

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.33491 OF 2013

ORDER:

Heard Mr.Vikram Pooserla for petitioner. No representation for respondents on 28.11.2017 as well as today.

The petitioner prays for Mandamus declaring the action of respondents in not settling the full and final payment in terms of Subsidiary Agreement No.27/DEN/South/HYD dated 01.02.2010 including refund of security deposit amount under Agreement bearing No.2/DEN/Lines/HYD dated 13.04.2009 of 3rd respondent, as illegal and unconstitutional.

The case of petitioner is not substantially disputed by respondents. Therefore, for the limited purpose of appreciating the controversy between the petitioner and the respondents, the following circumstances are stated:

The petitioner was awarded the work covered by Tender Notice 140/DRM/W/HYD/OT dated 04.09.2008 by respondents. The value of the work was Rs.7,67,72,763-42ps. The petitioner brought to the notice of respondents increase in quantities of actual execution. Respondents 1 to 4 have also taken note of additional quantities involved in execution of the subject tender and have entered into subsidiary agreement dated 01.02.2010 with petitioner. The revised value of contract is Rs.10,21,17,637/-. According to petitioner, the scope of the agreement together with subsidiary agreement has been completed, satisfaction recorded and bills were processed for payment. At that stage, the Audit/Accounts Department has taken

objection namely, that the authorities who have entered into subsidiary agreement are not empowered to give administrative sanction for any work over and above Rs.8 Crores. Therefore, the respondents have withheld the payment of Rs.77,60,476-54ps. Hence the present petition for direction to pay Rs.77,60,476-54ps and also refund the security deposit of petitioner.

The respondents filed counter affidavit and object to the maintainability of writ petition for recovering the amount payable under agreement and subsidiary agreement. On the petitioner's entitlement to Rs.77,60,476-54 ps, the reply of respondents reads thus:

“ I submit with respect to paragraphs 2 to 16 of the Affidavit, it is submitted that the petitioner has stated at paragraph 9 of the Affidavit that the respondents Railways have to pay the balance payment which is approximately of Rs.77,60,476-54 ps and which is admitted due amount to the petitioner, is not correct and denied and the same is being disputed by the Respondents Railways. Accordingly, the Chief Engineer/Works, South Central Railways, Secunderabad has addressed a letter on 06.01.2014 to the Petitioner herein requesting him to attend a meeting on 16.01.2014 for settling the rates in view of the dispute (Annexure). The Petitioner has not attended the meeting for settling the rate and submitted a letter dated 15.01.2014. It is respectfully submitted that the Petitioner herein has not come forward to settle the disputes. The Competent Authority has accorded approval on 17.02.2014 and accordingly final bill prepared based on counter offer and kept ready for petitioner's signature. The Petitioner was informed to attend this office on 20.02.2014 (Annexure) for signing the final bill amounting to Rs.51,08,716/- after standard deductions the net amount payable to the petitioner is Rs.48,49,909/-. The petitioner's claim of

Rs.77,60,476.54 ps. is not correct and denied and the same is being disputed. The petitioner has refused to sign the final bill vide his letter Dt.24.2.14 (Annexure). The final bill is pending for want of his signature. However, the final bill will be passed and will be kept under deposit with Accounts if the Petitioner does not sign the final bill and gives a No Claim Certificate. It is evident that the petitioner is not having interest to settle the issue and hence the above writ petition filed by the Petitioner is not maintainable and liable to be dismissed.”

Thus from the above admission of respondents, it is clear that the competent authority accorded administrative approval on 17.02.2014 to the additional work. Basing on the approval granted by the competent authority, the final bill was prepared by respondents and net amount payable to petitioner is determined as Rs.48,49,909/-. The respondents do not dispute the total claim of Rs.77,60,476-54 ps., but admit that Rs.48,49,909/- is payable to petitioner. Therefore, this Court is of the view that to the extent of admitted amount, there ought not to be any reason for withholding payment by respondents, and at the same time in respect of undisputed and admitted amounts, the petitioner need not file a suit for recovery of admitted amounts from the respondents. The counter affidavit does not deny or dispute the security deposit amount kept by petitioner for due performance of contractual obligations. Once final bill is prepared, it presupposes contractual obligations have been substantially discharged. On the admitted stand in the counter affidavit, I am satisfied that the writ petition can be ordered as follows:

a) The petitioner is entitled to refund of security deposit subject to petitioner discharging the obligations, if any, for which the deposit was kept.

b) The petitioner since joins dispute on restricting his claim to Rs.48,49,909/-, the petitioner is given liberty to approach respondents to receive Rs.48,49,909/-, sign the final bill without prejudice to his rights and contentions on the disputed amount between the parties.

c) The respondents are directed to consider the above request and make payment of Rs.48,49,909/- and security deposit as expeditiously as possible preferably within eight weeks from the date of receipt of representation from the petitioner.

d) The parties are given liberty to work out the dispute i.e. the amount claimed by the petitioner and restricted by respondents in accordance with law.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:29.11.2017
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