

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.9589 of 2016

ORDER:

Heard Mr. S. Sridhar for petitioner and Mr. A. Abhishek Reddy for respondent-university.

2. Petitioner challenges letter No.JNTUH/EB/Infoplus/2016 dated 18.03.2016 as illegal, violative of principles of natural justice, arbitrary and contrary to the agreed terms vide agreement dated 14.08.2012. Petitioner prays for further direction to direct the respondent to undertake to conduct examinations as per the scope of agreement dated 14.08.2012.

3. The case of petitioner is that on 14.08.2012 the petitioner and respondent entered into agreement for supply of hardware installation at respondent-university. To appreciate the issue of fact between the petitioner and the respondent, which resulted in issuance of impugned letter, the scope of working of agreement dated 14.08.2012 is as follows:

“WHEAREAS The University wishes to leverage Information Technology for competitive advantage and to facilitate better governance and control across all of its operations through e-Governance including Examination Management System by implementing software product.

WHEREAS INFOPLUS is a Private Limited Company registered under the Companies Act 1956 and a leading IT services provider of end to end solutions and includes Hosting, consulting, IT infrastructure management, system integration, Custom software development & Business process outsourcing solutions.

WHEREAS in pursuance of aforesaid, the UNIVERSITY has floated an Expression of Interest vide public notification dated 16.05.2012. The evaluation committee of the UNIVERSITY has recommended M/s. INFOPLUS Technologies (P) Ltd., as the successful bidder to implement the Examination Management System at the UNIVERSITY Office and at 463 affiliated Institutions of the UNIVERSITY for all examinations conducted by the UNIVERSITY. The Executive Council at its meeting held on 26.07.2012 resolved to approve for the implementation Examination Management System (herein after known as EMS) vide its resolution No.U.O.NOTE NO.

RP/EC-6/2012 DATED 08.08.2012 approved for a period of 5 years. Accordingly, a letter of intent vide letter dated 07.08.2012 was issued and accepted by INFOPLUS on 09.08.2012.”

The project is for a period of five years and the scope of work includes deliverables in five stages viz. setting up data center, process study and to-be document creation, capacity building training, help desk operation, development of software and handing over the system to respondent-university. The agreement provides for termination of agreement for default and also arbitration, which read thus:

“3.6 Termination for Default

The normal contract period is for 5 years. However, THE UNIVERSITY, without prejudice to any other remedy, may terminate the work/task assigned to INFOPLUS in whole or in part, after sending a written notice to INFOPLUS before the completion of contract period under following conditions.

- If there is breach in terms and conditions.
- If the Company fails to deliver or complete the job assigned as per the contract within the prescribed time.

3.15 Arbitration

In case of any dispute or differences, breach and violations relating to the terms of this agreement, the same shall be referred for arbitration to a Board of Arbitration, as per Rules and regulation formulated under the Arbitration and Conciliation Act 1996. This Board will be constituted prior to commencement of arbitration and will comprise two arbitrators and an umpire. INFOPLUS and the University will each nominate an arbitrator to the Board and these arbitrators will appoint the umpire.

The venue for the arbitration will be decided on mutual consultation of the parties. The award rendered by the arbitrators shall be final and binding upon both the parties.”

4. According to petitioner, the petitioner has been performing contractual obligations strictly as per the term and tenor of the agreement dated 14.08.2012 and after 3½ years of operation of the agreement, for reasons best known to the university non-existing disputes in discharge of obligations

by the petitioner are conceived and various grounds are made either for relieving the petitioner or not paying the amount in terms of the agreement dated 14.08.2012. Therefore, petitioner filed WP.No.26981 of 2015 challenging the letter dated 12.06.2015 whereunder the amounts due and payable to the petitioner were withheld. On 11.02.2016, the writ petition was disposed of. It is relevant to note that this Court while disposing of the said writ petition, *inter alia*, observed that it is open to the parties to terminate the agreement, if they so choose, however, subject to rights and obligations provided in the agreement.

5. The respondent-university through impugned letter dated 18.03.2016 terminated the agreement dated 14.08.2012.

The respondent-university before taking recourse to the above termination, as is evident from the letter dated 18.03.2016, sent reminders on 03.11.2015 and 04.11.2015 to petitioner setting out alleged deficiencies noticed by the respondent-university in the discharge of contractual obligations under agreement dated 14.08.2012. According to respondent, the petitioner, in utter violation and breach of terms of contract, with a view to defraud the university, has been raising false invoices with inflated figures by showing lab counts and absentees and thereby causing loss to the university.

The cautions administered by the respondent did not change the petitioner from raising inappropriate bills. By referring to deficiencies in performance of agreed work under agreement dated 14.08.2012, the respondent terminated the agreement by reference to letters dated 03.11.2015 and 04.11.2015. Hence, the writ petition.

6. Mr. S. Sridhar substantially repeated the grounds urged in affidavit. For the view I am proposing to take, I am refraining to refer to the submissions urged by Mr. S. Sridhar or contentions on merits urged by Mr. A. Abhishek Reddy.

7. It is suffice to note that the agreement dated 14.08.2012 is a pure and simple commercial contract between petitioner and respondent. The agreement provides for termination of the agreement during the currency of five years. The petitioner has filed AOP.No.603 of 2016 under Section 9 of the Arbitration and Conciliation Act restraining the respondent-university from acting directly in respect of Examination Management System as per notification dated 10.03.2016 and has obtained ad-interim injunction as well.

8. I have carefully gone through the letter dated 18.03.2016 terminating the contract dated 14.08.2012. I am, *prima facie*, of the view that the respondent-university, firstly, has put petitioner on notice of deficiencies in performance of contractual obligations vide letters dated 03.11.2015 and 04.11.2015. As there was no change in the petitioner, having regard to the scope of the work that is entrusted to the petitioner and to prevent financial loss, the respondent-university has terminated the agreement dated 14.08.2012. On the reasons for terminating the agreement, the petitioner may have its reasons, but this Court by reference to those reasons in exercise of jurisdiction under Article 226 of the Constitution of India can consider and record any finding one way or the other. Since the petitioner has already availed the remedy under Section 9 of the Arbitration and Conciliation Act with reference to the disputes under agreement dated 14.08.2012, the writ remedy challenging the termination letter is misconceived and the petitioner has to work out remedies in accordance with law and as per the clauses under the agreement dated 14.08.2016.

The writ petition fails and dismissed accordingly. The dismissal of the writ petition shall not be treated as expressing any view on the merits sought to be canvassed by the petitioner, further the merits are to be considered and decided in the legal remedy the petitioner wishes to pursue. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

April 19, 2016
DSK

S. V. BHATT, J