contractor, interest can be waived during the period of extension. It is the contention of the petitioner that it is entitled for waiver of interest in terms of clause 49.4 and without considering the same, the interest is being deducted from the running bills.

On the other hand, learned Government Pleader resists the writ petition and raises the question of maintainability of the writ petition submitting that in terms of clause 49.4 of the agreement, the question of waiver of interest can be determined solely by the Executive Engineer/Superintending Engineer and it is not for this Court to undertake such exercise.

I have considered the respective submissions and perused the material on record. The stand taken by the learned Government Pleader commends acceptance as in terms of agreement it is the Executive Engineer/Superintending Engineer, who is the competent authority, to determine the eligibility or otherwise of the claim for waiver of interest after taking into consideration all the contractual terms

including the original time granted for execution of work. In that view of the matter, this Court is not inclined to enter into the controversy and decide whether the petitioner is entitled or otherwise to claim for waiver of interest.

Without expressing any opinion, liberty is given to the petitioner to approach the respective authorities setting out the necessary facts justifying its claim for waiver of interest. As and when such application is made, the same shall be dealt with in terms of contractual rights of the respective parties. It is made clear that the direction of this Court in this writ petition shall not be construed as expressing any opinion with respect to eligibility or otherwise of petitioner's claim.

With above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

Justice Challa Kodanda Ram

1st June, 2016.

sur