

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos. 23226 of 2015 and 358 of 2017

COMMON ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondent.

The petitioner is a company providing Linux based network infrastructure solutions to various Corporations. While so, the respondent called for tenders on 30.04.2014 for purchase of email servers with archival solution and migration of email as per specification. The tender required the server of HP/IBM. The petitioner participated in the tender process and became a successful tenderer. Since 'Hudhud Cyclone' occurred in the area, the petitioner sought extension of time and the same was extended till 28.02.2015. On 20.02.2015, the respondent issued Letter of Intent followed by a purchase order, dated 15.04.2015, which was amended on 02.05.2015 postponing the delivery date from 31.05.2015 to 05.08.2015. In response to the same, the petitioner addressed a letter on 25.05.2015 to the respondent stating that it was unable to procure IBM make servers since the IBM sold its server division to M/s. Lenovo. Thus, the contract has been frustrated. Thereafter, the respondent amended the purchase order, dated 08.07.2015, by changing the hardware specification as IBM/Lenovo in place of IBM and the petitioner submitted its reply on

10.07.2015 pointing out various issues. Challenging the action of the respondent in insisting it to provide hardware of Lenovo, the petitioner filed W.P.No.23226 of 2015, which is being disposed of along with W.P.No.358 of 2017.

The respondent issued a letter on 28.12.2016 reminding the petitioner to supply the material immediately pursuant to the purchase order, dated 15.04.2015, on or before 15.01.2017, failing which they would make purchase at risk and cost of the petitioner. Challenging the said letter, W.P.No.358 of 2017 was filed.

This Court by order, dated 04.01.2017, granted interim suspension of the operation of the letter, dated 28.12.2016. As a result of such interim order, neither the petitioner could supply the required material nor could the respondent procure the material.

The only issue that arises for consideration in the light of the above facts and circumstances is whether the respondent can purchase the material at the risk and cost of the petitioner.

The petitioner is not in a position to supply the material as per the original purchase order and this is evident from the correspondence made by it. With regard to the rights of the respondent to purchase the material at the risk and cost of the petitioner, this Court is not inclined to record any finding as there is a provision for arbitration existing in the purchase order.

In the circumstances, without expressing any opinion on the merits of the case, it is left open to the parties to work out their remedies in accordance with the purchase order and till they work out their remedies, no party shall force the other party to act in a particular manner pursuant to the purchase order.

The writ petitions are accordingly disposed of.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

Dt:20.03.2017

kdl



A.RAMALINGESWARA RAO, J

