HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION NO: 12331 OF 2020

Between:

1. M. Butchaiah, S/o Venkateswarlu, Aged 47 years, occ. Business, R/o Manikyaram, Singareni Mandal, Bhadradri Kothagudem District.
2. Bukya Ratna, S/o Ramu, Aged 49 years, occ. Business, R/o Suraram, Kothagudem.
3. U. Srinivasarao, S/o Venkateswarlu, Aged 48 years, occ. Business, R/o 4-46/28, Chanbdrugonda, Kothagudem.

...PETITIONERS

AND

1. The Principal Chief Conservator of Forests, Aranya Bhavan, Saifahad, Hyderabad.
2. The Chief Conservator of Forests/Conservator of Forests, Kothagudem, Bhadradri Kothagudem District.
3. The Forest Divisional Officer, Kothagudem, Bhadradri Kothagudem.
4. The Superintending Engineer, Road and Buildings, Khammam Circle, Kharnmam.
5. The Superintending Engineer, Sitarama Lift Irrigation Project, Khammam.
6. The Superintending Engineer, Panchavat Raj Department, Khammam.
7. The Superintending Engineer, Mission Bhageeradha, Khammam.
8. The Superintending Engineer, Rural Water Scheme, Kothagudem.
9. The Superintending Engineer, I and CAD, Khammam Circle,Khammam
10. Commissioner of Municipality, Kothagudem Municipality, Kothagudem.
11. Commissioner of Municipal Corporation, Khammam Municipal Corporation,Khammam.
12. Commissioner of Municipality, Yellandu Municipality, Yellandu,
13. Commissioner of Municipality, Paloncha Municipality, Paloncha

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass an order or direction or writ, in the nature of Mandamus duly declaring the action of the respondents 4-13 in stopping the dues arising out of the works done by the petitioners by virtue of the impugned letter of the 2nd respondent vide Rc.291/2017/ M3, dated 03.07.2020 as illegal, arbitrary and against the principles of natural justice and consequently, direct the respondents 4 -13 to ignore the said letter and disburse the funds due to the petitioners as per their entitlement against the works done by them to the respective respondents.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 4 - 13 to ignore the said letter vide Rc.291/2017/M3, dated 03.07.2020,

and disburse the funds due to the petitioners as per their entitlement against the works done by them to the respective respondents, suspend the operation of letter of the respondents.

Counsel for the Petitioner: SRI. P. RAMA SHARANA SHARMA

Counsel for the Respondent Nos.1 to 3: GP FOR FORESTS

Counsel for the Respondent No.4: GP FOR ROADS AND BUILDINGS

Counsel for the Respondent No.5 & 9:
GP FOR IRRIGATION & COMMAND AREA DEVELOPMENT DEPARTMENT

Counsel for the Respondent Nos.6 to 8:
GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for the Respondent Nos.10 to 13: SRI N. PRAVEEN KUMAR,
SC FOR MUNICIPALITIES

The Court made the following: ORDER

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No.12331 of 2020

ORDER:

This writ petition is filed seeking to declare the action of respondent Nos.4 to 13 in stopping the dues arising out of the works done by the petitioners by virtue of the letter Rc.291/2017/M3 dated 03.07.2020, of the 2nd respondent, as illegal and arbitrary.

2. The brief facts are that the petitioners were successful bidders in an open tender for construction of protection wall at Chathakonda Reserve Forest, Kothagudem, and that they were independently allotted the works on 14.06.2019 with the estimated contract value, and accordingly, they entered into a contract agreement with the respondents duly signed by respondent No.2. It is stated that as per Clause 18 of the said agreement, the payment will be made as per schedule and on making physical inspection of the quality and quantity of the work done. The petitioners commenced the work and completed 95% of the work as per the schedule and they have received more than 70% of the amount for the work done. While so, the petitioners have received a communication from respondent No.3 on 18.01.2020, directing them to stop the work, but the reason to stop the work was not mentioned. Though the petitioners had personally met respondent No.3, there was no response from him. In the meantime, respondent No.2 issued the impugned letter dated 03.07.2020, stating that the petitioners have not followed specifications as per the agreement and requested the contractors to withhold payments and deposits for any work awarded to the petitioners. Aggrieved by the same, the present writ petition is filed.

3. Respondent No.3 filed counter-affidavit stating that the petitioners have failed to maintain the quality and quantity in execution of the work for construction of protection wall at Chatakonda Reserve Forest and that they also failed to execute the work as per the sanctioned estimates and agreement condition and as such, respondent No.2 issued proceedings invoking agreement condition Nos.27 and 28 in order to avoid misappropriation of Government funds. It is further stated that as per the orders of respondent No.1 vide Rc.No.243/2020/Vig.1 dated 17.01.2020, respondent No.3 issued orders to stop the works and to assess the quality of work done. It is further stated that as per the quantities recorded in the work measurement books and as per the records, the petitioners have to pay an amount of Rs.12,51,785/- to the Government. It is also stated that in order to avoid financial loss to the Government and to protect public money, respondent No.2 issued the impugned letter and thus, the writ petition is liable to be dismissed.

4. Learned counsel for the petitioners submits that the respondents have no right to direct the other departments to withhold the amounts. He also submits that deficiency is only in respect of one item of the work even according to the report and that an amount of Rs.52 lakhs and odd is lying with the department towards EMD (Earnest Money Deposit) and FSD (Fixed Security Deposit) and that the respondents are liable to pay the amounts for the work already done by the petitioners and that an amount of Rs.1 crore is due from the respondents. He further submits that even according to the counter affidavit, the petitioners are due only an amount of Rs.12,51,785/- and as such, Clause 28 of the contract agreement applies only in case of over payment or wrong payment.

5. Learned Government Pleader for Forests submits that since there were complaints, inspection was done and certain deficiencies were found in the work done by the petitioners and that before initiating action by the respondents, the present writ petition is filed. She further submits that the impugned action is traceable to the condition under Clause 28 of the agreement and that no exception can be taken. She also submits that the writ petition is not maintainable as the agreement contains arbitration clause.

6. It is to be seen that there is no dispute that the petitioners were independently allotted with the work for construction of compound wall for protection of Reserve Forest and there is also no dispute that the petitioners have completed part of the work. But, there is a dispute with regard to quality of the work done by the petitioners. However, this Court is not inclined to go into the merits of the matter since the contract agreement contains arbitration clause.

7. At the hearing, learned counsel for the petitioners submits that the petitioners are ready and willing to give security to the amount of Rs.12,51,785/-, which is liable to be paid by them as per the counter-affidavit without prejudice to their rights to challenge the said determination, in appropriate proceedings and in order to protect the interest of the Government and since the petitioners are ready and willing to give security for the amount of Rs.12,51,785/-, as mentioned in the counter-affidavit, this Court is of the view that the impugned letter dated 03.07.2020, shall be kept in abeyance, on production of Bank guarantee by the petitioners to the value of Rs.12,51,785/-, which would be subject to further proceedings to be initiated by the respondents or in case of invocation of arbitration proceedings. On furnishing such Bank

guarantee by the petitioners, the respondents shall intimate the same to the other Departments enabling the petitioners to receive the amounts from the said Departments.

8. With the above direction, the Writ Petition is disposed of. No order as to costs.

9. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Chief Conservator of Forests, Aranya Bhavan, Saifahad, Hyderabad.
2. The Chief Conservator of Forests/Conservator of Forests, Kothagudem , Bhadradri Kothagudem District.
3. The Forest Divisional Officer, Kothagudem, Bhadradri Kothagudem.
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11. Commissioner of Municipal Corporation, Khammam Municipal Corporation, Khammam.
12. Commissioner of Municipality, Yellandu Municipality, Yellandu,
13. Commissioner of Municipality, Paloncha Municipality, Paloncha
14. One CC to Sri P. Rama Sharana Sharma, Advocate [OPUC]
15. Two CCs to GP for Forests, High Court for the State of Telangana at Hyderabad. [OUT]
16. Two CCs to GP for Roads and Buildings, High Court for the State of Telangana at Hyderabad. [OUT]
17. Two CCs to GP for Irrigation & Command Area Development Department, High Court for the State of Telangana at Hyderabad. [OUT]
18. Two CCs to GP for Panchayat Raj & Rural Development, High Court for the State of Telangana at Hyderabad. [OUT]
19. One CC to Sri N. Praveen Kumar, SC for Municipalities [OPUC]
20. Two CD Copies

CHR

HIGH COURT

DATED:06/11/2020

ORDER

W.P.No.12331 of 2020



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

25
MMA
Dt 23/11/2020.