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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 27.11.2019

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W.P.(C) 11256/2019 & CM 46351/2019

M/S SANJAY AGRAWAL

..... Petitioner

Through: Ms.Kiran Suri, Sr. Adv. with
Mr.Suryadeep Singh, Ms.Radha R.Tarkar,
Mr.Sidhant Dwivedi, Ms.Aishwarya Kumar,
Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Gaurav Varma, Mr.Annu
Singh, Advs. for R-1/UOI.
Mr.Devashish Bharuka, Mr.Justine George,
Advs. for R-2-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner *inter alia* praying for the following reliefs:

“a) Issue a writ in the nature of Mandamus, or any other appropriate WRIT, order or direction, thereby, directing the Respondent No.1 to comply with the decision taken in the meeting dated 13.06.2019 and allow the Petitioner to complete the work of construction of bypass around Gumla town connecting NH-78 and NH-23 (R - G) (km 0.00 to km 12.842) in the State of Jharkhand in accordance with the terms of agreement dated

15.12.2015 and, consequentially set aside the termination dated 24.04.2019.

b) Issue a writ in the nature of Mandamus, or any other appropriate WRIT, order or direction, thereby, directing the Respondent No. 1 to refund an amount of Rs.5,17,05,000/- and allow the Petitioner to submit a fresh bank guarantee of the same amount as Performance Security towards completion of the Project Works.”

2. It is the case of the petitioner that the petitioner had been awarded the work of the construction of bypass of Gumla town connecting NH-78 and NH-23 (R-G) (km 0.00 to km 12.842) in the State of Jharkhand and Agreement dated 15.12.2015 was executed for the said purpose.

3. Alleging breach of the terms of the Agreement, the respondent no.3 terminated the contract of the petitioner by its letter dated 24.04.2019. The petitioner represented against such termination by its letter dated 29.04.2019, which was forwarded by the respondent no.2 to the respondent no.1 for its consideration.

4. In a meeting held on 13.06.2019 under the Chairmanship of the Director General (RD) & SS, Ministry of Road Transport of Highways, it was observed as under:

“5. Authority Engineer has informed that the Agreement has been signed on 15.12.2015 with appointed dated on 02.02.2016. As per contract, Land in 90% of the length will be handed over within 10 days of signing of agreement. Further,

Land in balance 10% of the length was to handed over within 150 days of the appointed date. AE has produced the statement of availability of land which is enclosed herewith at Annex-II. It is noted that there is delay in handing over the land. Further, there encumbrances has been observed at every km of the stretch. The entire stretch of encumbrance free land was handed over to the Contractor in June, 2018.

6. DG(RD) & SS inquired about the slippages of the target given by the Contractor in June, 2018. The Contractor submitted that the delay in the work was due to financial crunch, encumbrances at sight and the project site falling under heavy naxal affected area. The Contractor assured to complete the Project excluding major bridges by December, 2019 and in all respect by March, 2020, for which he has submitted an affidavit regarding revised work programme indicating fortnightly targets for different item of works. The Contractor confirmed that there is no encumbrance at site to hinder the progress the work at present.

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8. As it is evidence that there is delay in handing over the encumbrance free land within stipulated time as stipulated in the contract. It would be legally unjustified to terminate the Contract and accordingly State PWD was advised to take necessary action to get the work done. It would be fair enough to grant extension of time for construction up to March, 2020 failing which action as envisaged in the Contract may be initiated. Further, more progress of the Contract would be regularly monitored viz a viz milestone submitted by him by RO, MoRTH & reported.”

5. The present petition was filed by the petitioner as the respondents did not communicate any further decision on the above referred Minutes of Meeting.

6. The respondent no.1 has filed its counter affidavit *inter alia* contending therein that pursuant to the Minutes of Meeting dated 13.06.2019, an advise was sought from the Department of legal affairs, the Ministry of Law, on whether the termination of the contract can be revoked without any legal complication as per the contract. The Department of Legal Affairs rendered an opinion on 02.08.2019 *inter alia* opining as under:

“It is noted that there is no stipulation, either expressly or impliedly, under the said contract agreement to the effects that contract which has once ceased to exist by virtue of the termination order issued by the Government can be revived or reinstated. Further, it is settled position of law that once a contract has been terminated, either on the breach of terms of contract by one party and subsequent repudiation by the other or by frustration of the contract due to circumstances beyond the control of either of the parties, the contract legally comes to an end between the parties. What follow is only the legal consequences which may have been contemplated in the terms of the contract e.g. liquidated damages, etc. Since the contract has been terminated under article 23.1.1(C) of Contract, in absence of any stipulation under the contract for its revival after the termination, the terminated contract cannot be revived.”

7. The learned counsel for the respondents further submits that based on the above opinion, the respondents decided not to revive the contract of the petition.

8. In my opinion, the opinion of the Ministry of Law is totally flawed. There is nothing in the contract or the Indian Contract Act, 1872 that prohibits a party to a contract to reconsider its decision to terminate the contract on a representation made by the other.

9. It is a settled law that even in the matter of contract, the respondents, as a 'State' must act reasonably and not in an arbitrary manner. Therefore, if certain circumstances are brought to the notice of the respondents that may require the respondents to revoke its decision to terminate the contract, it cannot still insist upon continuing with such decision to terminate only for absence of a provision under the contract allowing revocation of its decision.

10. As the decision of the respondents to persist with the termination of the contract is based on the legal advice that it had received and which has not been found to be correct by this Court, the respondents are directed to take a decision on the further course of action to be adopted on the Minutes of Meeting dated 13.06.2019 referred to hereinabove, without being influenced by such opinion of the Ministry of Law. Such decision be taken by the respondents within a period of four weeks of communication of copy of this order.

11. Needless to say, the respondents would take such decision remaining uninfluenced by any observation made by this Court in the present order. Further, incase the petitioner is aggrieved of the decision taken by the respondents, it will be open to the petitioner to avail its legal remedies.

12. It is again clarified that this Court has not expressed any opinion on the legality or otherwise of the termination of the contract by the respondents.

The petition is disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 27, 2019
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