

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.20785 OF 2008

ORDER:

This writ petition is filed challenging the proceedings dated 15.05.2007 issued by the 2nd respondent as confirmed by the impugned proceedings dated 11.09.2008 issued by the 1st respondent, wherein the 1st respondent terminated the contract of the works being executed by the petitioner under the agreement dated 21.02.2005, and for a consequential direction to set aside the same while directing the respondents to settle the payments of dues payable to the petitioner under the agreement dated 21.02.2005 including the EMD & FSD deposits.

The respondents 1 to 3 filed counter stating that amounts were paid for the work done by the petitioner and also as per Article 3 of the Article of Agreement any dispute which is worth more than Rs.50,000/- is to be adjudicated by the Arbitrator and the said condition reads as follows;

“Except as otherwise provided in the contract, any disputes and differences arising out of relating to the contract, shall be referred to adjudication as follows;

I) SETTLEMENT OF ALL CLAIMS UPTO Rs.50,000/- IN VALUE AND ABOVE BY WAY OF ARBITRATION TO BE REFERRED AS FOLLOWS:-

- | | | | |
|----|-------------|----------|---|
| a) | claim | to | |
| | Rs.10,000/- | in value | ...Superintending
Engineer (PR), (R&B),
Div. |
| b) | Claims | above | |
| | Rs.10,000/- | and upto | |
| | Rs.50,000/- | in value | ...Chief Engineer
(R&B) or PR., A.P.,
Hyderabad |

The Arbitration proceedings will be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1990 has appended from time to time the ultimatum shall invariably give jurisdiction by way of regular suit and not by arbitration.

II) Settlement of all claims above Rs.50,000/- in value:-

All claims above Rs.50,000/- in value shall be decided by the Civil Court of competent jurisdiction by way of regular suit and not by arbitration.

A reference for adjudication under this clause shall be made by either party in the contract within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment.

No reply affidavit is filed by the petitioner denying the assertion made by the respondents in the counter with regard to arbitration clause. The payment of amount by the respondents to the petitioner is also asserted in the counter and the same is also not denied. It is also stated in the counter affidavit with regard to release of EMD & FSD amounts that the said deposits were forfeited to Government Head of Account after cancellation of agreement under clause 60 A of APDSS.

Since the petitioner has alternative effective remedy as per Clause-3 of the Agreement, it is open for the petitioner to avail the same or any appropriate remedy available under law. However, this order will not preclude the respondents from paying any amounts due to the petitioner.

In view of the above, I do not see any reason to entertain the writ petition, accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

17.07.2017
tk

