

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.26447 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking to declare the action of respondents 1 to 3 in issuing notice bearing No.54 (Cashier) EE/HCD-I/2016/7299-H dated 12.07.2016 and subsequent reminder-I notice dated 02.08.2016 directing the petitioner to renew the bank guarantee dated 10.05.2014 without considering petitioner's representation dated 14.07.2016 as illegal and arbitrary.

2. The case of the petitioner, as seen from the affidavit filed in support of the writ petition, is that the petitioner entered into a contract with Public Works Department, Government of India, for construction of Modern Firing Range in site "B" SVP in National Police Academy, Sivarampally, vide agreement No.121/EE/HCD-1/2009-2010 for an amount of Rs.70,44,536/-, which was subsequently enhanced to Rs.98,97,328/-. Petitioner executed the said work, and bills were also paid to him. Thereafter, with mutual consent, the contract was foreclosed and the same was confirmed by the Executive Engineer vide letter dated 26.03.2011. The final bill submitted by the petitioner for a sum of Rs.5.4 lakhs is still due. However, the respondents 1 to 3 rejected the said bill and also demanded additional amount of Rs.45,66,568/- towards due on the ground that excess amount was paid to the petitioner. Aggrieved by the same, petitioner filed W.P.No.8878 of 2013, which was disposed

of by this Court on 29.11.2013 directing the petitioner to approach the Engineer-in-Chief along with relevant papers in support of his claim, upon which, the Engineer-in-Chief shall pass a reasoned order and thereafter only appropriate action shall be taken.

3. While things stood thus, respondents 1 to 3 withheld the payments to be made to the petitioner under the final bill by invoking Clause-29 and 29-A of General Conditions of Contract for CPWD. Questioning the same, petitioner filed W.P.No.2653 of 2014, which was disposed of by this Court on 07.02.2014, directing the respondents to release the amount subject to the condition of petitioner furnishing bank guarantee for an amount of Rs.45,66,568/-. However, the respondents avoided to comply with the order dated 07.02.2014 on the ground that there is no provision in CPWD Rules and Regulations to accept bank guarantee,. Aggrieved by the said action, petitioner again preferred W.A.No.624 of 2014, which was disposed of by a Division Bench of this Court vide order dated 09.04.2014, directing the respondent authorities to release the amount due to the petitioner within seven days from the date of furnishing bank guarantee in terms of the order passed in W.P.No.2653 of 2014 and also directed the respondent authorities to accept the bank guarantee, if the same is furnished in terms of the order passed in W.P.No.2653 of 2014.

4. It is the grievance of the petitioner that in spite of specific direction given by this Court in Writ Petition as well as in the Writ Appeal, the respondent authorities have failed to release the amount

withheld by them, upon furnishing bank guarantee bearing B.G.No.45610-IGL00-01514 dated 10.05.2014 for an amount of Rs.45,67,000/- issued by the Union Bank of India, Asif Nagar Branch, Hyderabad. It is further averred that the said bank guarantee is being renewed on quarterly basis and till the date petitioner has incurred huge amounts to get the bank guarantee renewed from time to time. It is further submitted that the respondents, by invoking the arbitration clause, referred the matter to Arbitration with respect to the claim of the respondents that excess payment and refund of bills to an extent of Rs.45,66,568/- was made. On 30.06.2016, an award No.ARB/RK/SZ-II/140/2016/355 came to be passed in favour of the petitioner and in counter claim also Award was passed in favour of the petitioner directing the respondents to pay a sum of Rs.8,07,965/- along with simple interest @ 10% p.a. from 02.09.2015 till the date of payment, towards the counter claim made by the petitioner.

5. It is the grievance of the petitioner that in spite of settlement of all claims in his favour, the respondents are still insisting the petitioner to renew the bank guarantee. Questioning the said action of the respondents, the present Writ Petition is filed.

6. On 08.08.2016 in W.P.MP.No.32712 of 2016, this Court directed the 4th respondent-Bank Manager not to revalidate the bank guarantee dated 10.05.2014. Seeking to vacate the said order, respondents filed W.V.MP.No.3741 of 2016 along with a counter affidavit stating that while disposing of W.P.No.8878 of 2013, this

Court directed the petitioner to appear before the Chief Engineer and also directed the authorities take appropriate action only after passing a reasoned order by the Chief Engineer. Taking advantage of said order, the petitioner avoided to appear before the Chief Engineer, in order to prolong the matter. Hence, the conduct of the petitioner, made the authorities to withhold the amounts of the petitioner. It is further submitted that in pursuance of the order of this Court dated 07.02.2014, passed in W.P.No.2653 of 2014, the authorities have released the amounts to the petitioner on furnishing bank guarantee. The 3rd respondent requested the 4th respondent to renew the bank guarantee. It is further submitted that the respondents have an option of a recourse against the Arbitral Award in the Principal Civil Court and for that, the respondents have three months time to do so. Meanwhile, to protect the public money, respondent No.3 write a letter to respondent No.4, to renew the bank guarantee. The petitioner without waiting till expiry of limitation to prefer an appeal, filed the present writ petition.

7. Heard the learned counsel for the petitioner and the learned Assistant Solicitor General appearing for respondents.

8. As seen from the record, as against the Arbitral Award, the respondents filed an appeal before the Civil Court vide A.O.P.No.928 of 2016 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad.

9. The grievance of the respondents is that if a direction is not given to renew the bank guarantee, there would be difficulty in recovery of the money, if the respondents herein succeed at a later point of time. Though the learned Assistant Solicitor General would submit that an appeal was preferred, but it is brought to the notice of this Court that the trial Court did not pass any order and the interlocutory application seeking interim relief was also rejected. The said fact is not seriously disputed by the learned Assistant Solicitor General. No steps were taken by the respondents to question the rejection of interim relief in A.O.P.No.928 of 2016.

10. Having regard to the above, the Writ Petition is allowed and the order of the 1st respondent directing the petitioner to revalidate the bank guarantee vide proceedings No.54(Cashier)EE/HCD-I/2016/7299-300(H), dated 12.07.2016 is set aside.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:17.04.2017
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