
(2023) 04 TEL CK 0024
In the Telangana High Court
Case No : Writ Petition No. 2949 Of 2011

M/S. Kbc Infrastructure Pvt Ltd.

APPELLANT

Vs

Singareni Collieries Company Ltd., Rep. By Its VC MD

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Citation : (2023) 04 TEL CK 0024

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Prasad Rao Vemulapalli, N.S. Pattabhi Ramarao

Final Decision : Dismissed

Judgement

1. Heard Mr. Prasad Rao Vemulapalli, learned counsel for the petitioner and Mr. N.S. Pattabhi Ramarao, learned counsel for the respondents.

2. This writ petition is filed to declare the action of respondent No.1 in debarring the petitioner from participating in Tenders of the Singareni Collieries Company Limited for a period of two (02) years and forfeiting the deposit amount of Rs.31,30,000/- and in not returning the Bank Guarantee for Rs.5,00,000/- as illegal, and for a consequential direction to the respondents to refund the aforesaid amounts and to allow the petitioner to participate in future tenders by setting aside the order dated 25.09.2010 of respondent No.2.

3. FACTS:

i) On 09.07.2009, respondent No.2 had issued subject tender i.e., Tender Notice No.CRP/CVL/BHP/TN-19/09-10, dated 09.07.2009 calling for combined tender for three (03) works viz., 1) Strengthening of existing B.T. Road from Ambedkar Statue Junction to KTK OC Section-I Junction at Bhupalpalli, Warangal District; 2) Laying B.T. over existing WBM road from R&B Road Junction at Manjoornagar to KTK Long Wall project at Bhupalpalli, Warangal District; and 3) Laying B.T. over WBM road from KTK-1 incline road to R&B Road via Weigh Bridge at KTK-5 incline

at Bhupalpalli, Warangal District.

ii) The petitioner herein had submitted tender along with all required documents including undertaking, EMD amount of Rs.31,03,000/- and Bank Guarantee for Rs.5,00,000/-.

iii) The petitioner herein stood as successful bidder. Works were awarded to the petitioner on 09.09.2009. The respondent Company had addressed letter dated 23.09.2009 to the petitioner with a request to attend the office for the purpose of entering into an Agreement.

iv) M/s. Sri Venkateswara Constructions, L2 in the said Tender had filed a writ petition vide W.P. No.21975 of 2009 stating that the petitioner herein is not having separate P.F. Code number and, therefore, contract work may not be awarded to the petitioner herein. Initially, this Court granted interim order and subsequently the said writ petition was dismissed on 16.12.2009. Feeling aggrieved by the same, M/s. Sri Venkateswara Constructions, preferred an appeal vide W.A. No.287 of 2010 and there were no interim orders. Thereafter, the appellant withdrew the said writ appeal and it was dismissed as withdrawn.

v) After dismissal of the said writ petition and also during pendency of the said writ appeal, the respondents requested the petitioner herein to come to the office to enter into an agreement and also to commence the work. There is correspondence between the petitioner and the respondents.

vi) According to the respondents, despite addressing several letters, the petitioner did not come forward to enter into agreement, commence the work and also to mark out. Therefore, by following due procedure laid down under law, the respondents have terminated the contract vide proceedings dated 12.07.2010 and the EMD amount furnished by the petitioner was forfeited and other applicable penalties as per the tender conditions.

vii) Thereafter, the respondents vide proceedings dated 25.09.2010, debarred the petitioner from further participating in the tenders of respondent Company for a period of two (02) years with immediate effect. Challenging the said proceedings, the petitioner had filed the present writ petition.

4. In so far as debarring the petitioner for a period of two (02) years is concerned, since the same was expired by 24.09.2012 itself, and therefore, the said relief sought by the petitioner has become infructuous. Mr. Prasad Rao Vemulapalli, learned counsel for the petitioner, would also fairly submit that he is not pressing the said relief.

5. In view of the above, the only issue to be considered by this Court is:

Whether the action of the respondents in forfeiting the EMD amount of Rs.31,30,000/- and not returning the Bank Guarantee amount for Rs.5,00,000/- is illegal or not?

6. Mr. Prasad Rao Vemulapalli, learned counsel for the petitioner, would submit

that there is no agreement between the petitioner and the respondents on specific terms and conditions thereof. In the absence of the same, the respondents cannot terminate the contract of the petitioner, debar it from participating in the tenders of the respondents for a period of two (02) years and cannot forfeit the aforesaid EMD amount as well as Bank Guarantee. In the absence of concluding contract, the respondents cannot invoke the same and forfeit the said amounts. The same is impermissible. He has also placed reliance on the decisions in i) Bharat Sanchar Nigam Limited v. Telephone Cables Limited (2010) 5 SCC 213; Yogesh Mehta v. Custodian Appointed under the Special Court (2007) 2 SCC 624 and Maula Bux v. Union of India AIR 1970 SC 1955. With the said submissions, he sought to set aside the proceedings dated 25.09.2010.

7. On the other hand, Mr. N.S. Pattabhi Rama Rao, learned counsel for the respondents, would submit that the petitioner has furnished the aforesaid EMD amount of Rs.31,30,000/- and the Bank Guarantee for Rs.5,00,000/- in terms of tender conditions. Therefore, the petitioner cannot now contend that since there is no agreement entered into between the petitioner and the respondents on specific terms and conditions including forfeiture etc., the respondents cannot terminate the same.

i) He would further submit that the respondents requested the petitioner to come forward for the purpose of entering into agreement, marking out, commence the work and complete the same in terms of tender conditions. Despite the same, the petitioner did not come forward. After dismissal of the aforesaid writ petition also, the respondents requested the petitioner to come forward for the purpose of entering into agreement in terms of tender conditions. The petitioner did not come forward. There is no interim order granted by the Division Bench of this Court in the writ appeal and even then, the petitioner failed to comply with the tender conditions. Therefore, considering all the said aspects and in terms of the tender conditions, the respondents have terminated the contract, forfeited the EMD amount as well as the bank guarantee.

ii) He would further submit that vide proceedings dated 25.09.2010, the respondents debarred the petitioner from participating future contracts pertaining to the respondents Company for a period of two (02) years with immediate effect. There is no challenge to the said proceedings dated 12.07.2010. Therefore, the petitioner cannot seek refund of the aforesaid EMD amount of Rs.31,30,000/- and Bank Guarantee for Rs.5,00,000/- furnished by it. The challenge is only to the proceedings dated 25.09.2010 and the said period was expired.

iii) He has also placed reliance on the decisions in National Highways Authority of India v. Ganga Enterprises (2003) 7 SCC 410; Bharat Coking Coal Ltd., v. AMR Dev Prabha AIR Online 2020 SC 466; Silppi Constructions Contractors v. Union of India 2019 LawSuit (SC) 1386 and Ajay Kumar Sharma v. State of H.P. AIR Online 2020 HP 689.

iv) With the aforesaid submissions, learned counsel for the respondents sought to dismiss the writ petition.

8. In view of the aforesaid rival submissions, it is relevant to note that with regard to the first limb of the prayer i.e., declaring the proceedings dated 25.09.2010 issued by respondent No.2 debarring the petitioner from further participating in tenders pertaining to the respondents for a period of two (02) years is concerned, the said period was expired on 24.09.2012 itself and, therefore, the said relief has become infructuous and on the said aspect, there is nothing to adjudicate further.

9. With regard to the second issue, in the tender notice dated 09.07.2009 itself, there is specific provision with regard to furnishing of an undertaking by the petitioner and it has furnished the same. The petitioner has to submit the aforesaid EMD amount of Rs.31,30,000/-and Bank Guarantee for Rs.5.00 lakhs. The petitioner has furnished the said EMD amount and the Bank Guarantee amount in terms of tender notice dated 09.07.2009.

10. The undisputed facts are as under:

i. The petitioner and the respondents have not entered into any agreement on the specific terms and conditions in terms of tender notice dated 09.07.2009;

ii. M/s. Sri Venkateswara Constructions, L2 in the subject tender, had filed the aforesaid writ petition and interim order was granted therein; Thereafter the said writ petition was dismissed vide order dated 16.12.2009; though an appeal was filed by M/s. Sri Venkateswara Constructions vide W.A. No.287 of 2010, there was no interim order granted by the Division Bench of this Court;

iii. Finally it was dismissed as withdrawn;

iv. The respondents had addressed several letters to the petitioner with a request to come forward to enter into agreement;

v. The petitioner has sent replies to the said letters;

vi. Vide letter dated 23.02.2010, the petitioner has submitted all the documents including Bank Guarantee for Rs.5.00 lakhs etc.;

vii. The entire correspondence was referred in the proceedings dated 12.07.2010 and 25.09.2010;

viii. Ultimately the respondents vide proceedings dated 12.07.2010 terminated the contract of the petitioner on the ground that the petitioner failed to approach the respondents for the purpose of entering into the contract, failed to commence the work and conclude the same;

ix. After following the procedure including issuance of final notice dated 20.05.2010, considering the reply given by the petitioner, the respondents have terminated the said contract and forfeited the EMD amount. The reasons are specifically mentioned. There is no challenge to the said proceedings;

x. Thereafter, vide proceedings dated 25.09.2010, the respondents have debarred the petitioner from further participating in the tender pertaining to the respondents for a period of two (02) years. The said order is only a consequential order. In the said order also, there is specific mention about the correspondence between the petitioner and the respondents and the procedure followed by the respondents. Thus, having furnished the aforesaid EMD amount and Bank Guarantee in terms of tender notice dated 09.07.2009, now the petitioner cannot contend that the respondents cannot forfeit the EMD amount as well as Bank Guarantee in the absence of agreement. The said contention is untenable. The said principle was also laid down by the Hon'ble Supreme Court in Ganga Enterprises (Supra).

11. The facts in the decisions referred to by the learned counsel for the petitioner are altogether different to the facts of the present case. As discussed above, in the present case, the petitioner herein had furnished the EMD amount as well as Bank Guarantee in terms of the Tender conditions vide Tender Notice dated 09.07.2009 itself. Thus, the petitioner herein cannot contend that there is no agreement and that there are no specific terms with regard to forfeiture of EMD amount as well as Bank Guarantee and, therefore, the respondents cannot forfeit the same.

12. It is also relevant to note that the petitioner herein has furnished an undertaking along with tender document wherein it has specifically agreed that any delay in acknowledging the receipt of award letter within fifteen (15) days of mailing will be a breach of contract and the petitioner shall be liable for forfeiture of the EMD by the respondents. It was further agreed to sign an agreement bond within two (02) weeks from the date of acceptance of tender, failing which, the petitioner shall be liable for forfeiture of the EMD. The petitioner also agreed to start the work within two (02) weeks as may be directed by the respondents from the date of signing the agreement bond and carryout the work strictly in accordance with the specifications and conditions of contract, failing which the petitioner shall be liable for the forfeiture of EMD in full and contract will be considered as cancelled. The procedure with regard to furnishing of EMD and Bank Guarantee amount is also specifically mentioned in the tender notice dated 09.07.2009 itself. Therefore, having agreed, the petitioner now cannot contend that the respondents cannot forfeit the EMD and the Bank Guarantee.

13. At the cost of repetition, it is relevant to note that the petitioner herein did not challenge the proceedings dated 12.07.2010 through which the tender was terminated and the EMD amount was forfeited. The Challenge is only to the proceedings dated 25.09.2010. Thus, viewed from any angle, the petitioner herein is not entitled for any relief, much less the relief sought in the present writ petition. The writ petition fails and the same is liable to be dismissed.

14. The present writ petition is accordingly dismissed. However, liberty is granted to the petitioner to challenge the proceedings dated 12.07.2010 if so advised. There shall be no order as costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.