

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.6193 of 2019 &
W.M.P.No.7035 of 2019

M/s.R.A.U.S.Constructions Pvt. Ltd.,
Rep. by Authorized Signatory,
Ms.Padmaja Bayyavarapu,
H.No.23-425/4, Bhodevi Nagar,
Near Sai Datta Garden, Venkatapuram,
Alwal, Ranga Reddy District,
Telangana State - 500 010. ..Petitioner

Vs.

1. The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Kamarajar Salai,
Chepuak, Chennai -5.
2. The Erode City Municipal Corporation,
Rep. by its Commissioner,
New No.246, Old No.894,
Brough Road,
Erode - 638 001. ..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Declaration to declare that the action of the second respondent in passing order in Roc.No.UGSS-7587/2010, dated 05.09.2018, terminating the petitioner's contract as illegal, arbitrary and violative of principles of natural justice and contrary to the contract conditions, and consequently, direct the respondent No.2 herein to restore the UGSS, package-II in favour of the petitioner by cancelling the proceedings Roc.No.UGSS-7587/2010 of the Commissioner, Erode City Municipal Corporation, for completing of pending works after receiving pending bills from the second respondent and to consider representation dated 06.09.2018, made by the petitioner for payment of pending bills.

For Petitioner : Ms.C.H.Vinobha Gandhi

For Respondents : Mr.B.Anand
Government Advocate for R-1

Mr.M.Raja Mathivanan
Standing Counsel for R-2

O R D E R

Challenging the impugned order of termination of the second respondent, dated 05.09.2018, and for a direction to the second respondent to restore the UGSS, package-II and pay the pending bill in favour of the petitioner, and for further direction to consider the representation of the petitioner dated 06.09.2018, the present Writ Petition has been filed.

2. According to the petitioner, the petitioner-Construction Pvt. Ltd., has already completed 85% of the work and at this stage, the order passed by the second respondent, terminating the contract is per se and illegal and therefore, prays for allowing the Writ Petition.

3. According to the learned Standing Counsel appearing for the second respondent, as per Clause 4 of the Contract Agreement entered between the parties, it stipulates that, in case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with the agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. Therefore, without approaching the Arbitrator, filing of Writ Petition before this Court is not maintainable and prays for dismissal of the Writ Petition.

4. For better appreciation, the relevant provisions of the Contract is extracted hereunder:-

"4. Arbitration (GCC Clause 25.3)

The Procedure for arbitration will be as follows:-

25.3 (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral Tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period

of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the President of the Institution of Engineers (India), Tamil Nadu Chapter."

5. In view of the Clause 4 of the Contract Agreement, the Writ Petition is not maintainable and as per the Clause, in case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with the agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. Therefore, the disputed fact can be decided by the Arbitrator as per Clause 4 of the Agreement (GCC Clause 25.3).

6. Accordingly, the Writ Petition is dismissed with liberty to the petitioner to approach the Arbitrator and seek remedy in the manner known to law. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

r n s
To

1.The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Kamarajar Salai,
Chepuak, Chennai -5.

2.The Commissioner,
Erode City Municipal Corporation,
New No.246, Old No.894,
Brough Road,
Erode - 638 001.

+1 CC to Govt. Pleader sr 24746.

+1 CC to Mr.C.H.Vinobha Gandhi, Advocate sr 24164

+1 CC to Mr.M.Rajamtathivanan, Advocate sr 24046.

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KK(CO)
SP(12/04/2019)