

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION Nos.4528 & 8361 OF 2019

COMMON ORDER:

As the legal issue involved in both the writ petitions is one and the same, they are being disposed of by this common order.

2. M/s.Chabbras Associates is the petitioner in both the writ petitions. It filed W.P.No.4528 of 2019 challenging the proceedings of the Chairman-cum-Managing Director of HSCC (India) Limited, second respondent therein, dated 20.02.2019 terminating the contract work with the petitioner. It filed W.P.No.8361 of 2019 challenging the tender notice dated 29.03.2019 issued by the Deputy General Manager (Civil) of HSCC (India) Limited, third respondent therein, inviting fresh bids.

3. For the sake of convenience, the parties shall be referred to as they are arrayed in W.P.No.8361 of 2019.

4. It is the case of the petitioner-firm that the second respondent, which is a Government of India undertaking, called for tenders on behalf of the National Institute of Animal Bio-Technology, the third respondent, vide NIT No.SCC/NIAB/Hyd/Phase-II/2018, dated 11.04.2018, for construction of Phase II works comprising Director Residence, Type-II, III, IV and V residential quarters for third respondent. In pursuance of the said tender notice, four contractors, including the petitioner, participated in the tender process and stood as

successful bidder. Thereafter, the second respondent issued a Letter of Award dated 20.08.2018 prescribing the period for completion of work as 12 months, commencing after 15 days from the date of Letter of Award. The petitioner averred that though the second respondent issued Letter of Award, it did not provide necessary designs, drawings and other incidental information to the petitioner to commence the work, in spite of its repeated requests through e-mails. Thereafter, on 03.10.2018, an Architect was sent by the second respondent, who directed the petitioner to carryout the jungle clearance and earth excavation work for recreation center, for which, the petitioner complied the same. Thereafter, the second respondent entered into an agreement dated 18.09.2018 with the petitioner at Delhi, but a copy of the same could not be furnished to the petitioner in spite of its repeated requests. The petitioner alleged that its Managing Partner was called up to Delhi on 27.11.2018, where respondent Nos.5 and 7 in W.P.No.4528 of 2019 demanded him to pay Rs.1.25 crores as an extraneous consideration for smooth progress of the work and the petitioner rejected the same. Subsequently, the second respondent issued a show cause notice dated 30.01.2019 pointing out certain lapses on the part of the petitioner. Though the petitioner submitted a reply to the same, the second respondent, without considering the same, issued proceedings dated 20.02.2019, terminating the contract work and also forfeiting the bank guarantee of Rs.89,46,404/-. Challenging the same, the petitioner filed W.P.No.4528 of 2019. During the pendency of the said writ

petition, the second respondent called for a fresh tender vide No.HSCC/NIAB/HYD/PHASE-II/2019, dated 29.03.2019, inviting tenders for the aforesaid works. Challenging the same, the petitioner filed W.P.No.8361 of 2019.

5. A counter-affidavit is filed on behalf of Respondent Nos.2 to 7 in W.P.No.4528 of 2019 stating that though the petitioner is having alternative remedy of referring the disputes for adjudication by way of arbitration, it did not avail the same. It is averred that as the petitioner had failed to take up the work in the time prescribed, the second respondent issued the show cause notice dated 31.01.2019. After considering the reply of the petitioner, and the under performance of the contractual obligations on the part of the petitioner, it was decided to determine the agreement under Clause 3 of General Conditions of Contract and accordingly, the impugned orders were passed.

6. Sri A.Sudershan Reddy, learned counsel representing Sri P.Udaya Bhaskara Rao, learned counsel for the petitioner in both the writ petitions, submits that as per Clause 3-A of Tender Document, if the work could not be commenced within 1/8th period of stipulated time for completion of work or one month, whichever is higher, either party may close the contract by giving a notice to the other party stating the reasons. In the present case, though Letter of Award was issued on 20.08.2018, the delay is occurred on the part of the second respondent for its failure to provide necessary designs, drawings and other incidental information to

the petitioner, and hence, the second respondent did not take any action as per Clause 3-A of Tender Document. Therefore, termination of contract and issuance of fresh tenders vide impugned proceedings dated 20.02.2019 and 24.04.2019, is illegal and arbitrary. He further submitted that though the matter is arising out of a contractual obligation, a writ petition as against a State or an instrumentality of a State is maintainable. To buttress his arguments, he relied upon a judgment of the Apex Court in **ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd.**¹.

7. Sri Sourav Mishra, learned Senior Counsel representing Sri V.Ramesh Kumar, learned counsel for respondent Nos.2 to 4 in W.P.No.4528 of 2019 and respondent Nos.2 to 5 in W.P.No.8361 of 2019, submits that the contract between the parties is a contract in the realm of private law. As the contract is not a statutory contract, it is governed by the provisions of the Contract Act. Hence, any dispute relating to interpretations of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration, as provided by the contract, or for the civil court, as the case may be, and therefore, termination of contract and issuance of fresh tenders, in pursuance of a private contract, cannot be agitated in or adjudicated upon a writ petition under Article 226 of the Constitution of India. He further submits that as per Clause 2

¹ (2004) 3 SCC 553

of Specific Conditions of Contract, the Courts at Delhi shall have exclusive jurisdiction to entertain any disputes arising out of the contract, and hence, the present writ petitions are not maintainable on that ground also. He further submits that there is a procedure prescribed under Clause 25, which provides for constitution of Dispute Redressal Committee and also for appointment of Arbitrator, for resolution of disputes, if any arise. When the contract itself provides for a mode of settlement of disputes arising from the contract, parties should follow and adopt that remedy and hence, he seeks to dismiss the writ petitions on this ground also. To buttress his argument, he relied on a judgment of the Apex Court in **State of U.P. Vs. Bridge & Roof Co. (India) Ltd.**² and a judgment of the A.P. High Court in **Uttar Pradesh State Road Transport Corporation Vs. K.L. Hi-Tech Secure Print Ltd., Hyderabad**³.

8. As could be seen from the above arguments, one of the questions that arises for consideration is whether a writ petition under Article 266 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party?

9. In **ABL International Ltd.**'s case (supra), the Apex Court, having reviewed the entire law on the subject and adverting to the question, held that 'on a given set of facts if "the State" acts in an

² (1996) 6 SCC 22

³ (2004) 4 ALD 682 (DB)

arbitrary manner even in a matter of contract, an aggrieved party can approach the Court by way of writ under Article 226 of the Constitution of India and the Court, depending on facts of the said case is empowered to grant the relief'. It is to be noted that the said judgment, in my opinion, in no manner supports the contention of the writ petitioner, for, in contractual matters, the remedy under Article 226 of the Constitution of India is always available even if the contract itself provides a mode for settlement of disputes arising from the contract. Hence, the said decision cannot help the petitioner.

10. In **Bridge & Roof Co. (India) Ltd.**'s case (supra), the Apex Court held that 'when the dispute relating to terms of private contract, proper course would be to reference to arbitration or institution of suit and not writ petition'. In **K.L. Hi-Tech Secure Print Ltd., Hyderabad**'s case (supra), the A.P. High Court had occasion to deal with the issue whether a writ petition is maintainable to resolve the disputes arising out of concluded commercial contractual obligations between a citizen and the State or its instrumentalities even in cases where the contract itself provides for the Forum to resolve the disputes. The A.P. High Court held that 'the remedy under Article 226 of the Constitution of India may be available to enforce the contractual obligations of a State or its instrumentality depending on the facts of each case but the Public Law remedy is not available to annul or modify or whittle down the clauses in the agreement. The remedy lies elsewhere.' It

also held that 'having regard to the complex nature of facts and the nature of disputes between the parties and having regard to the agreement between the parties to resolve the disputes by referring the same to the Arbitrator, we hold that it is not a fit case for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India'.

11. In the present case also, the disputes relate to a private contract. Under Clause 25, procedure has been prescribed for constitution of Dispute Redressal Committee and also for appointment of Arbitrator, for resolution of disputes, if any arise. When the contract itself provides for a mode of settlement of disputes arising from the contract, filing of the present writ petitions is not just. The facts in **Bridge & Roof Co. (India) Ltd.**'s case (supra) and **K.L. Hi-Tech Secure Print Ltd., Hyderabad**'s case (supra) squarely apply to the facts of the present case.

12. For the aforesaid reasons, the writ petitions are dismissed. However, this order shall not preclude the petitioner to avail the remedies that are available to it under law. Miscellaneous petitions pending in both the writ petitions, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 30.04.2019
TJMR

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