

HON'BLE SRI JUSTICE S. V. BHATT

Writ Petition No.36587 of 2013

ORDER:

Heard Mr. Chavali Ramanad for petitioner and Mr. Rama Rao for respondents.

2. The petitioner challenges letter No.CGM(T)DFO/ ORPP/ Package-III/ 1/ 2012-13 dated 05.08.2013 and letter No.1301/ CGM(T)DFO/ ORRP/ Pkg.III dated 16.11.2013, as illegal, arbitrary and violative of principles of natural justice.

3. The circumstances necessary for disposing of writ petition are stated thus:

On 30.07.2012, petitioner and 1st respondent entered into an agreement for taking up the planting of ornamental and flowering shrubs in the central median from APPA to Shamshabad (from 11.000 KM to 23.380 KM), Hard and soft landscaping of Shamshabad interchange area, Avenue plantation in the 25 meters left side land strip of Nehru Outer Ring Road and maintenance up to February 2016 under package-III, for short 'subject work'. The subject work is taken up and implemented with JICA under Phase-I programme assisted by JICA. The petitioner is the successful tenderer and work was assigned to petitioner. During and in the course of execution of the work by petitioner, the respondents noticing either laxity of performance in adherence to time schedules and conforming to the requirements of subject agreement, communicated letters dated 25.04.2013 etc. to petitioner either to speed up the execution of work/or adhere to time schedules, in default it was informed that action as provided under the agreement read with Andhra Pradesh Standard Specifications (APSS) would be initiated. The

petitioner replied to each one of the notices and according to petitioner, the petitioner is more or less conforming to obligations under subject agreement and no exception can be taken. While matters stood thus, the respondents issued communications impugned in the writ petition, which read thus:

“Lr.No.CGM (T)/ DFO/ ORRP/ Package-III/ 1/ 2012-13, Dated: 05.08.2013

Gentlemen,

Sub: Planting of Ornamental and flowering shrubs in the central median from APPA to Shamshabad (From KM 11.000 to KM. 24.380), Hard and soft landscaping of shamshabad interchange area, Avenue plantation in the 25 m left side land strip of Nehru Outer Ring road and maintenance up to February 2016 – Package-III with the loan assistance of JICA under Phase-I programme –Agreement terminated –Regarding.

Ref: 1. Agreement No.CGM(T)HGCL/ 3/ 2012-13, dt: 30.07.2012
2. CGM(T)/ DFO/ ORRP/ Package-III/ 1/ 2012-13, dt. 25.04.2013;
3. CGM(T)/ DFO/ ORRP/ Package-III/ 1/ 2012-13, dt: 21.06.2013;
4. CGM(T)/ DFO/ ORRP/ Package-III/ 1/ 2012-13, dt: 08.07.2013.

The above work was entrusted to you vide reference 1st cited, with a stipulated period to complete and maintenance up to February 2016. In the references 2nd to 3rd cited, you are requested to resume the work immediately. But, you have failed to resume the work even after several requests made. Final notice was issued vide reference 4th cited, to resume the work immediately. You have not responded to resume the work till today. It shows that you are not interested to take up the work. This office has left with no alternative except to terminate the Agreement.

Therefore, it is informed to you that the agreement for the above work is terminated under Clause 60(a) of Preliminary specifications to APSS duly forfeiting the EMD paid together with the value of work executed and not paid.

Yours faithfully,
Divisional Forest Officer
Outer Ring Road Project
HMDA, Hyderabad.”

“Ref.No.1301/ CGM(T)/ DFO/ ORRP/ Pkg-III, dt. 16.11.2013

Sub: M/s Madhura Landscapes, Plot No.45, Srikanth Nilayam, Krishna Reddy Nagar, Bowenpally, Secunderabad-500 011-Package-III contractor of Outer Ring Road (Median Plantation) – Terminated – Communicated –Regarding.

Ref: Minutes of the 35th Meeting of the Board of Directors of HGCL held at 3.00 PM on 26.09.2013 at the conference hall – HMDA Office – Tarnaka –Hyderabad.

It is to submit that Package-III contractor of Outer Ring Road (Median Plantation) Viz., M/s Madhura Landscapes, Plot No.45, Srikanth

Nilayam, Krishna Reddy Nagar, Bowenpally, Secunderabad-500 011 was terminated on 05.08.2013 due to fundamental breach of contract and failed to achieve the milestones as stipulated in the contract agreement.

Further, it was resolved to blacklist the contractor forthwith barring future participation in the contract works of HGCL and HMDA, Tarnaka, Hyderabad, vide reference cited above.

This is for favour of information.

Divisional Forest Officer
Outer Ring Road Project,
HMDA, Hyderabad"

Hence, the writ petition.

4. Mr. Ramanand, appearing for petitioner contends that termination of agreement is arbitrary, illegal and violative of principles of natural justice. According to him, there was no cause or circumstances warranting termination of the agreement and blacklisting petitioner from participation in the further contracts considered and entrusted by respondent. On the decision of respondents in blacklisting the petitioner, his legal objection is that the respondents have not issued show cause notice or afforded opportunity to petitioner before blacklisting. Hence, blacklisting through letters impugned in the writ petition is also illegal, unsustainable and prays for setting aside the impugned letters in the writ petition.

5. The respondents filed counter-affidavit and on merits of the issue between parties, respondents have stated in detail their version. Having regard to the legal objections raised by Mr. Ramarao, for brevity and also avoid pronouncing any view on merits of the matter, these averments are not adverted. Mr. Ramarao, firstly contends that the agreement is valid up to February 2016, during the currency of agreement, termination was ordered with the expiry of time stipulated in the agreement. No relief vis-à-vis the subject agreement can be

considered much less granted by this court under Article 226 of the Constitution of India.

6. He objects to the maintainability of the writ petition by placing strong reliance on the decision reported in '*Joshi Technologies International Inc. vs. Union of India & others*¹', on the contention of petitioner that respondents have not issued notice before blacklisting the petitioner, he relies on the letter dated 25.04.2013, which among other things refer to proposed action of blacklisting as follows:

"If the above works are not completed before 30.04.2013 you are liable for paying liquidated damages as mentioned above and a report may be submitted to superior officers for putting black list of your company i.e. Madhura Landscapes."

7. Therefore, according to him, objection as to blacklisting is untenable and prays to dismiss the writ petition.

8. This court after taking note of submissions of the learned counsel appearing for the parties and keeping in view binding precedent of the Apex court in the decision cited supra, is of the view that challenge to termination of agreement dated 30.07.2012 through letters impugned in the writ petition cannot and could not be considered and decided in a petition filed under Article 226 of the Constitution. Both on facts of this case and the principle of law enunciated in '*Joshi Technologies International Inc*' case (supra), I hold that writ petition is not maintainable.

9. On the additional financial burden alleged to have been incurred by petitioner in executing the work, as rightly contended by Mr. Pamarao, there are issues under section 70 of the Contract Act and the petitioner can raise all the grounds in this behalf. The obligation of

¹ (2015) 7 SCC 728

respondents, if any for enjoying the works said to have been carried out by petitioner can be worked out under Section 70 of the Contract Act, which reads thus:

“Section 70 of the Contract Act – Obligation of person enjoying benefit of non-gratuitous act:-

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

10. Hence, it is open to the petitioner to workout all grievances available under the agreement vis-à-vis to the relief to which petitioner is entitled to in a suit instituted for this purpose including the claims if any towards additional amounts spent by petitioner. It is open to respondents to raise objections on fact and law in a suit so instituted by petitioner. Therefore, without further dilating on this aspect, the first contention that termination of the agreement dated 30.07.2012 is not considered and left open for decision by civil court.

11. Now adverting to second contention, namely, blacklisting petitioner without show cause notice and receiving the explanation, the reply of respondents is that communication dated 05.08.2013 satisfies requirement of show cause before blacklisting and consequently blacklisting petitioner for breach of obligation under the subject agreement is also valid and tenable. This contention of the respondents does not appreciate the content and context of letter dated 28.04.2013. The 2nd respondent during and in the course of correspondence with petitioner for expeditious execution etc., the sentence referred to above is included and this merely informs petitioner as one of the consequences if timely action is not taken. If letter dated 25.04.2013 has to be treated as notice on blacklisting the rest of the letters are

unnecessary. In the case on hand, the letters dated 21.06.2013 and 08.07.2013 does not refer to blacklisting but envisages proceeding under clause 60(a) of APSS. What is sought to be reported to higher ups by 2nd respondent through letter dated 25.04.2013 cannot be treated as show cause for blacklisting petitioner. Termination of contract has one set of consequence viz., confining to the agreement between parties and to ancillary implication, if any, whereas blacklisting has serious implication on the business of petitioner. Blacklisting in the case on hand is without notice, much less affording opportunity to petitioner. This court is not interfering with termination of agreement but to the extent blacklisting of the petitioner for the reasons stated supra, is set aside. It is left open to respondents, if circumstances still warrant to issue notice and proceed in accordance with law against petitioner for blacklisting or the disposal of writ petition shall not be understood that this court expressed any view on the merits of all issues between parties.

12. The writ petition is ordered to the extent indicated above. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 07.08.2017
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