

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.16659 of 2020

ORDER:

This writ petition is filed seeking a writ of *mandamus* declaring the action of respondent Nos.2 to 6 in not supplying the materials for execution of the work i.e., construction of Intra Village Pipelines, OFC Duct & Household connections at Chintha Pally H/o Chintha Pally G.P, Keshya Thanda H/o Chinthapalli G.P, Bonthu Gutta H/o Chinthapalli G.P, FCI Thanda H/o Chinthapalli G.P, Valya Thanda H/o Chinthapalli G.P, Botya Naik Thanda H/o Chinthapalli G.P, Teekya Thanda H/o Chinthapalli G.P, Balu Thanda H/o Chinthapally G.P., Mahesh Puram H/o Chinthapally G.P of Miryalguda Mandal, as per the Standard Technical Specifications, as illegal and arbitrary.

.2 Heard learned counsel for the petitioner, learned Government Pleader for Irrigation and Command Area Development and learned Government Pleader for Panchayat Raj and Rural Development for the respondents. With their consent, the Writ Petition is disposed of at the stage of admission itself.

3. The case of the petitioner, in brief, is that he belongs to Scheduled Tribe (Lambada) and he is a civil contractor and that pursuant to the tender notification issued by the Government of Telangana calling tenders for RWS & S (Mission Bhagiratha) 2017-18 for the above stated works, the petitioner has applied for the same, and the contract was awarded to him. The value of the said contract is Rs.33,15,187/-. According to the petitioner, Intra Pipeline Package No.5 was allotted to him, and accordingly, he entered into an agreement dated 03.10.2018. As per the said

agreement, the work has to be completed within four months from the date of the agreement. The Government has decided to take up supply and laying of PLB HDPE pipe duct for providing OFC Cable through the trench of intra village water pipeline of Mission Bhagiratha RWS & S up to the house hold in the Gram Panchayat. The contractor shall take up the work and complete the same as per the standard technical specifications. Therefore, he approached respondent Nos.2 to 6 for supply of material, which is necessary for execution of the work, but they have not supplied the material to him. Despite making several representations and repeated oral requests, respondent Nos.2 to 6 have not supplied the material to him. Further, the petitioner came to know that the very same authorities have supplied the material to other similarly situated contractors and they have completed the work also. It is stated that due to political pressures, respondent Nos.2 to 6 are not supplying the material to him. Therefore, again he made a representation on 16.05.2020 to respondent Nos.2 to 6 requesting them to supply material for execution of the work. But, so far no action has been taken thereon.

4. A counter affidavit has been filed by respondent No.5 - the Deputy Executive Engineer, RWS & S Miryalguda, Nalgonda District, stating that the estimated cost of the subject contract work is Rs.37.66 Lakhs and that the offer of the petitioner was accepted and accordingly, he entered into an agreement dated 03.10.2018. It is stated that as per the terms and conditions of the agreement, the petitioner should complete the work within four months from the date of agreement. But, due to personal reasons, the petitioner neither commenced the work nor applied for EOAT (Extension of

Agreement of Time). Therefore, the respondent authorities have not supplied the material for execution of the work. It is further stated that the respondent authorities have informed the petitioner time to time to carryout the subject work and complete the same within the stipulated time, but he has not carried out the work, and dragging the matter on one pretext or the other. It is stated that the petitioner failed to engage the earth movers and proper man power at the work site. It is further stated that the petitioner has approached this Court with unclean hands, and therefore, he prayed to dismiss the writ petition.

5. A reply affidavit has been filed by the petitioner denying the averments made in the counter affidavit filed by respondent No.5 and specifically stating that though the petitioner has approached respondent Nos.3 to 6 for supply of material, they stated that the Telangana State Assembly Elections Code came into force, and therefore, it is not possible to supply the material to him. After the Assembly Elections of 2018, the petitioner has approached respondent Nos.3 to 6 and made a representation for EOAT (Extension of Agreement of Time) and that they made an endorsement on the letter of the petitioner dated 03.01.2019. That respondent Nos.3 to 6 have also made an endorsement on another letter of the petitioner dated 31.01.2019. It is further stated that due to negligence on the part of respondent Nos.3 to 6 in supplying the material, the petitioner could not complete the work, due to which, the tribals are facing drinking water problem. It is further stated that respondent Nos.3 to 6, under political pressure, have not supplied the material to the petitioner in order to disqualify him to execute the contract work, and to cause loss to him.

6. A perusal of the documents filed by the petitioner especially the letter dated 31.01.2019 addressed to the Executive Engineer, R.W.S. & S Division, Nalgonda, clearly establishes that the petitioner has given a letter for extension of time for the agreement entered and the same was endorsed by the authority concerned. The petitioner has also addressed a letter dated 16.05.2020 to the Chief Engineer, RWS Hyderabad, bringing to the notice of the authority the factual background and also that the material for extension of the work is not being handed over to the petitioner. In the counter filed by respondent No.5, there is absolutely no denial about the receipt of these letters or about the endorsement made by the officer concerned. Except stating that the petitioner has not submitted any letter for extension of time, nothing has been stated with regard to the letter dated 31.01.2019. The counter does not state as to whether the petitioner was put on notice at any point of time after the contract was awarded to complete the works within the stipulated time or not. In the absence of any correspondence by the authorities to the petitioner, the version of the petitioner that the authorities have not supplied the required material to the petitioner to complete the contract work has to be taken as true. The authorities have not bothered to give any reply to the letter dated 16.05.2020 addressed by the petitioner to the Chief Engineer, RWS Hyderabad. Therefore, an adverse inference has to be drawn. The counter is also silent as to whether the work has been completed by some other contractor or not.

7. The averments in the writ petition affidavit, points to the fact that the work is yet to be executed and there is no denial of the same in the counter affidavit. When the petitioner has been

awarded the contract, it is obligatory on the part of the authorities to supply the required material as per the terms of the contract to complete the work. If the authorities do not supply the material, it is not understandable as to how the contractor is supposed to complete the work. There is no material on record to show that the non completion of the work by the petitioner is because of the lapses committed by the petitioner, and he has to be blamed for the same. In view of the above, this Court has to necessarily hold that the non-supply of the required material by the authorities is the reason for non completion of the works by the petitioner and not due to the lapses committed by the petitioner.

8. For the aforementioned reasons, the Writ Petition is allowed and the respondent authorities are directed to supply the required material for completion of the contract work i.e., construction of Intra Village Pipelines, OFC Duct & Household connections at Chintha Pally H/o Chintha Pally G.P, Keshya Thanda H/o Chinthapalli G.P, Bonthu Gutta H/o Chinthapalli G.P, FCI Thanda H/o Chinthapalli G.P, Valya Thanda H/o Chinthapalli G.P, Botya Naik Thanda H/o Chinthapalli G.P, Teekya Thanda H/o Chinthapalli G.P, Balu Thanda H/o Chinthapally G.P., Mahesh Puram H/o Chinthapally G.P of Miryalguda Mandal, forthwith to the petitioner so as to enable him to complete the work within the stipulated time.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 05-01-2021
va/sur