

(1999) 11 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14104 of 1999

Sri Sai Pipe Co., Hyd.

APPELLANT

Vs

Engineer-in-Chief Panchayat Raj, A.P., Hyd.

RESPONDENT

Date of Decision : 10-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 2

Citation : (2000) 1 ALD 268 : (2000) 1 ALT 650

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Mr. R. Subhash Reddy, for the Appellant; Government Pleader for Panchayat Raj, for the Respondent

Judgement

1. The petitioner-Firm registered as a Small Scale Industry manufacturing pressure pipes. It is a Small Scale Industrial Undertaking as defined in Section 2(ii)(a) of Interest on delayed payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993). The aforesaid Act has been legislated for the encouragement and the benefit of the Small Scale Industries for the delayed payments to the Small Scale Industries.

2. The petitioner entered into a rate contract agreement dated 2-2-1998 with the Engineer-in-Chief, Panchayat Raj, Engineering Department, Errum Manzil, Hyderabad, for the supply of AC Pressure Pipes and AC Couplings. As per Clause 5.1 of Special Conditions of the Contract, 98% of the value of the goods and the taxes in full shall be released by the consignee by Demand Draft within 15 days from the date of receipt of the material at Sub Divisional Stores and the remaining 2% balance shall be paid within a period of 30 days from the date of receipt of the entire material by the Sub-Divisional Stores. In the instant case, the Chief Engineer, RWS Project, Panchayat Raj Department placed an order dated 26-12-1998 for the supply of AC Pressure Pipes manufactured by the petitioner. The material was put up in the Stores for inspection on 3-12-1998 and

the concerned authorities inspected the same on 17th and 19th of December, 1998 and only after inspection and certification of quality of the material by the concerned authorities, the supplies were made till 10-1-1999. As a matter of fact, the petitioner received a telegram dated 28-11-1998 for supply of the material to Pattikonda Sub-Divisional Stores, Deputy Engineer.

3. The consignment was supplied by two invoices i.e., Invoice No.283/98-99 dated 9-1-1999 for an amount of Rs.27,06,713-94 and Invoice No. 186/PR/98-99 dated 9-1 -1999 for an amount of Rs.23,068-08 towards supply of AC Pressure Pipes and Rubber Rings for AC Couplings respectively. As per the terms and conditions of the rate contract, the full payment for the aforesaid bills should be made within 30 days from the date of receipt of the material. But the respondents having received the said consignments, have not paid any amount, and therefore, the petitioner filed this Writ Petition to declare the action of the respondents in not paying the due amount to the petitioner pending against the aforesaid invoices for the supply of AC Pressure Pipes and Rubber Rings for AC Couplings as illegal, arbitrary and to direct the respondents to pay the amounts due against the said material.

4. A counter has been filed on behalf of the respondents stating that the Chief Engineer, Projects (RWS), Panchayath Raj Department, placed a purchase order received by the contractor on 12-2-1998 but the contractor could not supply the material within the stipulated period i.e., on or before 30-4-1998 and the validity of the purchase order has expired on 1-5-1998. However, the contractor has unauthorisedly supplied the material from 25-11-1998 to 10-1-1999 i.e., after eight months from the date of expiry of the validity of the purchase order violating the conditions of the rate contract agreement, and therefore, the respondents have not made the payments for the unauthorised supplies made by the petitioner and that their action is not illegal or in violation of the rate contract agreement. The claim of the petitioner for making the payment along with interest and the compound interest does not arise as the supplies were not made within the stipulated period. It is also stated that the progress of the Project was affected because of default of the petitioner and that the Government has incurred loss and therefore, the Writ petition is not maintainable since the petitioner is claiming the amount with interest.

5. Heard the rival contentions at length. It is not the lumpsum contract or any works contract to be executed or a project to be completed within the stipulated time. It is only a rate contract for supply of the specified type of material i.e., AC Pressure Pipes and Rubber Rings for AC Couplings. I have perused the rate contract agreement. The only rates have been fixed for the particular consignment for payment. There is no condition that the quantum of the material to be supplied. As per the terms and conditions of the contract, if any supply is made contrary to the conditions and the goods are not according to the specification or otherwise not satisfactory owing to any reason for which the Department shall be a sole Judge, Department will be entitled to cancel or reject

the supplies and cancel the contract and get its requirement in the open market or from other parties. In the instant case, admittedly, the Department has received the supplies made by the petitioner. The rates are already fixed. There is no dispute with regard to the rates or the quantities received by the Department. There are no disputed question of facts either with regard to the rates or quantum of amount payable by the Department to the petitioner in respect of the consignment supplied by the petitioner and received by the Department and utilised by them. As far as the payment of interest is concerned, I am not inclined to award any interest as it cannot be said that the respondents are solely responsible for the delayed payments.

6. It is no doubt true that in the case of private field of contractual obligations of public authorities, in respect of execution of contracts, this Court under Article 226 of the Constitution of India will not settle the disputed questions of facts. The normal course would be in respect of the contractual obligations, for settlement of disputes by Arbitration and Conciliation proceedings or the Civil Courts. In the particular case, there is no dispute with regard to the supply and receipt of the consignment and the rate is already fixed in the rate contract, and therefore, the question of relegating the petitioner to the Civil Court does not arise. Having received the consignment and utilised the same, the respondents cannot deny to pay the payment against the said consignments and the respondents cannot be permitted for the unjust enrichment. The action of the respondents in declining the payment is unreasonable and unconscionable.

7. For the foregoing reasons, the Writ Petition is allowed directing the respondents to pay the amounts due against the invoice Nos.283/98-99 dated 9-1-1999 and 186/PR98-99 dated 9-1-1999 towards supply of AC Pressure Pipes and Rubber Rings for AC Couplings, to the petitioner without any interest, within two months from the date of receipt of a copy of this order. In the circumstances, no order as to costs.