HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO.19735 OF 2007

ORDER:

1. This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to declare the proceedings issued by the 2nd respondent vide Rc.No.161/DPEP/B2/2003, dated 22.9.2004 whereunder the order placed with the petitioner for supply of Teaching Learning Equipment was suspended, and also to declare the letter issued by the 3rd respondent in Rc.No.2/C1/SSA/05, dated 17.12.2007, as illegal and arbitrary, and consequently, to direct the respondents to forthwith release payments to the petitioner including the interest thereon with incidental charges till realization, and also to direct the 3rd respondent to pay an amount of Rs.5,00,000/- towards damages as well as past and future mesne profits.

2. The case of the petitioner is as follows:

(i) The petitioner is a partnership firm and authorized dealer and distributor of educational kits, chemical, laboratory equipment, stationery, furniture and other equipment. Under a Central Government Scheme known as Sarva Siksha Abhiyan, the State Government undertook the supply of teaching and learning equipment to 519 High schools and upper primary schools under the management of Zilla Parishad and Mandal Parishad Schools in Vizianagaram District. The District Level Purchase committee decided to follow open tender process for procurement of Teaching Learning Equipment and accordingly, a tender notice dated 28.2.2004 was issued for supply of Teaching Learning Equipment to 519 schools in Vizianagaram District. An amount of Rs.3,48,000/- towards

Earnest Money Deposit was required to be submitted by way of Demand Draft/Banker's cheque. The petitioner submitted a tender. The petitioner quoted Rs.1,58,32,180/- with a discount of 23%. The petitioner was declared as L1. The work order was issued to the petitioner by the 1st respondent vide proceedings dated 23.5.2004. The petitioner supplied equipment valued at Rs.80 lakhs. For further equipment valued at Rs.30 lakhs, order was placed and necessary documents were handed over to the 3rd respondent. The consignments were dispatched. But the delivery was not taken without valid reason. No verification was undertaken. While so, the State Project Director issued proceedings dated 22.9.2004 suspending the orders of purchase placed with the petitioner without assigning any reason. Aggrieved by the same, the petitioner filed a writ petition and the said writ petition was dismissed holding that the suspension was temporary in nature and the petitioner could always make a representation to the State Project Director. The petitioner came to know that the 3rd respondent by proceedings dated 25.9.2004 and 8.10.2004 submitted a clarification in detail to the 2nd respondent requesting revocation of suspension orders on the ground that the procedure was duly followed as per the SSA/DPEP norms and the teaching and learning equipment supplied by the petitioner to the concerned schools was in accordance with the specifications prescribed during the time of finalization of tenders by the District Purchase Committee. The 4th respondent issued a memo dated 16.9.2005 stating that the Government directed the 2nd respondent to arrange payment to the petitioner to the extent of the material already supplied while making it clear that the agreement entered between the petitioner and the Government may be cancelled. The petitioner submitted representations dated 5.1.2007, 5.6.2007 and 2.8.2007 to release the amounts due with interest. But no action has been taken so far. The petitioner paid 60% advance for the material valued at Rs.48.32 lakhs, and the material worth Rs.30 lakhs was received and was not released though the L.Rs were handed over requesting for clearance of balance, for which order has already been placed. The respondents are liable to pay interest at market rate for the amount unduly withheld.

(ii) In the reply affidavit filed in the year 2008, the petitioner submitted that the material supplied by the petitioner was verified by the staff of the 3rd respondent and after full satisfaction, the goods were received by the 3rd respondent. After receipt of the material, the schools concerned sent the amounts to the 3rd respondent and now, after expiry of 3 ½ years and after using of the material, return of the said material cannot be recommended. The stock worth Rs.80,00,000/- was supplied as per the samples at the time of tender, and the same were accepted and approved by the District Purchase Committee. The stock supplied by the petitioner was in conformity with the samples submitted at the time of tender. The 2nd respondent addressed a letter dated 17.12.2007 to the petitioner requesting to accept payment of Rs.41,30,100/-, after filing this writ petition. All the goods received by the 3rd respondent were not shown in the annexure attached to the letter dated 17.12.2007. The petitioner came to know that District Review Committee passed a resolution on 30.9.2007 stating that the issue relating to payment to be made to the petitioner for the goods supplied was carefully examined and it was decided to pay the amount for the goods supplied by the petitioner. But no amount was paid.

(iii) Further, it is the case of the petitioner that the material, which was delivered to the 3rd respondent, was stored in the godown of the petitioner at the request of the 3rd respondent due to lack of place to store the material and that the premises where the material was stored would easily fetch a monthly rent of Rs.7,000/-, and by the acts of the respondents, the petitioner was deprived of beneficial use of the godown and the rent, and therefore, the 3rd respondent is liable to pay the prevalent rent in the area at the rate of Rs.7,000/- per month towards usage of the godown, and also to pay the liquidated damages of Rs.5,00,000/- towards damage caused to the premises and mesne profits.

3. The 3rd respondent filed a counter-affidavit as follows:

(i) The orders placed with the petitioner are suspended vide proceedings dated 22.9.2004 as per the directions of the Government. On verification of the stock in godown and schools, the value to be released to the extent of the material supplied by the firm is arrived at Rs.16,528/- to each school and the value to the extent of the material not supplied is arrived at Rs.18,486/- and the same was placed before the District Review Committee (DRC) for approval. The Chairman approved resolution on 30.9.2007 accordingly. Originally, the Additional Project Co-ordinator, DPEP/SSA, Vizianagaram released one time grant to the institutions directly vide proceedings dated 31.3.2004 to an extent of Rs.2,11,50,000/- to all 425 schools viz., UP schools and high schools having UP section as well at the rate of Rs.50,000/- to each school. The amount is now in the accounts of the schools concerned for arranging payment. Further action will be taken by the Headmasters concerned after issuance of directions by SSA to release payments to the firm concerned and in accordance with the Government Memo dated 16.9.2005, instructions of the State Project Director, DPEP/SSA, A.P., Hyderabad dated 24.10.2005 and the resolution made in the DRC. After receipt of the Government memo, the file was communicated to the District Collector & Chairman, DPEP/SSA, Vizianagaram with a request to constitute verification committees. Accordingly, committees were constituted and the material with the specifications made in the agreement, were verified. The verification committee submitted its remarks and the same was submitted to the District Collector for further action. As per the instructions of the District Collector & Chairman, the matter was placed before the District Review Committee for a resolution. The District Review committee approved resolution permitting payment to the firm to the extent of supplies made. After the resolution was passed by DRC, a final verification was ordered again. Upon receipt of the reports, the aspect relating to payment will be finalized immediately. The supplied material is in the godown of the petitioner and that the petitioner has not taken any steps for protection of the material. The petitioner has not produced the material package to the extent of the material stored at godowns and the schools.

(ii) It is stated in the additional counter-affidavit that on verification report as regards the stock supplied by the petitioner, the approval by the District Collector & Chairman, Rajiv Vidya Mission was accorded for making payment to the petitioner at the rate of Rs.9,178/- per school. After final verification, the material supplied to a tune of Rs.7,350/- was not recommended for payment to the petitioner. Then a letter was addressed to the petitioner accepting to make payment at the rate of Rs.9,178/- per school for the material supplied, in total Rs.41,30,000/- for 450 schools subject to the condition of the petitioner accepting it as a final settlement. The petitioner was requested to take back the balance material worth Rs.7,350/- per school which was supplied without fulfilling the tender specifications.

4. Heard and perused the material available on record.

5. It is submitted by the learned Counsel for the petitioner that a tender notice dated 28.2.2004 was issued for supply of Teaching Learning Equipment to 519 schools in Vizianagaram District, for which the petitioner submitted a tender by quoting Rs.1,58,32,180/- with a discount of 23%, and the petitioner was declared as L1. It is further submitted that in pursuance of the same, the work order was issued to the petitioner by the 1st respondent vide proceedings dated 23.5.2004 and the petitioner supplied equipment valued at Rs.80 lakhs and further order for the equipment valued at Rs.30 lakhs was also placed and necessary documents were handed over to the 3rd respondent and that the consignments were dispatched. But delivery was not taken without valid reason. It is further submitted that the petitioner paid advance of Rs.48 lakhs to the manufacturer for further supply of stock prior to stoppage of supply order and that the 2nd respondent- State Project Director issued proceedings dated 22.9.2004 suspending the orders of purchase placed with the petitioner without assigning any reason and without any notice to the petitioner. It is further submitted that the material supplied by the petitioner is in conformity with the specifications and that neither the 3rd respondent nor the headmasters raised the issue of quality of the material supplied and that the respondents admitted their liability and also admitted that the petitioner supplied the material worth Rs.80.50 lakhs.

6. On the other hand, it is contended on behalf of the respondents that the orders placed with the petitioner are suspended as per the directions of the Government and that on verification of the stock in godown and schools, the value to be released to the extent of the material supplied by the firm is arrived at Rs.16,528/- to each school and the value to the extent

of the material not supplied is arrived at Rs.18,486/- and the same was placed before the District Review Committee for approval. It is submitted that the Chairman approved the resolution on 30.9.2007 directing the 450 schools to pay the amount at the rate of Rs.16,528/-each while directing to deposit the remaining amount of Rs.18,486/- to the account of the 1st respondent, and that after passing of the above resolution, a final verification was ordered again and after receipt of the verification report, it is approved that payment shall be made to the petitioner at the rate of Rs.9,178/- per school and that after final verification, the material supplied for an amount of Rs.7,350/- was not recommended for payment to the petitioner, and therefore, a letter was addressed to the petitioner accepting to make payment of Rs.9,178/- per school for the material supplied, which is fulfilling tender specifications, total worth Rs.41,30,000/- for 450 schools subject to the condition of the petitioner accepting it as a final settlement and that the action of the respondents is in consonance with the specifications mentioned in the tender and as such, the writ petition is liable to be dismissed.

7. On 30.4.2009, this Court passed interim order directing the respondents to release Rs.40,00,000/- within a period of four weeks towards the approximate cost of the material supplied to 225 units by the petitioner. While so, on 22.10.2010, the order dated 30.4.2009 was complied with by handing over the Demand Drafts-415 in number and an account payee cheque for Rs.20,79,792/-.

8. From the material on record, it is apparent that on 30.9.2007 a resolution was passed by the President of the District Review Committee, Vizianagaram. The said resolution discloses that due to the complaints raised against the confirmation of the tender, the order for supply of

materials placed with the petitioner was suspended by the then State Project Director whereas in the counter, it is contended that the petitioner did not take any care with regard to the material in its possession. But, there was no such agreement that the petitioner is responsible for the stock stored in its godown at the request of the 3rd respondent. It was made clear in the resolution dated 30.9.2007 that it was decided to pay the amount to the petitioner at the rate of Rs.16,528/- per school against the supply of one set of scientific equipments supplied to each school aggregating to 450 schools. But, so far, the said resolution has not yet been implemented by the respondents by paying the amounts to the petitioner, except paying Rs.40,00,000/- in pursuance of the directions issued by this Court on 30.4.2009.

9. After filing of the writ petition, the 3rd respondent sent a letter to the petitioner dated 17.12.2007 whereunder the material supplied to 450 schools was valued at the rate of Rs.9,178/- per school against the work order of Rs.35,014/- per unit. As a matter of fact, the said letter issued by the 3rd respondent was pressed into service giving a go bye to the resolution passed by the District Review Committee, dated 30.9.2007. Apart from that, the said letter does not contain even the reference of the said resolution therein, and further, no reasons were assigned in the said letter as to why they cannot abide by the resolution, dated 30.9.2007.

10. Be that as it may, it is not in dispute that the material worth Rs.80,00,000/- was supplied by the petitioner as on 2.8.2007. From the material on record, it is apparent that in pursuance of the interim directions of this Court, the respondents paid Rs.31,80,177/- after deducting 23% discount from Rs.40,00,000/-. As per the material, the amount due to be paid is Rs.40,00,000/-. The respondents agreed to pay the said amount.

11. In support of his contention that in view of the admitted amount of Rs.40,00,000/- to be paid to the petitioner by the respondents the question of alternative remedy would not be arisen, the learned Counsel for the petitioner relied upon the judgment of the Apex Court reported in **Rajasthan State Electricity Board Vs. Union of India and others**[1], wherein it is held thus:

> "We are clearly of the view that as the respondent-Union of India has clearly admitted the liability, the High Court ought not to have relegated the appellant to his alternative remedy and should not have dismissed the writ petition on that count. There is no disputed question of fact in this case. As already noted, in the present case the respondent had admitted its liability and, therefore, the question raised before the High Court being an admitted fact the High Court ought not to have directed the appellant to resort to its alternative remedy under the Act."

12. In the present case also, the respondents admitted their liability. Therefore, the issue in question is squarely covered by the principles laid down by the apex Court in the above judgment. However, there is a dispute with regard to quantum of amount to be paid to the petitioner. During the course of arguments, the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents agreed that the respondents may be directed to pay the balance amount of Rs.40,00,000/- with interest at the rate of 12.5% per annum.

13. The learned Counsel for the petitioner submitted that due to cancellation of the agreement of the year 2004 all of a sudden, and due to non-payment of the amount for the material already supplied, the petitioner sustained heavy loss and therefore, the petitioner is entitled to claim interest on the amount due to be paid to it and that the respondents

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[1] (2008) 5 SCC 632

are not entitled to claim discount of 23% on the balance amount agreed to be paid.

14. In view of the discussion in the foregoing paragraphs and in view of the fact that the Government has already gave directions to cancel the agreement in question, it is not appropriate to set aside the proceedings impugned and restore the orders placed with the petitioner. However, considering the submission made by the learned Counsel for the petitioner that the petitioner sustained heavy loss due to suspension of the work order placed with the petitioner all of a sudden without there being any valid reasons and non payment of the amounts due to it by the respondents, this Court is of the view that the respondents are not entitled to claim 23% discount atleast on the balance amount to be paid.

15. In the above circumstances, the respondents are directed to pay the balance amount of Rs.40,00,000/- (Rupees Forty Lakhs only) to the petitioner with interest thereon at the rate of 12.5% p.a., from 2.8.2007 till realization, within a period of four weeks from today. The respondents are not entitled to claim 23% discount on the above balance amount to be paid.

16. Accordingly, the Writ Petition is allowed to the extent indicated above. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Date:11.9.2017

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11.09.2017

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