

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.22965 of 2022

ORDER:

When the matter is taken up for hearing learned counsel for the petitioner as well as learned Government Pleader appearing for respondents submits that in the similar matter this Court has disposed the W.P.No.22944 of 2022 on 15.11.2022 and placed the copy of the order.

The present Writ Petition is filed seeking a writ of mandamus declaring the action of the respondents in not paying the bill of Rs.7,50,000/- in respect of the Tree guards supplied by the petitioner pursuant to the work order in proceedings in RC.No.1758/2018/S4/Tenders (ii) dated 29.02.2020 as illegal and arbitrary and consequently to direct the respondents to pay the bills in accordance with the tender conditions and to pass such other order or orders.

2. Brief facts leading to the filing of the present Writ Petition are that the respondent No.1 had issued instructions to the respondents No.2 and 3 for planting trees on the National Highway 163 and main road at Ghanpur and accordingly, the 2nd respondent has issued a tender notification inviting tenders from the eligible

contractors for the “Cost and Supply of iron mesh tree guards”. Since, the petitioner industry was manufacturing the Tree guards, it had participated in the tenders and submitted sealed tenders. The petitioner and three others were found to be successful tenderers and accordingly, negotiations were held and tender committee agreed to distribute the indent equally amongst the three participants at the rate of Rs.125 for each tree guard. It is submitted that the 2nd respondent through his proceedings No.1758/2018/S4/Tenders (ii), dated 29.02.2020 requested the petitioner to supply 11,800 tree guards of 6 feet height with 1800mm. Accordingly, the petitioner entered into an agreement with the 2nd respondent and as per the work order dated 29.02.2020, the petitioner supplied 11,800 tree guards on various dates and the respondents have received the same. According to the petitioner, the total cost of the tree guards supplied by him is Rs.7,50,000/-. It is submitted that the petitioner has submitted all the necessary documents as required by the respondent for payment of the bills. However, the payment has not been done by the respondents and in view thereof, the petitioner got issued a legal notice on 23.06.2021 and subsequently a representation was also made on 09.09.2021. Since, the petitioner did not receive the payment, the present Writ Petition has been filed.

3. Learned counsel for the petitioner, while reiterating the averments made in the Writ Affidavit, submitted that the petitioner has supplied the material as per the tender notification and that after issuance of notices about defects in the materials supplied by the 3 contractors, petitioner has supplied fresh material and the same has also been recorded in the books of the respondents, but no payment has been made so far. He further submitted that on the instructions of the Forest Divisional Officer to the respondent No.2 to get the material inspected by the Industrial Engineering Wing, the material was also got inspected and the report has been given by the Industrial Wing of ITI Warangal that the material has been found satisfactory. It is therefore submitted that there were no defects in the material supplied and there was no reason for not making the payment.

4. Learned Government Pleader for Forest however, relied upon the averments made in the counter affidavit and submitted that the material supplied by the petitioner was defective and the said defects have also been pointed out by the respondent No.2 vide letter dated 24.07.2020. It is submitted that as per the conditions of the agreement, the petitioner was required to replace the defective material whenever pointed out. He submits that the petitioner has also not given any details as to the material supplied and the

amount to be paid after reducing the sum for the defective material. He also relies upon one of the tender condition in the tender agreement wherein it is stipulated that the payment can be given as per the quality of the material supplied by the petitioner.

5. Having regard to the above submissions of both the parties, this Court finds that there is no dispute with regard to the material being supplied by the petitioner as per the tender agreement but the dispute is with regard to the quality of the material supplied. As pointed out by the learned counsel for the petitioner, the material has also been examined by the ITI Warangal and has been found to be satisfactory. Therefore, it is not understandable as to what are the other defects that were found by the Forest Department for withholding the payment due to the petitioner. Since the petitioner has already supplied the material and no defects have been pointed out with regard to the material supplied by the petitioner to the Forest Department, this Court finds that there is no reasonable cause for withholding the payment by Forest Department. In view thereof, this Court deems it fit and proper to direct the 2nd respondent to make the payment for the material supplied by the petitioner within a period of two (02) weeks from the date of receipt of a copy of this order. The Department is at liberty to point out the defects, if any, in the material supplied or in

the documents furnished by the petitioner and to give due opportunity to the petitioner to submit the same. The entire exercise shall be completed within a period of three (03) months from the date of receipt of a copy of this order. However, the Department shall make payment of minimum of 50% of the amount due to the petitioner forthwith before pointing out any defects and the balance as directed above shall be paid within a period of three (03) months thereafter.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE J SREENIVAS RAO

03rd February, 2023

PSW/GV

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