
(2023) 03 TEL CK 0078
In the Telangana High Court
Case No : Writ Appeal No.308 Of 2023

M/S. Sanyu Infra Projects Private Limited	APPELLANT
Vs	
Union Of India And 6 Others	RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g)

Citation : (2023) 03 TEL CK 0078

Hon'ble Judges : Ujjal Bhuyan, CJ;N. Tukaramji, J

Bench : Division Bench

Advocate : J.Venudhar Reddy, N.V.R.Rajya Laxmi, Gadi Praveen Kumari

Final Decision : Disposed Of

Judgement

1. Heard Mr. J.Venudhar Reddy, learned counsel for the appellant and Ms. N.V.R.Rajya Laxmi, learned counsel representing Mr. Gadi Praveen Kumari, learned Deputy Solicitor General of India for respondent Nos.1 to 6.
2. It is submitted at the Bar that issue raised in this appeal is identical to the one raised in Writ Appeal No.276 of 2023 which was disposed of on 10.03.2023 in the following terms:

"Heard Mr. D.Prakash Reddy, learned Senior Counsel for the appellant and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent Nos.1 to 6.
2. This intra-court appeal is directed against the common order dated 18.01.2023 passed by the learned Single Judge dismissing writ petition No.23748 of 2022 and batch.
3. The present appeal arises out of writ petition No.23757 of 2022.
4. Appellant as the writ petitioner had filed the related writ petition assailing the action of respondent No.4 in terminating the contract work awarded to the appellant under Letter of Acceptance dated 07.10.2021 and consequently,

forfeiting the bank guarantee.

5. Subject matter of the contract relates to construction of Road under Bridge (RuB). Pursuant to a tender process, appellant was awarded the contract and in this connection, Letter of Acceptance was issued on 07.10.2021. Without entering into the rival contentions, it is seen that there was delay in the execution of the work. While according to the appellant, the delay occurred because of respondent No.4 not taking prompt action in signing the contract agreement and subsequently in preparing and approving the drawings, on the other hand, according to the respondents, the delay was because of the appellant's failure to execute the work in a time bound manner. Ultimately, respondents issued seven (7) days notice followed by forty-eight (48) hours notice. It was thereafter that the contract was terminated by the respondents.

6. While according to the appellant, no notice was issued and no hearing was granted to the appellant before termination of the contract, it is the case of the respondents that the termination notice was uploaded in the common portal called Indian Railway- Works Contract Management System (IRWCMS). After terminating the contract of the appellant, respondents forfeited the bank guarantee furnished by the appellant. This led to filing of the writ petition.

7. At the initial stage, interim order was passed by the learned Single Judge directing the respondents not to award contract for the balance work to third party contractors.

8. Respondents in their vacate stay petition which was treated as counter affidavit contested the very maintainability of the writ petition. On merit, it was contended that there was delay on the part of the appellant in executing the contract which is of public importance. Therefore, respondents were compelled to terminate the contract but before doing so, adequate notice was granted to the appellant.

9. Learned Single Judge held that though there is an arbitration clause in the contract, yet the writ petition is maintainable. In support of such conclusion, learned Single Judge has placed reliance on several decisions of the Supreme Court. However, learned Single Judge after entertaining the writ petition as being maintainable went into the merit and held that appellant had failed to complete the contract work within the agreed time. On notice, learned Single Judge held as follows:

35. It is relevant to note that entire tender process and re-tendering process, submission of tender is online through respondent's e-mail ID. The aforesaid notices were placed in IRWMS site of the respondent Railways. However, the petitioner herein has filed copies of 7 days and 48 hours notice. Therefore, petitioner cannot contend that the said notices were not served on him. Therefore, according to this Court, there is no irregularity in terminating the aforesaid contracts by the respondents Railways and forfeiting the bank guarantee.

10. Government of India in the Ministry of Railways (Railway Board) has approved the new Indian Railways Standard General Conditions of Contract, July 2020. While Part I thereof lays down Regulations for Tenders and Contracts, Part II provides for Standard General Conditions of Contract. Clause 4 of the Standard General Conditions of Contract reads as follows:

4. Communications to be in writing: All notices, communications, reference and complaints made by the Railway or the Engineer or the Engineer's Representative or the Contractor inter-se concerning the works shall be in writing or e-mail on registered e-mail IDs and no notice, communication, reference or complaint not in writing or through e-mail, shall be recognized.

11. From the above, it is seen that as per the Standard General Conditions of Contract all communications are to be in writing. All notices, communications, reference and complaints made by the Railways or the Engineer or the Engineer's Representative or the Contractor inter-se concerning the works shall be in writing or e-mail on registered e-mail IDs. No notice, communication, reference or complaint not in writing or through e-mail shall be recognized.

12. In the writ affidavit, appellant specifically pleaded in paragraph 7 that while it was waiting for approval of thrust-bed drawings and alternate solution, it received a call from respondent No.4 on 02.05.2022 evening that it had been served with 48 hour notice for several bridges. Appellant had addressed a letter on 06.05.2022 to respondent No.4 and questioned illegal termination of contract without notice. In paragraph 10, this was elaborated upon by the appellant by stating that termination of contract and forfeiture of bank guarantee was without any notice and hearing and thus being in violation of the principles of natural justice. Paragraphs 7 and 10 of the writ affidavit of the appellant reads as follows:

7. While we were waiting for approval of Thrust-bed drawings and for alternate solution for 28mm TMT steel, we got a call from respondent No.4 on 02.05.2022 evening that we have been served with 48 hour notices for several bridges. Immediately we addressed a detailed letter on 06.05.2022 elaborating the entire issue involved in all the RUB works, and specifically stated that we did not receive any notice from them since 01.04.2022, much less 48 hours notice, and requested to revoke the termination of contract, if initiated.

* * *

10. I submit that termination of contract and forfeiture of the BG by the respondent No.5, without issuing any notice and without any fault on the part of our company, is totally illegal, arbitrary and high handed and in violation of principles of natural justice and Article 19(1)(g) of Constitution of India. Due to such forfeiture and abrupt terminations of contracts, the Company went to deep financial crisis and unable to pay the vendors and meet the salaries of the workmen who are already deployed at the respective work sites and also huge material procedure at the work sites is at risk.

13. This was contested by the respondents in their application for vacate stay which was treated as the counter affidavit by stating as follows:

7. In reply to paras 1 to 3 of the petitioner affidavit filed in support of above writ petition, it is to submit that all the notices have been sent to the petitioner ID in Indian Railway – Works Contract Management System (IR-WCMS) (online platform for making agreements, recording bills, paying bills, granting extension of currency, issuing notices, etc.). The petitioner having participated in the tender and after getting the Letter of Acceptance is supposed to get all the agreements, bills, variation, currency extensions, etc., in Indian Railway – Works Contract Management System. The maintenance of their account, correctness of information being furnished is their responsibility and is as per Clause 6 of Annexure-V of General Conditions of Contract (GCC) submitted by the Tenderer at the time of participation in the said tender.

14. From the above, it is seen that stand taken by the respondents was that all notices were uploaded on IRWCMS i.e., the online platform. Appellant having participated in the tender and after obtaining Letter of Acceptance was supposed to get all agreements, bills, extensions etc., through the aforesaid online portal; it is the responsibility of the appellant to obtain such information.

15. Learned Single Judge observed that the termination notice was placed in the IRWCMS site. Appellant had filed copies of seven (7) days and forty-eight (48) hours notice which were issued prior thereto and therefore, appellant cannot contend that the said notices were not served upon the appellant. Learned Single Judge held that there was no irregularity in terminating the aforesaid contract by the respondents.

16. Before we proceed to deal with the above conclusion of the learned Single Judge, our attention has also been drawn to clause 64 of the Standard General Conditions of Contract which provides for arbitration. It is another matter that learned Single Judge has held the writ petition to be maintainable notwithstanding availability of the remedy of arbitration. Having entertained the writ petition, we are of the view that learned Single Judge instead of entering into the merit as to the justification for cancellation of contract, ought to have confined the deliberation to the decision making process. After all, judicial review is primarily concerned with the decision making process and not with the decision per se. If the writ court feels that the decision making process is vitiated by non-compliance to the procedural requirements and violation of the principles of natural justice etc., certainly a writ court would be entitled to entertain a writ petition in exercise of its power of judicial review notwithstanding availability of alternative remedy. When clause 4 of the Standard General Conditions of Contract clearly provides that all notices, communications etc., should be in writing or on registered e-mail IDs, it means that the notices would have to be sent to the affected party in writing or to the registered e-mail ID of the affected party. Otherwise, clause 4 would have mentioned that such a notice would be uploaded or posted in IRWCMS portal. That having not been done, we are of the

view that there is violation of the principles of natural justice inasmuch as due notice and adequate opportunity of hearing was not granted to the appellant before cancellation of contract.

17. Having said that we are of the view that appellant should be relegated to the forum of respondent No.4. Now that appellant is aware of the reasons for termination of contract, let the appellant appear before respondent No.4 on 20.03.2023 at 11.00 am whereafter respondent No.4 shall take a fresh decision in accordance with law. All contentions are kept open. Needless to say, if the appellant is aggrieved by any decision that may be taken by respondent No.4, it will be open to the appellant to avail the remedy as provided in clause 64 of the Standard General Conditions of Contract.

18. This disposes of the writ appeal. However, there shall be no order as to costs.”

3. In view of above, the present Writ Appeal is also disposed of by directing the appellant appear before respondent No.4 on 20.03.2023 at 11.00 A.M. whereafter respondent No.4 shall take a fresh decision in accordance with law. All contentions are kept open. Needless to say, if the appellant is aggrieved by any decision that may be taken by respondent No.4, it will be open to the appellant to avail the remedy as provided in Clause 64 of the Standard General Conditions of Contract. However, there shall be no order as to costs.

4. As a sequel, miscellaneous applications pending, if any, in this Writ Appeal, shall stand closed.