

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.34655 OF 2017

ORDER:

Heard learned Senior Counsel for petitioners.

The petitioner states that it was awarded the work of "Formation of G.Pulla Reddy Minor Irrigation Tank across Edduleru Vagu", under Agreement dated 10.07.2015 for value of Rs.5,84,26,903/-. The petitioner was called upon to execute certain works, which are not in the scope of work and he was asked to do some deviated items/additional works mentioned as follows:-

- a) Excavation of COT (cut off trench) for depth beyond 1/2 FRL (deviation) as suggested by the Senior Geologist, Geological Survey of India.
- b) Excavation of COT beyond 1/2 FRL in Nandyal shale (new item) as suggested by the Senior Geologist.
- c) Filling up COT beyond 1/2 FRL (deviation) with impermeable soil as suggested by the Senior Geologist.
- d) Pre and post permeability tests (new item) as suggested by the Senior Geologist.
- e) Grouting as per pattern (new item) as suggested by the Senior Geologist.
- f) Casing cover on the U/S and D/S of Bund as suggested by the Chief Engineer, Quality Control, Rayalaseema Region.
- g) Excavation of surplus course for passage of surplus water.

The petitioner executed the above works on the instructions of the Executive Engineer and 90 to 95 per cent of the works were completed and an amount of Rs.44 crores is held up. The petitioner is unable to proceed with the execution of the balance work under the Original Agreement in view of the pending acquisition proceedings and other issues. Though the respondents are supposed to enter into the Supplementary Agreement with regard to the additional works/deviated items, and in spite of the representations of the petitioner dated 19.03.2017 and 10.04.017, no Supplementary Agreement was entered.

The present writ petition is filed challenging the action of the respondents in not making payment of the value of the additional works/deviated items, which are not covered under the Agreement, dated 10.07.2015.

Whether the petitioner is under an obligation to execute the additional/deviated works under the Agreement and what rights and liabilities flow out to the agreement holder, are matters concerned with the clauses relating to the contract.

This Court took a view in **Lanco Infratech Limited v Power Finance Corporation**¹, that merely because the State is a party to the Agreement, the writ petition is not maintainable. The jurisdiction of this Court cannot be invoked for deciding the present dispute with regard to the entitlement of the petitioner for payment of the additional works/deviated items as there is an alternative remedy for such purpose.

The writ petition is accordingly dismissed. Consequently, miscellaneous petitions, if any pending, in the writ petition shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

20.10.2017
pln

¹ 2017 (5) ALD 556