

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MAY, 2025

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION No.23866/2023(GM-RES)

BETWEEN:

1 . SHRI ANANDAMURTHY,
AGED ABOUT 62 YEARS,
SON OF LATE CHIKKABEERANNA,
R/AT No.217, 8TH CROSS,
X MAIN I BLOCK,
HMT LAYOUT,
NAGASANDRA POST,
BENGALURU 560073.

...PETITIONER

(BY SRI GIRIDHAR H., ADVOCATE)

AND:

1 . SOUTH WESTERN RAILWAY,
OFFICE BY THE DY. CHIEF ENGINEER/
CONSTRUCTION- I,
AT No.18, MILLERS ROAD,
BENGALURU 560046.

REPRESENTED BY ITS
DEPUTY CHIEF ENGINEER/
CONSTRUCTION - I,
SHRI P. V. SATYANARAYANA,

...RESPONDENT

(BY SRI VAIBHAV RAVI MALIMATH, ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ANNEXURE-E FINAL TERMINATION NOTICE DTD
10/08/2023 ISSUED BY THE RESPONDENT TO THE PETITIONER

AND DIRECT THE RESPONDENT TO REFUND EMD AND SD AMOUNTING TO A SUM OF RS.1,01,80.070/- AVAILABLE WITH THE RESPONDENT TO THE PETITIONER FORTHWITH.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. ORDER

Heard Sri. H. Giridhar, learned counsel for the petitioner and Sri Vaibhav Ravi Malimath, learned counsel for the respondent.

2. The instant writ petition is filed challenging the termination notice dated 10.08.2023, Annexure-E, issued by the respondent.

3. The brief facts of the case are that the respondent invited tender No. TK-RDG-72 for providing skilled manpower for various services, including Professional Housekeeping, Waste Disposal, Sewerage Works, Security, Rest Houses, Offices, Field Work, Gardening, and other Engineering works, as well as providing Laundry Services in Rest Houses at South Railway Construction Offices in

Bengaluru. The petitioner participated in the tender process and was declared the successful bidder. Consequently, the respondent entered into an agreement for the work with the petitioner, who successfully performed the contract. While the bills were submitted and pending clearance, the Central Bureau of Investigation (CBI) registered a case against the Assistant Executive Engineer of the respondent concerning the alleged demand and acceptance of an undue advantage. In light of the CBI's investigation, the respondent withheld the Earnest Money Deposit (EMD) and Security Deposit (SD) amounts. The petitioner made representations requesting the release of the said amounts, along with the final bill. However, instead of considering the petitioner's representation and refunding the EMD and SD, the respondent issued a final termination notice on 10.08.2023. The total amount withheld by the respondent towards the EMD and SD is Rs. 1,01,80,070/-. Aggrieved by the termination notice, the petitioner has preferred the present writ petition.

4. Sri. H. Giridhar, learned counsel for the petitioner, submits that the petitioner participated in the tender process and emerged as the successful bidder. The petitioner has completed the works as per the terms of the tender contract, and the completion of the works has been certified by the competent authorities. The case registered by the Central Bureau of Investigation (CBI) against the officials of the respondent is unrelated to the work performed by the petitioner. The amount retained, consisting of the Earnest Money Deposit (EMD) and Security Deposit (SD), is required to be released upon completion of the work. The withholding of these deposit amounts is illegal and contrary to the terms and conditions of the contract. In the alternative, learned counsel submits that the withholding of the amounts should only be to the extent of any loss or damage sustained by the Railways due to a decision influenced by illegal gratification. However, the respondent has failed to quantify any such loss or damage under the contract, and the reasons provided for withholding the amounts are vague. With the above submissions, learned counsel prays that the

termination notice be quashed and that the respondent be directed to release the EMD and SD amounts.

5. Per contra, Sri Vaibhav Ravi Malimath, learned counsel appearing for the respondent, submits that the contract in question was awarded and the final bills were settled with the petitioner due to illegal gratification by the officials of the respondent. The Central Bureau of Investigation (CBI) has conducted an inquiry and gathered evidence regarding the illegal gratification allegedly offered by the petitioner in relation to the work in question. Learned counsel further submits that, as per the contract agreement, the respondent is entitled to withhold amounts to the extent of any loss or damage resulting from decisions influenced by illegal gratification. The quantification of such loss or damage, however, can only be ascertained after the conclusion of the CBI's investigation.

5.1 Learned counsel further submits that Clause 4.13 of the contract addresses illegal gratification, while Clauses 8.1, 8.2, and 8.4 pertain to arbitrable disputes, the

manner of appointment of an arbitrator, and the arbitral procedure to be followed. The petitioner has issued a notice dated 05.09.2023, invoking the arbitration clause and raising a demand for arbitration in accordance with Clause 8.2. Given that the petitioner has invoked arbitration as per the contract, learned counsel submits that the writ petition is not maintainable, as the agreed process of arbitration must be followed to resolve the dispute.

6. Having considered the submissions of learned counsel for the parties, it is evident that the dispute arises from the contract agreement. The contract provides a mechanism for the resolution of disputes, and the mechanism agreed upon by the parties is through arbitration.

7. The question to be considered by this Court is,

"When the parties are binding themselves for arbitration, can the jurisdiction under Article 226 of the Constitution be invoked?"

8. A bare perusal of the various clauses of the contract agreement reveals that it constitutes a self-contained code, providing for the resolution of disputes through arbitration, including the procedure for appointment of the arbitrator and the conduct of arbitral proceedings.

9. Another important aspect to be noted is that the petitioner himself has issued a legal notice dated 05.09.2023, demanding the appointment of an arbitrator to resolve the dispute arising out of the termination notice. The said legal notice unequivocally reflects that the dispute is considered arbitrable by the petitioner.

10. Learned counsel for the petitioner has expressed an apprehension that, subsequent to the issuance of the legal notice, doubts arose with respect to the arbitrability of the dispute. Hence, he submits that the present writ petition is the only efficacious remedy available to the petitioner.

11. In response to the aforesaid apprehension, learned counsel appearing for the respondent fairly submits that there is no dispute on the part of the respondent with

respect to the arbitrability of the present dispute. By referring to Clause 8.1 of the contract agreement, learned counsel submits that the dispute arises out of Clause 4.13 and, as such, is liable to be resolved through arbitration in terms of the contractual provisions. The submission made by learned counsel for the respondent is placed on record.

11.1 A conjoint reading of Clauses 4.13, 8.1, 8.2, and 8.4 of the contract agreement, along with the legal notice dated 05.09.2023 issued by the petitioner, makes it evident that the parties have mutually agreed to resolve the dispute through the process of arbitration. In that view of the matter, this Court is of the opinion that the present writ petition is not maintainable for adjudicating the correctness or otherwise of the termination notice.

11.2 Though this Court is not inclined to enter into the arena of factual aspects pertaining to the arbitrable dispute, certain grievances brought before this Court by the petitioner warrant consideration.

12. Learned counsel for the petitioner has contended that, as per the terms of the contract, any loss or damage arising from the decision of a railway employee may be deducted from the amounts payable to the contractor. However, in the present case, the respondent has neither quantified any such loss nor demonstrated the extent of damage, if any. The withholding of the entire amount, in the absence of such quantification, amounts to an arbitrary exercise of power.

13. It is the contention of the petitioner that, even assuming the dispute is arbitrable, the petitioner has already issued a notice dated 05.09.2023 invoking arbitration and seeking resolution of the dispute in terms of the contract. As per the contractual provisions, the respondent was required to take a decision within 120 days from the date of such notice, following which arbitration proceedings were to commence. It is vehemently contended that, despite the lapse of over 18 months since the issuance of the notice, no arbitrator has been appointed. In this context, it is submitted that the

respondent cannot now take shelter under the arbitration clause to non-suit the present writ petition, particularly when the respondent itself has failed to act upon the arbitration notice.

14. Although learned counsel for the respondent sought to justify the delay by submitting that the petitioner had alternate remedies for seeking appointment of an arbitrator, such submission does not absolve the respondent of its contractual obligation nor does it justify the inaction or delay in the appointment of the arbitrator. The respondent cannot be permitted to continue retaining amounts refundable to the petitioner under the guise of an arbitral dispute, especially when the power to appoint the arbitrator lies with the respondent and has not been exercised.

15. The Court has to balance the interests of both parties. The retention of the Earnest Money Deposit (EMD) and Security Deposit (SD) by the respondent, amounting to Rs.1,01,80,070/-, is likely to cause serious prejudice to the petitioner and adversely affect its business operations.

At the same time, the respondent is entrusted with the responsibility of safeguarding public funds. In order to strike a balance between the competing interests, this Court is of the considered view that the dispute should be relegated to arbitration, while directing the respondent to partially release the amounts retained. As evident from the record, the respondent has not quantified any loss or damage allegedly suffered on account of the alleged gratification. In the absence of such quantification, the respondent cannot be permitted to retain the entire amount.

16. In terms of the agreement, the petitioner issued a legal notice dated 05.09.2023, demanding the appointment of an arbitrator. As per Section 21 of the Arbitration and Conciliation Act, 1996, arbitral proceedings shall be deemed to commence on the date on which such notice requesting arbitration is received by the respondent. It is evident that the petitioner has invoked the arbitration clause. The failure of the respondent to act upon the said notice or perform its part under the

agreement does not, by itself, entitle the petitioner to maintain a writ petition under Article 226 of the Constitution in respect of the same dispute. In that view of the matter, it is held that the dispute is arbitrable and the dispute cannot be adjudicated in this writ petition.

17. In the light of the aforesaid discussion, the following,

ORDER

- (i) Writ petition is allowed in part.
- (ii) The prayer to quash the final termination notice dated 10.08.2023, Annexure-E is refused.
- (iii) The respondent shall, if it so desires, appoint an arbitrator in accordance with the terms of the contract agreement within a period of four weeks from the date of this order.
- (iv) The respondent is directed to refund and release the sum of Rs.50,00,000/- held in the suspense account as per the final termination notice dated 10.08.2023, subject to outcome of arbitration proceedings. The refund shall be

made within a period of four weeks from the date of this order.

- (v) In the event the respondent fails to appoint an arbitrator within the time granted, the petitioner shall be entitled to a refund of the entire amount held in the suspense account. The respondent shall make the refund within four weeks from the expiry of the four-week period granted for the appointment of the arbitrator, subject to the directions and decision set out above.
- (vi) No order as to costs.

**Sd/-
(K. V. ARAVIND)
JUDGE**

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