



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 3992 of 2024

M/s.Laxmi Construction Co. through its authorized representative:

Laxman s/o Dilipkumar Gupta

vs.

Union of India, through Ministry of Road Transport and High Way, through the Chief
Engineer and Regional Officer, Mumbai and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R. P Masurkar, Advocate for petitioner.

Mr. Nandesh Deshpande, Dy. Solicitor General of India, for respondent no.1.

Mr. N.S.Rao, Assistant Government Pleader for respondent no.2.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 9th JULY, 2024

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Heard.

2. The challenge in the petition is to the notice whereby a fresh tender is invited on 26.06.2024 in relation to the balance work which is identified as strengthening to Mandla – Nainpur – Balaghat – Gondia – Amgaon-Deori – Korshi - Bramhapuri Road, N.H.543 (Section Korchi to Deori) in Kms. 156/0 to 180/0 of SH-276 in Gondia District in the State of Maharashtra on EPC Mode.

3. It is the case of the petitioner that against the 'Appointed Date' i.e. 21.05.2020 it was required to complete the work in question within a period of nine months and default liability period was of thirty six months. Mr. Masurkar, counsel appearing for the petitioner would claim that the work in question was accepted by the petitioner 27% below the estimated value and has already completed the work.

4. So as to substantiate his contention that the petitioner has completed the work in question, he would invite our attention to the enclosure with the Office Memorandum dated 24.06.2024 produced on record at Annexure-R-18. He would claim that the report thereon in the tabular form depicts that the work in question was completed in

2022 and the finishing work such as side shoulders were pending, which have been completed recently. That being so, he would claim that only final bill is pending with the respondents which they have to process. However, a statement is made that during defective liability period, the petitioner is willing to execute all the defective works.

4. As such, it is claimed that the balance work which is tendered by the respondent at the estimated cost of Rs. 1,37,29,875/- is already executed and that being so, the tender notice ought not to have been issued.

5. As against above, the respondent-Authority has placed on record the fact about the expiry of the tender completion period of nine months and the failure of the petitioner to seek extension. It is further claimed that there already exists an arbitration clause and it is always open for the petitioner to take recourse to the arbitration agreement. He has invited our attention to Clause 26.3 of the Tender Agreement, which reads thus:

“26.3 : Arbitration

“(i) Any dispute which remains unresolved between the parties through the mechanisms available/prescribed in the Agreement, irrespective of any claim value, which has not been agreed upon/reached settlement by the parties, will be referred to the Arbitral Tribunal as per the Arbitration and Conciliation Act.

(ii) Deleted.

(iii) The Arbitral Tribunal shall make a reasoned award (the ‘Award’). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

(iv) The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

(v) This Agreement and rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution and Dispute in accordance with this Article.

(vi) In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five percent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120%(one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten percent) per annum from the date of interim payment to the date of final settlement of such balance.”

6. We have appreciated the submissions.

7. On one hand the petitioner is claiming that it has completed the work; whereas, the respondents are claiming that the petitioner has not yet completed the work in question. Both the parties have tried to demonstrate from their respective documents, which are placed on record, that what has been claimed by each of them is correct factual position. As such, it has to be inferred that the petition involves disputed question of fact.

8. Apart from above, the fact remains that the work in question was awarded to the petitioner at 27.66% below the tender value i.e. estimated cost. The petitioner should have completed the work within a period of nine months as was agreed by it, pursuant to the order dated 21.05.2020 issued by the respondent.

9. It is an admitted position on record that the petitioner within stipulated period i.e. within nine months, which was provided for completing the tender work, was unable to complete the work. There is no document on record to infer that the petitioner any time before has sought extension for completion of the balance work. However, it appears that the petitioner has assured that it has carried out the work at later point of time as could be noticed from the communication dated 26.06.2024 issued by the petitioner to the Executive Engineer, National Highway, Nagpur.

10. In these eventualities, we are of the view that no interference could be shown in extra ordinary jurisdiction as alternate remedy is available to the petitioner. As such, the petition fails and it is dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.