THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No. 40000 of 2012

ORDER:

Aggrieved by the issuance of the proceedings in Lr. No.EE/SYP/Dn.3/Estt/ECI/41/M/1No dated 03.02.2012 and Lr.No.SE/SYPC/MNCL/ATO-3/190/4 dated 04.05.2012 rejecting the claim of the petitioners for adjustment charges with regard to labour and other materials, the present writ petition is filed.

Heard the learned counsel for the petitioners and the learned Government Pleader for Irrigation and Command Area Development for the respondents.

Learned counsel for the petitioners has stated that the respondent No.1 has entered into an agreement with petitioner No.1 vide Agreement Bond No.L.S.1/2005-06 dated 03.04.2005. Learned counsel, while drawing the attention of this Court to the terms and conditions of the contract, more specifically, clause 13.8.1 thereof, has stated that the official respondents instead of implementing the said clause, in toto, have denied some of the benefits to the petitioners and restricted the price adjustment only for cement, steel and fuel, and have rejected the benefit of the said clause for the labour and other material, based on the Government Memo No.30250/Maj.Irr.III/A2/2007-6, dated 16.11.2009 said to have been issued by the Government. That the petitioners have no inkling, knowledge or notice of the same at any point of time. That

the official respondents having entered into the contract are bound by the terms and conditions of the agreement and the price adjustment for labour and other materials cannot be rejected on the ground of an internal memo or circular issued by the Government. That the petitioners are not bound by the said internal memo or circular and the petitioners cannot be denied the benefits which they are entitled to under the terms of the contract entered between the parties. Learned counsel has also stated that subsequently the Government of Telangana *vide* G.O.Ms.No.146 dated 08.10.2015 has extended the above said benefit to all the parties. Therefore, the exclusion of the price adjustment for labour and other materials only for the petitioners cannot be countenanced and the same is illegal, bad, arbitrary and against the terms and conditions of the contract which are binding on the parties. Learned counsel has also relied on the following judgments in support of his submissions:

1) ***SSANGYONG ENGINEERING AND CONSTRUCTION COMPANY LIMITED VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA***[1];

2) ***SURESH KUMAR WADHWA VS. STATE OF MADHYA PRADESH***[2];

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[1] (2019) 15 SCC 131
[2] (2017) 16 SCC 757

3) ***UNITED INDIA INSURANCE CO. LTD., VS. M.K.J. CORPORATION***[3];

4) ***Karambir Nain vs. The State of Haryana***[4]; and

5) GOVERNMENT OF ANDHRA PRADESH VS. SRI SEVADAS VIDYAMANDIR HIGH SCHOOL[5].

Per contra, the learned Government Pleader appearing on behalf of the official respondents has stated that the authorities concerned, duly taking into consideration the internal memo issued by the Government of India, have not paid the benefit to the petitioners. That the price adjustment for other items has already been paid to the petitioners except for these two items. Learned Government Pleader has also stated that the Department is bound by the Circulars issued by the Government wherein it has clearly stated that the price adjustment can be allowed only for cement, steel and fuel and not other items. Learned Government Pleader has also questioned the very maintainability of the Writ Petition on the ground that all these are the disputed questions of fact, which cannot be gone into under Article 226 of the Constitution of India and the petitioners have to be relegated to the Civil Court, if they have any grievance regarding breach of any conditions of the contract.

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[3] (1996) 6 SCC 428
[4] 2014 SCC Online P&H 12589
[5] (2011) 9 SCC 613

In reply, the learned counsel for the petitioners has drawn the attention of this Court to the letter addressed by Chief Engineer, I&CAD Deptt., SSP&FFC, LMD Colony, Karimnagar, to the Secretary, I&CAD Dept., Secretariat, Hyderabad, vide Lr.No.CE/SSP&FFC/LMD/TS/F.20/5817 dated 26.09.2007 wherein the Committee has recommended for price adjustment towards labour and other material also on the ground that the price adjustment towards labour and other material was already incorporated in the agreement and the same is binding on the parties. But, the Secretary to Government for reasons best known to him without assigning any reasons has simply rejected the price adjustment for labour and materials *vide* Memo No.30250/Maj. Irri.III/A2/2007-6 dated 16.11.2009. Therefore, the learned counsel prays to allow the present writ petition.

Perused the record.

Admittedly, in this case, there is an agreement entered between the parties. Clause 13.8.1 thereof, reads as under:

13.8 Price Adjustment:

13.8.1 Procedure:

> The contract price shall be adjusted for increase or decrease in rates and prices for labour, cement, steel, fuel, lubricants and other materials (electro mechanical works) in accordance with the

> following principals and procedures as defined in clause 20.9 of conditions of contract.

As per the above, the price adjustment is allowed for labour, steel, cement, fuel and other materials. Once the parties have entered into the contract, the parties cannot simply rescind from the same on some flimsy grounds and deny the agreed benefits to the other party. Moreover, as seen from the letter, dated 16.11.2009, the State Level Standing Committee in its meeting held on 21.11.2007 has discussed in detail the agreement conditions and recommended to the Government to accept the payment of price adjustment towards labour and other materials for the particular package, as the price adjustment clause for labour and other materials is incorporated in the agreement and the same is binding on both the parties. In spite of the same, the rejection order was passed giving absolutely no reasons for the said rejection.

Under similar circumstances, the Hon'ble Supreme Court in ***SSANGYONG ENGG. & CONSTRUCTION CO. LTD. case (referred supra)***, has held, at para 76, as under:

> "However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions

or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February, 2013 – in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-94 to 2004-05. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula de hors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court."

In ***SURESH KUMAR WADHWA case (referred supra),*** the Hon'ble Supreme Court, at paras 26 and 27, held as under:

"26. Equally well-settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to the contract has no right to unilaterally "alter" the terms and conditions of the contract and nor they have a right to "add" any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.

27. Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the

other contracting party then such addition is not binding on the other party. Similarly, a party, who adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply such additional terms/conditions."

The Hon'ble Supreme Court in ***M.K.J. CORPORATION case (referred supra)***, at para 7, has held as under:

"7. .... After the completion of the contract, no material alteration can be made in its terms except by mutual consent..."

In ***Karambir Nain case (referred supra)***, at paras 22 and 23, it has been held as under:

"22. .....Further, once an agreement is reduced to writing, it shall be binding on the parties to the agreement and no party has any right to relieve itself of its contractual obligations unilaterally. Still further, the action of the State in altering, modifying or withdrawing any contractual obligation unilaterally would entitle the petitioner to invoke the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

23. ....There is alteration in the terms of the licence. Alteration cannot be enforced unless both the parties agree to it. The terms of licence are, although statutory in nature, cannot be unilaterally changed by the State in between the licence period, without either seeking consent of the licensees or without giving opportunity to the licensee to repudiate the contract...."

In ***SRI SEVADAS VIDYAMANDIR HIGH SCHOOL case (referred supra)***, at paras 18 and 19, it has been held as under:

"18. Having considered the submissions made on behalf of the respective parties, we are of the view that no interference is called for with the judgment and order of the Division Bench of the High Court.

> There is no dispute that the Memo dated 20-10-2004, imposing a ban on recruitment to grant-in-aid posts was issued after the schools in question had been given permission by the State authorities to fill up the vacant posts in the schools being managed and run by the writ petitioners, who are the respondents in these special leave petitions. There is also no dispute that the said memo was not given retrospective effect so as to negate the approval already given for filling up the grant-in-aid posts. The State Government and its authorities could not, therefore, contend that the rationalisation process which had been introduced, would also apply in respect of the private aided schools, where the process of recruitment had already been commenced pursuant to the approval granted earlier.
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> 19. Furthermore, as was submitted by Ms. Pavani, even the approval which was granted for filling up the vacant aided posts, had been granted after due scrutiny as to the requirements of the schools in question. **Since it is well-settled that administrative orders are prospective in nature, unless they are expressly or by necessary implication made to have retrospective effect**, there is no need to refer to the decisions cited by Ms. Pavani, appearing on behalf of the respondent schools."
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> (EMPHASIS ADDED)

In **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.**[6], the Hon'ble Supreme Court, at para 28, has held as under:

> "However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a

[6] (2004) 3 SCC 553)

> writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

In **HSIDC v. HARI OM ENTERPRISES[7],** the Hon'ble Supreme Court, at para 31, has held as under:-

> "It may be true that ordinarily in a matter of enforcement of a contract qua contract, a writ Court shall not exercise its jurisdiction under Article 226 of the Constitution of India. But, it is also trite that where the action of State is violative of Article 14 of the Constitution of India as being wholly unfair and unreasonable, the writ Court would not hesitate to grant relief in favour of a person, where both law and equity demand that such relief should be granted."

Having regard to the above, the rejection of the price adjustment for labour and other material cannot be countenanced by any stretch of imagination. This Court as well as the Hon'ble Supreme Court in a catena of cases have held that the internal memos/circulars cannot be the basis for denying the benefits to the party, more so, when there is a binding contract between them. The parties to the contract are always bound by the terms and conditions of the contract and they cannot breach the terms based on an internal memo which was never brought to the notice

[7] (2009) 16 SCC 208)

of the other side. In the absence of any evidence to show that the said memo/circular was brought to the notice of the petitioners and that they have agreed for the same, in writing, the terms and conditions of the contract will prevail and bind the parties.

For the afore-stated reasons, the impugned order is set aside and the writ petition is allowed. The official respondents are directed to verify the claim of the petitioners for price adjustment towards labour and other material and pay the same, as expeditiously, as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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A.ABHISHEK REDDY, J

Date: 23.03.2022
smr/sur

L.R. Copy to be marked