

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25126 OF 2006

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus declaring the action of the first respondent in imposing and recovering penalties from the running bills of the petitioner unilaterally without hearing the petitioner, as illegal and arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India and consequently direct the first respondent not to impose any penalty without conducting any enquiry and hearing the petitioner.

2. The petitioner is a Company. The petitioner was awarded the work of blast hole drilling, blasting, excavation, loading, transportation and dumping etc. in respect of removal of Over Burden of Medipalli Opencast Project vide Work Order No.ROC-3103 dated 06.10.2003, in pursuance of notice inviting the tender dated 25.06.2003. The clause 8 of the contract agreement speaks of work completion schedule to be executed by the petitioner. The clause 8 of Annexure-A of contract agreement also deals with the penalty for delay in works. The clause 23 of Annexure-A of contract agreement, which deals with 'settlement of disputes' reads as under:

23. SETTLEMENT OF DISPUTES:

The dispute or difference of opinion arising between the SCCL or its authorised representative and the excavation agency in respect of site plans, specifications, measurements, manner of execution or any thing connected with the work, not specially provided for, here in under the specification or in respect of meaning of any clause of the terms and conditions shall be decided by 'CIVIL COURT' of competent jurisdiction and not by arbitration.

3. When the first respondent started deducting the alleged penalties from the running bills, by levying penalties of Rs.77,749-40 paise for the month of April, 2006, Rs.1,30,230-38 paise during the month of May, 2006, Rs.80,678-58 paise during the month of June, 2006, Rs.39,744-28 paise during the month of July, 2006, and Rs.1,54,051-86 paise during the month of August, 2006, the petitioner filed this writ petition.

4. Initially, on 04.12.2006 while issuing notice to the respondents, this Court directed that there shall not be any recoveries from the running bills of the petitioner. Subsequently, on 22.12.2006 after considering the counter affidavit filed by the respondents, this Court opined that in case the petitioner has acted contrary to the terms and conditions of the contract, it is always open to the first respondent to take appropriate action following due process of law. This Court further directed that stay of recovery of the penalties shall be continued until further orders. It is represented that in view of the interim order passed by this Court, no deductions were continued. However, the contract was terminated on 03.01.2007.

5. On facts and circumstances of the case, this Court found that the act of the respondents in deducting penalties from the running bills, without any notice, is contrary to the principles of natural justice, even though in contractual matters, is arbitrary and violative of the Article 14 of the Constitution of India, held liable to be declared as unjustifiable. Hence, the respondents are directed not to deduct penalties from the future bills pending before the first respondent.

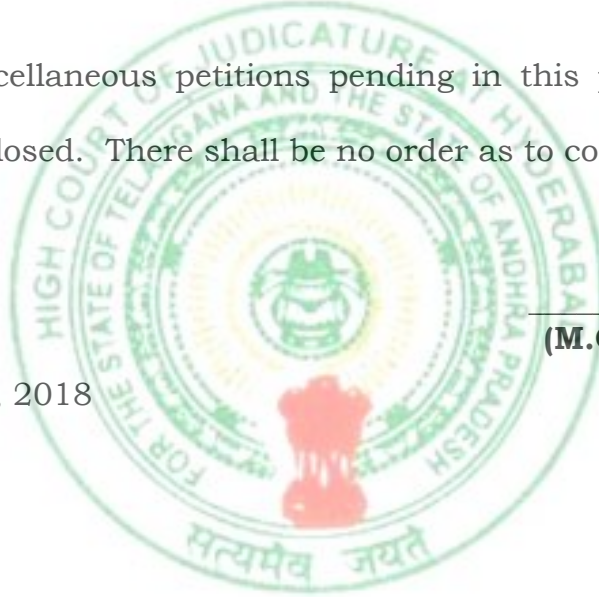
6. The counsel for the first respondent would submit that both the parties to the writ petition, the petitioner as well as the respondents, filed civil suits for recovery of the amounts and the Civil Court is ceased of the matters.

7. Therefore, the first respondent is given liberty to pursue the matter before the Civil Court, as per clause 23 of Annexure-I of the contract agreement for recovery of penalties from the petitioner as there is no arbitration clause in the contract agreement.

8. Accordingly, the Writ Petition is disposed of.

9. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

31st January, 2018
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(M.GANGA RAO, J)