

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.8596 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

“ .. to issue an appropriate writ or a direction and more particularly one in the nature of a writ of mandamus, declaring the action of the respondents proposing to recover an amount of Rs.2,82,13,338/- and 1.13 crores as per the remarks made by the Audit team as contrary to the clause 46.2 and 3 of the general conditions of the contract and G.O.Ms.No.22, dated 23.02.2015 and therefore arbitrary, illegal and in violation of Article 19(i)(g) and consequently direct the respondents not to recover any amounts contrary to clause 46.2 and 3 of the general condition of the agreement and G.O.Ms.No.22, dated 23.02.2015 and pass such other or further orders as this Hon'ble court may deem fit and proper.”

Petitioner herein is a Firm, which participated in the tenders invited by the Superintending Engineer, Construction Circle, Ongole, Prakasam District-3rd respondent herein, for construction of Tunnel including construction of head regulator and approach channel of Veligonda Project in Prakasam District and the petitioner herein being the lowest bidder was allotted with said work and an agreement was also entered into vide agreement No.3VGP/2005-2006 dated 20.08.2005. According to the petitioner herein, as per clause 46 of the general conditions of agreement, which deals with escalation in prices, the petitioner is entitled for escalation of prices in respect of cement and steel; as per clause 46.3 petitioner is entitled for escalation of prices in respect of fuel. It is further stated that as per G.O.Ms.No.22 dated 23.02.2015, petitioner-Firm is entitled for price variation for labour, machinery and other materials w.e.f.01.04.2013 and

respondents 1 to 4 have paid the amounts as per clause 46.2 and 3 and also as per G.O.Ms.No.22 dated 23.02.2015.

The Executive Engineer, VGP Division, Dornala, Prakasam District-4th respondent herein, by way of a letter dated 06.10.2016 informed the petitioner that the audit inspection was conducted in their office from 24.08.2016 to 02.09.2016 and they made certain remarks regarding escalation and price variations on fuel, labour, machinery and other materials. By way of said letter, the 4th respondent requested the petitioner-Firm to submit proposals after attending the remarks pointed out duly incorporating the observations for the proposals already submitted regarding fuel, labour, machinery and other materials upto October, 2016. According to the petitioner, petitioner submitted its explanation to the letter dated 06.10.2016 on 29.11.2016. It is stated in the affidavit filed in support of the writ petition that in spite of said reply filed by the petitioner herein on 29.11.2016, respondents 3 and 4 are proposing to recover a sum of Rs.2,82,13,338/- and 1.13 crores from the next running bills and if any such recovery is permitted, the petitioner will suffer serious injury and loss.

According to the learned Senior Counsel Sri C.V.Mohan Reddy, representing the learned counsel on record, the impugned order is highly illegal and arbitrary and there is absolutely no justification on the part of the respondents in resorting to the impugned action.

It is submitted by the learned Senior Counsel that no notice was issued to the petitioner herein before resorting to impugned action. Since the objections by way of representation dated 29.11.2016 submitted by the petitioner in response to the notice

dated 06.10.2016 issued by the 4th respondent are pending consideration, this Court is of the view that ends of justice would be served if the respondents are directed to pass appropriate orders on the objections dated 29.11.2016 submitted by the petitioner herein as per law.

In the above circumstances, the Writ Petition is disposed of directing the 4th respondent-The Executive Engineer, VGP Division, Dornala, Prakasam District, to pass appropriate orders on the representation dated 29.11.2016 submitted by the petitioner herein, in accordance with law, after giving notice and opportunity of hearing to the petitioner herein, within a period of six weeks from the date of receipt of this order. Pending consideration of the same, there shall be no coercive action against the petitioner.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No order as to costs.

13.03.2017
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JUSTICE A.V.SESHA SAI

