THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.37443 OF 2018

Dated 12th November 2018

Between:

M/s. A.M.T.Constructions Company (Special Class Contractors), rep.by its authorized person, Shaik Umar Alisha, S/o.late Shaik Masthan.

...Petitioner

And

1. The State of Telangana, Rep.by its Principal Secretary, Panchayat Raj and Rural Development Department, Secretariat, Hyderabad and four others.

...Respondents

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

The Court made the following:

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ORDER:

The petitioner entered into agreement with the respondents on 09.05.2012 for execution of laying road between Allapadu to Narayanapuram of Bonakal Mandal, Khammam District. The estimated cost of work was Rs.210.00 lakhs. As per the terms of agreement, the work was to be completed by 08.05.2013 whereas the petitioner had executed certain works of the value of Rs.65,72,094/- and he had stopped executing the works later. The Superintending Engineer, P.R. Circle, Khammam, *vide* proceedings dated 20.02.2015 terminated the contract by referring to the various clauses in the agreement. Further, the firm is debarred from e-procurement platform for a period of one year. This decision of the Superintending Engineer has become final. The petitioner later represented for settlement of amount of expenditure of the works executed. The petitioner earlier filed W.P.No.7907 of 2016 alleging inaction of the respondents in extending the time by revoking the agreement dated 09.05.2012. However, when the Writ Petition was taken up, a request was made that the representation made on 21.02.2018 to the Superintending Engineer be considered and appropriate decision be taken within time-frame. Accordingly, the said Writ Petition was disposed of directing to consider the representation dated 21.02.2018 within a period of two (2) months. On 24.05.2018, the Engineer-in-Chief issued memo to the Superintending Engineer, P.R. Circle, Khammam, directing him payment of amounts to the petitioner as per the rules in Vogue to obtain the discharge certificate from the

agency concerned before final payment to the agency so that the balance work can be entrusted to another agency. This Writ Petition is filed alleging inaction of the Superintending Engineer in taking steps as per the directions of the Engineer-in-Chief *vide* his memo dated 24.05.2018.

2. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Panchayat Raj.

3. It is not in dispute that the petitioner and the respondents are governed by terms of contract entered into by both the parties. The petitioner has not executed the entire work entrusted to him, but only a part of the work and therefore, his contract was terminated. The limited grievance of the petitioner is that he may be paid the amount of expenditure incurred for the work executed by him and claims non-payment of the same as arbitrary and illegal.

4. As noted above, the relationship between the petitioner and the respondents is governed by the contract entered into in the year 2012. Clause 23 deals with settlement of disputes. If any dispute or difference of any kind whatsoever arises between the department and the contractor in connection with, or arising out of the contract, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the contract, it shall in the first place, be referred to and settled by the Engineer-in-charge who shall, within a period of thirty days after being requested by the Contractor to do so, give written notice of his decision to the contractor. Upon receipt of the written notice of the decision of the Engineer-in-charge the contractor shall promptly proceed without

delay to comply with such notice. All disputes and differences arising out of contract shall be referred to a Superintending Engineer of another circle in the same department for claims up to a value of Rs.10,000/- and the claims above Rs.10,000/- up to Rs.50,000/- shall be referred to another Chief Engineer of the same department. The arbitration proceedings shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. All disputes or differences of claims above Rs.50,000/- are to be settled by a Civil Court of competent jurisdiction by way of Civil suit and not by arbitration.

5. In terms of this clause, it is the Engineer-in-Chief who has to take appropriate decision and issue a certificate whereas by the memo dated 24.05.2018 he directed the Superintending Engineer to take further course of action. The petitioner now seeks enforcement of the said direction. As noticed above, as the direction of the Engineer-in-Chief dated 24.05.2018 *per se* is contrary to the terms of the contract and as the relationship between the petitioner and the respondents is governed by the terms of contract, the Engineer-in-Chief could not have directed his subordinate to take decision contrary to the terms of the contract. Therefore, this Court cannot direct enforcement of the said decision. As the contract deals with settlement of disputes in a particular manner, the petitioner has to avail those remedies for settlement of disputes. When the contract enumerates clause for settlement of disputes, the Writ Petition under Article 226 of the Constitution of India is not maintainable. Even otherwise, when the petitioner has efficacious remedy as per the contractual terms,

he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India to enforce the terms of contract.

6. The Writ Petition is dismissed leaving it open to the petitioner to work out his remedies in accordance with the terms of contract. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(P.NAVEEN RAO, J)

12th November 2018
RRB