(2022) 06 TEL CK 0056

In the Telangana High Court

Case No : Writ Petition No. 24127 Of 2019

M/S RSR Infra Gsrcc Jv — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 17-06-2022

Acts Referred:

Citation : (2022) 06 TEL CK 0056

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Advocate : Prasad Rao, T S Venkata Ramana

Final Decision : Allowed

Judgement

1. This petition is filed to direct the respondents to refund/reimburse the differential amount between 30% and 10% amounting to Rs.24,72,224/-towards seigniorage charges that was collected during the course of execution of work in accordance with Clauses 18.3(a) and 19.1(ii) of conditions of contract in respect of agreement No.01/CAO/C/SC/2019 dated 17.01.2019.

2. Heard Sri Prasadarao Vemulapalli, learned counsel for the petitioner and Sri T.S. Venkata Ramana, learned Standing Counsel for the respondents.

3. The learned counsel for the petitioner submitted that the petitioner was awarded Earthwork in embankment and cutting, construction of minor bridges and provision of Height Gauges at RUB locations and bridge protective works etc., with regard to Manoharabad-Kothapalli New BG line from Ch:33000.0m to Ch:61500.0m in Reach-II between Gajwel and Siddipet stations through Letter of Acceptance No.Con.W.496/MOB-KPHI/6117/WC.3/Vol.IV dated 12.11.2018 for an initial value of Rs.73,35,98,814.77 within a completion period of 12 months, i.e. on or before 11.11.2019. The work would involve use of minor minerals such as earth, morrum/gravel, sand etc. The minor minerals would attract seigniorage and the petitioner was liable to pay the same. To meet the fluctuations in the seigniorage fee, the parties had consciously incorporated clauses – 18 and 19 in

the agreement. As per the above clauses, any new impost or refund in the duties/taxes/cess during the original currency of the contract would be to the Railways account. The additional liability, if any, in case of increase in duties/taxes/cess should be borne by the Railways even in extended period of contract, if such an extension was on account of Railways. The Government of Telangana increased the seigniorage from 10% to 30% from 15.12.2018 vide G.O. No.4056/MR/2018. Basing on the said G.O., the 3rd respondent effected recovery of seigniorage at 30% from CC bill No.V on account bill and recovered an amount of Rs.24,72,224/-. In terms of clause 18.3(a) of the agreement, the respondents were bound to reimburse the difference of increased seigniorage. Since the increase in seigniorage was subsequent to the last date of submission of tender, the agreed conditions, specially, clause 18.2 and 18.3 would apply to the work executed by the petitioner and the petitioner was entitled for reimburse/refund of the difference amount between the increased seigniorage and the prevailing seigniorage on the last date of submission of bid. The petitioner made several oral requests to the respondent Nos.2 and 3 to effect refund/reimburse. Since the respondents were not responsive, the petitioner made a written representation on 31.08.2019, explaining the terms of agreement and sought refund of Rs.24,72,224/- as against recovery of Rs.37,08,366/- being the difference of 20%. As there was no response from the respondents, filed this writ petition seeking a mandamus and prayed to allow the petition.

4. The learned Standing Counsel for the respondents, on the other hand, submitted that the Government of Telangana issued G.O.Ms.No.38 Ind.Com. (M.1) Department, dated 15.12.2018 wherein as per sub-Rule 13.1.4.3 of T.S. District Mineral Foundation Trust Rules, 2018 "an equivalent to 30% of seigniorage fee shall be recovered by the Engineering/Consuming Departments, along with seigniorage fee from the Contractor work bills on the quantity of minor mineral consumed in the consumption and remitted to District DMF account for any civil work(s) entered agreement for execution on or after First April 2018." As per the said directive, the seigniorage charges and district mineral fund had been recovered from CC bill No.V and credited to the bank account of Telangana State Government. The petitioner's contract had been entered after 1st April, 2018 (date of issue of letter of acceptance was on 12.11.2018). As such, the above Rules issued by the State Government of Telangana would apply and accordingly, 20% difference towards DMF had been recovered in the CC bill No.V in addition to 10% already recovered in the earlier bills to make it 30% as per aforementioned Rule. In the present contract of the petitioner, the refund of DMF from 10% to 30% as per G.O.Ms. No.38 of Telangana Government on the seigniorage fee had taken effect from 01.04.2018 i.e. much before issuance of Letter of Acceptance dated 12.11.2018 and hence, the same had to be borne by the contractor only. The petitioner's representation dated 31.08.2019 had been disposed of in compliance of orders dated 30.09.2019 of this Court in W.P. No.20429 of 2019 and prayed to dismiss the writ petition.

5. Perused the record. In view of the rival contentions of the learned counsel for both the parties, it is considered necessary to extract the special conditions of the contract relating to the seigniorage fee as laid down under Clause 18.

“18.0 SEIGNIORAGE CHARGES;

18.1 Seigniorage charges/fee for consumption of earth, morrum, sand and other minerals in works execution as fixed by the state government from where the minerals are drawn and payable to them as revised from time to time during currency of contract will be recovered by the Railway from the contractors, in "on account" and "final bills and remitted to the State government, unless exemption obtained to the contrary or proof of payment of seigniorage charges submitted as indicated below

"Transit passes / Redestinated Mineral Dispatch Permits Royalty Clearance Certificates” issued by State Govt. officials in token of having paid seigniorage fee. Such passes/permits/certificates should also indicate the relevant name of work / Contract Agreement Number. In such cases, the genuineness of such documentary evidence produced along with proof of payment of seigniorage charges shall be got verified by the Railway from concerned Mining and Geology department and excess amount recovered, if any, refunded to the contractor.

Note: The word "Consumption of various minerals indicated in above clause, inter alia means "supply" as well.

18.2 The rates quoted by the tenderer shall be inclusive of seigniorage charges on all items of work to be executed under the contract, applicable as on the last date of submission of tender.

18.3 For any subsequent increase or decrease in the rates of seigniorage charges, reimbursement/ recovery will be effected to / from the contractor as per the following provisions.

a) For increase in the rates of seigniorage charges after the last date of submission of tender the increased amount will be recovered by the Railway from the contractors, in "on account" and "final bills and remitted to the State Govt., on receipt of state Govt's order to that effect. However, the Railway shall reimburse the additional liability to the contractor, provided that the work executed falls in the original completion period of the work or in the extended period granted on administrative grounds i.e. under clause 17-A (i). (i) or (ii) of IRSGCC.

As such, claims regarding reimbursement due to increase in seigniorage charges shall not be payable for works executed in the extended period granted on contractors account under clause 17(B) of IRSGCC.

b) For any decrease in seigniorage charges or waivar, recovery of seigniorage charges will be made at the rates as prevailing on the last date of submission of tender but remittances to State to State government will be made only at the revised reduced rates The difference in amount will be retained by Railway and contractors will not have any claim on this amount.

c) In the event of contractor submitting proof of payment of seigniorage charges also. adjustment of liability by way of reimbursement recovery of the difference amount. arrived based on the increased reduced rates at which actual payments done by the contractor and the rates of seigniorage as prevailing on the fast date of submission of tender shall be effected on the lines of provisions under a) & b) above,

18.4 No additional amount will be paid or claim entertained on this account by the Railway Contractor shall not have any claim whatsoever as a result of the increase in the rates of all other taxes, duties, octroi or any form of levies etc., even if incurred on the supply/ use of minerals indicated above.

Note: A register shall be maintained by Dy. CE/C/Executive Engineer/ Construction concerned in which the entries should be made regarding the documentary evidence Le.. Serial No. of Transit passes Redestinated Mineral Dispatch Permits Royalty Clearance Certificates" issued by concerned authority showing proof of payment of seigniorage charges, for each bill. Relevant entries shall also be made on receipt of verified document from Mines & Geology department of State Government against the particular bill and "Transit passes / Redestinated Mineral Dispatch Permits/Royalty Clearance Certificates". The verified "Transit passes / Redestinated Mineral Dispatch Permits Royalty Clearance Certificates" shall be scored out with cross mark with an endorsement "Accounted against CC/Final bill No.____ dt.______ for Agt.No.____."

These passes shall be kept on record for subsequent verification till closure of the contract. The register should be page numbered and one page allotted to one contract. The reference where the verified, "Transit passes / Redestinated Mineral Dispatch Permits/Royalty Clearance Certificates" is filed shall also be made on the register."

6. As seen from the terms of the agreement under clause 18.3(a), the respondents shall recover seigniorage at 30% from the contractors in "on account" and "final bills" of the petitioner and remit the same to the State Exchequer. After recovering/deducting the said amount from the bills of the petitioner, the respondents are bound to reimburse the difference of increased seigniorage and the seigniorage prevailing on the last date of submission of bid in the same bill or in the subsequent bills.

7. The above terms of the agreement were further amplified through Clause 19.1(ii), which reads as under:

"19.0 TAXES:

19.1 (i) The tenderer shall quote the rate by taking into account all the statutory duties/taxes applicable to the work up to the date of opening of tender.

(ii) Any new impost or revision in the duties/taxes/cess during the original currency of the contract will be to the Railway's account subject to production of Govt. Notification and documentary evidence. This will also be applicable for the work done during the extended period, if such extension is on Railway's account.”

8. The learned counsel for the petitioner further submitted that as per the above clauses any new impost or refund in the duties/taxes/cess during the original currency of the contract would be to the Railways account and the additional liability, if any, in case of increase in duties/taxes or cess should be borne by the Railways even in extended period of contract, if such extension was on account of the Railways.

9. The learned Standing Counsel for the respondents submitted that basing on G.O.Ms.No.38 of Telangana Government on the seigniorage fee and as it would be applicable to the agreements entered into for execution on or after 01.04.2018 and the letter of acceptance was issued to the petitioner on 12.11.2018, the recovery of differential percentage of 20% was fully under order.

10. The tender notice No.V/.CAO//2018 was issued for construction of new BG line between Manoharabad-Kothapalli on 15.02.2018 and the petitioner submitted its tender on 19.03.2018 and the bid for packet-I was opened on 20.03.2018 and packet II was opened on 21.06.2018. The Director of Mines and Geology informed the 2nd respondent about the increase in seigniorage fee from 10% to 30% on 15.12.2018. As the 2nd respondent came to know about the increase in seigniorage fee from 10% to 30% only on 15.12.2018 and G.O.Ms.No.38 was issued by the State Government on 31.05.2018 long after the bid was submitted and the technical bid (packet-I) was opened and Clause 18.2 states that the rates quoted by the tender are inclusive of seigniorage charges on all items of work to be executed under the contract, applicable as on the last date of submission of tender and Clause 18.3 (a) provides for reimbursement/ refund of difference in seigniorage charges and Clause 19.1 (ii) states that any new impost or refund in the duties/taxes/cess during the original currency of the contract would be to the Railways account, the respondents are bound to reimburse/refund the differential amount between 30% and 10% amounting to Rs.24,72,224/-deducted towards seigniorage.

11. Hence, the writ petition is allowed directing the respondents to reimburse/ refund the difference amount between 30% and 10% towards seigniorage amounting to Rs.24,72,224/- to the petitioner in accordance with the conditions of the contract. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

