

HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.390 of 2019

ORDER:

The grievance of the petitioner is with regard to the order dated 03.10.2018 passed by the Chief Engineer, Panchayat Raj, Engineering Department, Government of Telangana, purporting to dismiss the appeal filed by him.

The said appeal was filed by the petitioner under Clause 24.2 of the General conditions of contract applicable in relation to construction of a bridge @ 5/0 KM on the road from Kanchanapalli to Ananthogu of Gundala Mandal, Khammam District. This appeal arose out of the order dated 29.5.2018 passed by the very same Chief Engineer, Panchayat Raj, Engineering Department, Government of Telangana, in exercise of power under Clause 24.1 of the General conditions of contract.

For the purpose of clarity, it would be appropriate to examine the relevant Clauses of the General conditions of contract, which read as under:

Clause 24.1: If any dispute or difference of any kind what-so-ever shall arise in connection with or arising out of this contract or the execution of works or maintenance of the works thereunder, whether before its commencement or during the progress of works or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred for settlement to the competent authority within 45 days of arising the dispute or difference, described along with their powers in the contract data, above the rank of the Engineer. The competent authority shall, within a period of forty-five days being requested in writing by the contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so

referred shall, subject to review as hereinafter provided, be final and binding upon the contractor. In case the works is already in progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending disposal of the decision of the competent authority as aforesaid, with all due diligence.

Clause 24.2:- Either party will have the right of appeal against the decision of the competent authority to the Standing Empowered Committee within 90 days of decision of the competent authority if the amount appealed against exceeds rupees one lakh.

Clause 24.3:- The composition of the Empowered Standing Committee will be:

- (i) One official member, Chairman of the Standing Empowered Committee not below the rank of Additional Secretary to the State Government.
- (ii) One official member not below the rank of Chief Engineer and
- (iii) One non-official members who will be technical expert of Chief Engineer level selected by the contractor from panel of three persons given to him by the employer."

In the light of the scheme contemplated by the aforesaid General conditions of contract, the Chief Engineer being the primary authority rejected the claim of the petitioner *vide* the order dated 29.5.2018. The appeal therefrom would lie to the Standing Empowered Committee within 90 days of the decision of the primary authority.

In the case on hand, the petitioner preferred such an appeal. In terms of Clause 24.3 of the General conditions of policy, the Standing Empowered Committee is to consist of various members.

Perusal of the impugned order dated 03.10.2018 does not reflect consideration of the petitioner's appeal by the Committee which ought to have been constituted under Clause 24.3 of the General conditions of contract.

The impugned order demonstrates that the very same Chief Engineer who acted as the primary authority straightaway dismissed the petitioner's appeal. Apart from the fact that the Chief Engineer could not have acted in this dual capacity, the consideration of the appeal ought to have been by the Standing Empowered Committee duly constituted in terms of Clause 24.3 ensuring that the very same Chief Engineer who acted as the primary authority was not made part thereof.

This procedure was not followed as is clear on the face of the record. Thus, on grounds more than one, the order dated 03.10.2018 passed by the Chief Engineer, Panchayat Raj, Engineering Department, Government of Telangana, in exercise of appellate power cannot be sustained.

The Writ Petition is accordingly allowed setting aside the impugned order dated 03.10.2018, passed by the Chief Engineer, Panchayat Raj, Engineering Department, Government of Telangana. The State of Telangana, respondent No.1 herein, shall ensure that the petitioner's appeal is placed before the duly constituted Standing Empowered Committee, seeing to it that the very same Chief Engineer who passed the order dated 29.5.2018 is not made part thereof. This exercise shall be completed within three weeks from today. The said Committee shall consider the petitioner's appeal on its own merits and in accordance with the norms expeditiously and

in any event, not later than four weeks from the date of constitution of such Committee.

Pending Miscellaneous Petitions, if any, shall stand closed in the light of this order. No order as to costs.

JUSTICE SANJAY KUMAR

20th February, 2019
Dr

