

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

Writ Petition No.33458 of 2017

Order:

Heard learned Counsel for the petitioner and learned Government Pleader for the respondents.

The third respondent issued a tender notification on 06.06.2013 through e-procurement tender for execution of the work for providing BT surface to the road from Panchanapalli to Gompam with an estimated cost of Rs.150.98 lakhs. The contract was awarded to the petitioner as he became the lowest tenderer. He entered into an agreement on 25.11.2013 and the period of contract is twelve months from the date of entering into the agreement. The work could not be commenced due to delay in completing the execution of parallel road from Solabham to Maghatapalem by other Contractor. The petitioner himself states that he could not complete the work within the stipulated period due to several problems like heavy rains. He sought extension of the contract by his letter dated 09.11.2014, but no extension was granted. In spite of the same, he states that he completed the entire earth work and culverts. The third respondent issued a show cause notice on 25.03.2017 asking the petitioner to submit his explanation as to why the contract cannot be terminated, and the petitioner submitted his explanation on 05.04.2017 giving the reasons. When the third respondent issued the impugned proceedings of termination on 05.06.2017, the present Writ Petition is filed.

Learned Counsel for the petitioner submits that the impugned order of termination does not refer to his explanation dated 05.04.2017 and though the third respondent called for a report from the fourth respondent, without considering the said report, the order of termination is passed.

The impugned letter of termination reads as follows:

“Through reference 1st cited, Agreement was concluded for the work “AP 19X 172-Road from Pachanapalli to Gompam in G. madugula Mandal, Est. Rs.150.98 lakhs with Sri A.V.V.Satyanarayana, Contractor, K.P.Palem, Mogaltur (M), West Godavari District and the date fixed for completion of work is 24.11.2014.

The contractor has failed to complete the work within the agreement period and stalled the work without any intimation. At present there is no activity at site even though the Agreement period is lapsed. In the above context several notices have been issued from time to time and a Final notice also issued vide reference 5th cited but the contractor has not turned up till to date.

As per Clause No.52.2 (a), (h) and (i) of General Conditions of Contract, it is concluded by the undersigned that the contractor was not turned up to the repeated reminders in commencement of work and indulged in fundamental breach of contract.

ORDER:

Therefore on the direction of the instructions in the meeting on 09.03.2017 of DCE & OSD at Visakhapatnam and on the strength of recommendations of the Executive Engineer, PR Division, Paderu vide reference 4th cited, the contract Agreement for the work “AP 19X 172-Road from Pachanapalli to Gompam in G. Madugula Mandal, Est.Rs.150.98 lakhs” is hereby stands terminated duly giving unilateral extension of Agreement time up to 05.06.2017 as the agreement period is lapsed by 24.11.2014.”

Admittedly, the relationship between the petitioner and the third respondent is a contractual relationship and the above letter was issued by the third respondent in pursuance of the clauses in the agreement. There is a separate provision for resolution of disputes in case of illegal termination of contract. In the instant case, the period of contract was never extended and the impugned letter *prima facie* shows that there was no activity at site even after the contract period, which expired in 2014.

In the circumstances, this Court cannot entertain the present Writ Petition as it is clearly a private contractual matter, though the State is one of the contracting parties. The petitioner is not without any remedy.

Learned Counsel argued the matter assuming that the action of the third respondent is an administrative action. The third respondent's action cannot be called as an administrative action, but it is only in exercise of powers vested in him under the clauses of contract.

The Writ Petition is, accordingly, dismissed at the admission stage. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

A. RAMALINGESWARA RAO, J

Date: 06.10.2017
Nsr

