

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.11809 of 2017

ORDER

Heard learned counsel appearing for the petitioner and learned Standing Counsel for Railways appearing for the respondents.

This writ petition is filed seeking to declare the action of the 3rd respondent in issuing seven days' notice on 23.2.2017 and consequent 48 hours' notice on 8.3.2017, as arbitrary and illegal.

The petitioner and another firm formed into a joint venture and participated in the tender pursuant to the notification issued by the 2nd respondent on 3.8.2015. The value of the work is Rs.30,39,48,122.41. The tender of the petitioner was accepted *vide* letter dated 16.11.2015. As per the letter of acceptance, the work should be completed within 15 months from the date of the said letter of acceptance i.e., on or before 15.02.2017. Thereafter, the time for completion of the work was extended till 15.4.2017 and when the work was in progress, the 3rd respondent issued seven days' notice on 23.2.2017, for which, the petitioner submitted a reply on 6.3.2017 pointing out that due to the lapses committed by the respondents,

milestones could not be achieved by it. However, when the respondents issued 48 hours' notice on 8.3.2017 by invoking Clause 62 of Standard General Conditions of Contract, entered into between the petitioner and the respondents, the present writ petition is filed.

It is admitted by both the learned counsel that the writ petition relates to a non-statutory contract and an arbitration clause is existing in the contract.

A reading of the notice dated 23.2.2017 discloses that after addressing several letters to the petitioner on 08.02.2016, 24.02.2016, 11.07.2016, 27.10.2016, 17.11.2016, 23.01.2017, notice was issued to it on 04.02.2017 and in spite of the same, the petitioner failed to complete the work within the specified time. However, on the representation of the petitioner dated 01.02.2017, time was extended till 15.4.2017. In the meanwhile, a report was received from the Deputy Chief Engineer, Nanded stating that in spite of granting extension of time, the petitioner could not mobilize resources and the progress at site is not commensurate with the programme submitted by it. The 3rd respondent, who is the competent authority, came to the conclusion that it is not possible for the petitioner to complete the balance work and hence, issued seven days' notice on

23.2.2017. The petitioner stated several reasons for slow progress in the work and that due to breaches committed by the respondents, the milestones were missed. The said notice was followed by another notice dated 8.3.2017 directing the petitioner to make good the progress of work within 48 hours, failing which, the contract would be rescinded. Pursuant to the said notice, the petitioner submitted a representation on 10.3.2017 requesting the respondents to restrict the work to the agreement quantities.

Learned counsel appearing for the petitioner submits that now the respondents are going ahead with the process of terminating the contract. He further submits that the present writ petition is maintainable in spite of existence of an arbitration clause.

The 48 hours mentioned in the notice dated 8.3.2017 is already over. Though this Court is in agreement with the learned counsel for the petitioner that the existence of alternative remedy is not a bar to entertain the writ petition, when the disputed questions of facts are involved in the matter, this Court will not normally exercise the extraordinary power under Article 226 of the Constitution of India. The issues with regard to breach of contract and who is responsible for the

delay have to be enquired into and without such enquiry, no relief can be granted in the present writ petition.

In the circumstances and also keeping in view the non-statutory nature of the contract, this Court is not inclined to entertain this writ petition.

Accordingly, the Writ Petition is dismissed at the admission stage.

Miscellaneous petitions, if any, pending shall stand closed.

6th April, 2017
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JUSTICE A.RAMALINGESWARA RAO

