

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.14084 of 2009

Order:

This Writ Petition is filed to declare the Memo dated 07.10.2006 issued by the second respondent as illegal and arbitrary and a consequential direction is sought against the respondents 3 to 5 to pay the price variation to the petitioner in terms of G.O.Ms.No.123, dated 06.07.2006 read with G.O.Ms.No.73, dated 24.04.2006, and G.O.Ms.No.35, dated 28.02.2006, along with the amount of Rs.1-00 Lakh withheld for want of quality control certificate.

The case of the petitioner Company is that they were awarded the work known as heavy periodic maintenance to carriage way of Sangareddy-Narsapur-Toopran road from KM 22/0 to 49/8 in Medak district under package No.RBERP-SNT-112 by the third respondent; the Managing Director of the third respondent also entered into an agreement dated 23.12.2004; the petitioner has completed the work to the satisfaction of the third respondent within the time; during the period of the work there was abnormal increase in the prices of the inputs such as road metal, bitumen, oils etc., as such the petitioner has incurred substantial loss; the Government, after deliberations with the representatives of the contractors, agreed for payment of price adjustment to the contractors though the same is not contemplated in the agreements and, accordingly, the Government issued G.O.Ms.No.35, dated 28.02.2006 directing price adjustment in respect of steel, cement, bitumen and POL etc., for all the road works and bridge works; subsequently, the Government issued another notification under

G.O.Ms.No.73, dated 24.04.2006, directing that the sanction of price adjustment shall be for the works completed within the original agreement period, but the price adjustment was restricted to the ongoing works and in respect of all the works completed for which final bills were not paid; subsequently, on representations by the third respondent, the Government issued G.O.Ms.No.123, dated 06.07.2006, extending the price variation benefits given under G.O.Ms.No.35, dated 28.02.2006, and G.O.Ms.No.73, dated 24.04.2006, to the World Bank Aided APERP works undertaken by the third respondent subject to condition that the adoption of price adjustment for steel, cement, bitumen and POL etc., shall be applicable for the works for which final bills are not paid as on 31.03.2006 and for which valid extension period was given; the petitioner, on 04.08.2006, addressed a letter to the fifth respondent requesting him to make a price variation bill and pay the same in terms of G.O.Ms.No.123, dated 06.07.2006 and also requested to pay an amount of Rs.1-00 lakh withheld from LS 13 part bill for want of quality control inspection report; the petitioner also requested to prepare the final bill and pay the amount; as there was no response from the fifth respondent, the petitioner addressed a letter dated 30.08.2006 duly enclosing a draft bill for an amount of Rs.29,36,765/- and the petitioner also addressed another letter dated 17.11.2006 requesting the fifth respondent to pay the price adjustment and balance amount of Rs.1-00 lakh; the third respondent addressed a letter dated 21.12.2006 requesting the petitioner to make correspondence with the fourth respondent regarding payment of variation and other dues, if any; thereafter, the petitioner addressed another letter dated 17.09.2007 to the fifth respondent duly marking a copy to the fourth respondent requesting for release of the price variation

amount; thereafter, the fifth respondent addressed a letter dated 01.10.2007 to the petitioner stating that the Government has rejected the proposal of price adjustment by enclosing the Memo dated 07.10.2006 wherein it was stated that the proposal for application of price adjustment clause is rejected for the works for which final bills were paid in June 2006; as per G.O.Ms.No.123, the payment of price variation is applicable for the works for which final bills are not paid as on 31.03.2006; even if the final bill is paid in June 2006 they are eligible for payment as per G.O.Ms.No.123.

Counter affidavit has been filed by the respondents stating, *inter alia*, that the petitioner has completed the works by 25.02.2006 and the petitioner is not entitled for the price escalation since the final bill was paid on 28.03.2006 and the Contractor has signed on 'release and discharge certificate' on 08.03.2006 stating that it releases and discharges from any and all claims and demands whatsoever.

Heard learned counsel for the petitioner and learned Government Pleader for Roads and Buildings.

As see from G.O.Ms.No.123, dated 06.07.2006, the price adjustment clause for Steel, Cement, Bitumen and POL etc., is made applicable to the World Bank Aided APERP works for which final bills are not paid as on 31.03.2006 and for which valid extension period is given. As seen from the letter addressed by the Executive Engineer, R & B Division, Sangareddy, to the petitioner company dated 01.10.2007, the Government, vide Memo dated 07.10.2006, has rejected the proposal of the price adjustment. In the Memo dated 07.10.2006, it is stated that the proposal for application of price adjustment clause for Steel, Cement,

Bitumen and POL to the four World Bank aided APERP works for which final bills were paid in June 2006 is rejected. The said memo is contrary to G.O.Ms.No.123. According to G.O.Ms.No.123, the price adjustment is applicable for the works for which final bills are not paid as on 31.03.2006. As the said G.O itself stipulates the deadline as 31.03.2006, the memo issued by the Government is contrary to the said G.O. As the memo is contrary to the GO, the same is liable to be set aside. Further, according to the counter affidavit final bill was paid on 28.03.2006. According to the petitioner Rs.1-00 lakh is withheld from the last bill for want of quality control report. The said fact is not disputed by the learned Assistant Government Pleader appearing for the respondents. Even according to the counter affidavit, Rs.1-00 lakh which was kept in deposit for want of quality control report was not paid to the petitioner. The said amount is withheld even as on today. As part of the final bill amount is withheld for want of quality control report and kept in deposit even as on today, it can be concluded that final bills are not paid as on 31.03.2006. Hence, in view of the fact that part of the final bill amount is not paid as on 31.03.2006, the petitioner is entitled for price adjustment clause.

Having regard to the facts and circumstances of the case, the impugned Memo dated 07.10.2006 and the letter dated 01.10.2007 are set aside and the fifth respondent is directed to reconsider the whole issue, as the final bill amount has not been paid and part of the amount from the final bill has been withheld, and pass appropriate orders including the refund of Rs.1-00 lakh which was withheld for want of quality control report, as expeditiously as possible, preferably within a period of eight (8) weeks from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Date: 20.11.2018
Nsr



THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Date: 20.11.2018

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