

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 14243 of 2020

Between:

M/s G.K.R. Infracon (India) Pvt. Ltd.

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 14243 of 2020

% 05.06.2023

Between:

M/s G.K.R. Infracon (India) Pvt. Ltd.

..... Petitioner

And

\$ The State of Telangana and others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr S.Viplav Simha Reddy

^ Counsel for the Respondent: G.P. for Irrigation

G.P. for Panchayat Raj

? Cases Referred:

1. (1978) 1 SCC 405

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. NO. 14243 OF 2020****ORDER:**

Heard the Learned Counsel for the Petitioner and the learned Assistant Government Pleader for Irrigation and the learned Government Pleader for Panchayat Raj.

2. This Writ Petition is filed to issue a Writ of Mandamus declaring the impugned orders issued by the 3rd respondent vide Lr.No.AE/DEE/TDWSP/ Sangareddy/Ph-II/2015-16, dated 14.08.2020 in rejecting and in not considering the petitioner as the sub-contractor and in not issuing the experience certificate in which the petitioner performed works pertaining to providing drinking water to Sangareddy segment from Singur as source in Medak District including operation and maintenance for 10 years under Telangana Drinking Water Supply Project, even inspite of satisfactory certificate issued by the concerned respondents after completion of the said tender works, being very much contrary to the Clause 15 of G.O.Ms.No 94, irrigation and C.A.D., dated 01-07-2003 and further contrary to modification of Sub Contracting conditions

vide G.O.RT.No.987, dated 08-12-2016 being illegal, arbitrary, unfair, unreasonable and consequently direct the respondents to consider the petitioner as the official sub-contractor and issue them with the experience certificate by setting aside the impugned orders of the 3rd respondent vide Lr.No AE /DEE /TDWSP/ Sangareddy / Ph-II/2015-16, dated 14-08- 2020 in rejecting and in not considering the petitioner as the sub-contractor and in not issuing the experience certificate, in respect to tender works pertaining to the providing drinking water to Sangareddy segment from Singur as source in Medak District under Telangana Drinking water Supply Project.

3. The case of the Petitioner, in brief, is as follows:

a) The respondents issued a tender notice Vide E-Procurement tender notice No.06/2015-16 dated 22.07.2015 of the ENC, RWS&S, Hyderabad, calling for the Sealed Tenders for the works pertaining to providing drinking water to Sangareddy segment from Singur as source in Medak District including operation and maintenance for 10 years under Telangana Drinking Water Supply Project.

b) Pratibha Industries being the lowest bidder for the said tender was allotted the work and the 4th respondent requested to submit all the documents.

c) Pratibha Industries had addressed a letter to The Superintending Engineer (TDWSP) Department, Mission Bhagiratha, Sangareddy (4th respondent herein) vide Lr.PIL/TDWSP/PIL/HO/0002 dated 03.10.2015, proposing the nomination of the petitioner company as official Sub-Contractor for 49% of the Project Work as per clause 6 of General conditions of contract and clause 27 of General Instructions to Bidders and the said proposal was entrusted as per clause 15 of [G.O.Ms.No](#) 94 dated 01.07.2003 of I&CAD (PW-COD) Department.

d) It had been submitted by the Pratibha Industries that the name of the petitioner company was not mentioned during the time of the bid as the sub-contractor was not finalized during the bid and sought for the approval of the respondents to treat the petitioner as Sub-contractor before the conclusion of the agreement as per clause 15 of [G.O.Ms.No](#) 94 dated 01.07.2003.

e) The petitioner company had started the works as per the terms and conditions of the agreement entered between the Pratibha Industries and Superintending Engineer (TDWSP), Mission Bhagiratha, Sangareddy (4th respondent herein), had finished all the works by March 2019.

f) In the meanwhile, the Government had issued orders of Modification of Subcontracting Conditions – Amending Order vide G.O.Rt.No.987 dated 08.12.2016, to allow sub contractors as the prime and main contractor, who could not have uploaded the details of the sub-contractor during the time of Bidding.

g) Pratibha Industries and the Petitioner Company had opened a Escrow Account vide Escrow Agreement dated 08.03.2016 and the same has been brought to the knowledge of the respondents. Pratibha Industries having under severe stress, Strategic Debt Restructuring (SDR) was decided as a Corrective Plan of Action (CAP) under the RBI Circular No DRB.BP.BC.No.101/21.04.132/2014-15 dated 08.06.2015 and the banker had applied NCLT against the Pratibha Industries and was affecting the cash flows of the Pratibha Industries.

h) Respondents having made proper authenticated verification over the said executed works, the 4th respondent herein had addressed a letter to 3rd respondent dated 02.01.2019 with eligibility of the Sub Contractor as per clause 21 of General Instruction to bidder of Volume-1 part A and G.O.Rt.No.987 dated 08.12.2016 and has given the certificate of satisfaction of with the performance of tender related works.

i) The 4th respondent addressed a letter dated 09.01.2019 to the 3rd respondent seeking to consider and approve the petitioner company as the main agency of O&M.

j) In spite of the petitioner's representations, to consider the petitioner company as the official Sub-Contractor of the performed tender works, the respondents have been dodging the issue without deciding on the representations of the petitioner.

k) Considering the satisfactory letter addressed by the 4th respondent, the 3rd respondent directed the respondent vide letter dated 25.01.2019 to re-examine the said proposal and eligibility criteria is found to be unclear and the 4th

respondent submitted a detailed satisfactory report dated 20.03.2020 and requested the concerned respondent to take further necessary actions.

l) In the meanwhile, the petitioner had addressed the concerned respondent to issue the experience certificate but despite petitioner's repeated representations, the answering respondent had not issued the Experience Certificate but to no avail.

m) Aggrieved by the inaction of the respondents, the petitioner company has filed **W.P. No. 8850 of 2020** before this court, which has been disposed off, directing the petitioner to make a fresh representation before the 2nd and 3rd respondents and on receipt of the same to be considered by the 2nd and 3rd respondents therein.

n) Complying the orders, the petitioner had made a representation to both the respondents therein and the Respondent no. 3 passed an order without any proper explanation and without assigning any reason, vide [Lr.No.AE/DEE/TDWSP/](#) Sangareddy/Ph-II/2015-16 dated 14.08.2020 stating that the petitioner has no locus to claim

“the official Sub-contractor” and the Experience Certificate.
Hence, this Writ Petition.

4. The counter affidavit filed by the respondents, in brief, is as follows:

a) The Pratibha Industries, having secured the tender had entered into a Memorandum of Understanding with the respondent and the petitioner is not officially recognized as their Sub-contractor as per clause 27.1 of volume I of Part A.

b) The respondents are not a party to the agreement between the petitioner company and the Pratibha Industries and such agreement is not only not recognized but also is not binding on the respondents.

c) Pratibha Industries, had not only failed to furnish the details of the subcontractor while uploading the bid document but also has not proposed any name as their subcontractor as stated in Clause 27.1 of the agreement and further under clause 27.5 of volume I of Part A of the agreement.

d) The fact that the petitioner and the respondent are holding a Escrow Account is not concerned to the

respondents. Entering into a escrow account does not have any authenticity, since the payment towards the work would be made to the primary contractor only and hence the petitioner is not eligible or entitled to get any experience certificate from the respondents.

e) The Petitioner is only observed as a local representative of the original contractor only. The 4th respondent vide Lr.No.AE/DEE/MB GRID/Sangareddy/Ph-II/GKR Exp-1/2018 dated 02.01.2019 had given satisfactory report on work previously done by the petitioner and not on the completion of the contract work.

f) The nature of the contract work is not only for the execution but also for maintenance of the work for a period of 10 years and issuance of Experience Certificate can only be done after the completion of maintenance of the work for a period of 10 years. Hence the Writ Petition and is devoid of merits and is liable to disposed.

PERUSED THE RECORD

5. The impugned proceedings issued by the Superintending Engineer vide Lr.No.AE/DEE/TDSWP/

Sangareddy/Ph-II/2015-16(TDSWP) dated 14.08.2020

reads as under:

"In the letter 1st cited, you have mentioned that you have moved a writ petition before Honourable High court of Telangana for inaction on not regarding us as official sub-contractor".

The ref 2nd cited is the writ petition No.8850 of 2020 before The Honourable High court of Telangana.

The Honourable High court of Telangana disposed of the writ with the following orders.

"Liberty is given to the petitioner to submit a fresh representation to the respondents 2 & 3 within a period of one week from the date of receipt of a copy of this order raising all the contentions, which are raised in the present writ petition by enclosing the copies of service certificates. On the receipt of such representation, the respondents 2 & 3 shall consider the same and pass appropriate orders within a period of 3 weeks thereafter."

As seen from the writ petition and the order there is no mention of the main contractor to whom you are the sub-contractor and also no service certificates as mentioned in The Honorable High court of Telangana order. Hence no action can be taken on the raised contentions.

Coming to the issue of considering you as official sub-contractor, based on Go Rt No 987, dated: 08-12-2016, it states that "The bidder shall furnish all the relevant documents of sub-contractors engaged during execution of work for approval of the Engineer-in-Chief, RWS&S Department." The relevant submitted documents have to be furnished to the BOCE and they have to evaluate the experience certificate and agree to the same. The Engineer-in- chief then has to accept the same and issue proceedings accordingly. As seen from the records, this has not happened.

As such as seen from the records, you have no locus standi in the work as seen from the above. Kindly desist from further correspondence.”

6. Paras 6, 9 and 10 of the counter affidavit filed by the respondents read as under:

6. It is submitted that the 4th respondent vide Lr.No.AE/DEE/MBGRID/Sangareddy/PH-II/GKR Exp-1/2018, dated 02.01.2019 had given satisfactory remarks to work done previously by the petitioner, but not on satisfactory report on completion of contract work, which is to be taken into consideration for issuance of the experience certificate. It is pertinent to mention that the nature of the contract work is not only for the execution of the work but for its maintenance for further 10 years.”

9. It is submitted that the question of issuance of experience certificate to the petitioner arises only after completion of the contract work and the scope of the contract work includes its maintenance for 10 years after the execution of project work. Therefore, the petitioner has no right to insist upon to issue experience certificate in the middle of the contract. Under these circumstances, the request of the petitioner for granting experience certificate is not considered and rejected.

10. It is submitted that the petitioner has no right much less any legal right to insist upon the respondents to issue experience certificate.”

7. The order dated 15.07.2020 in W.P.No.8850 of 2020 filed by the petitioner herein is disposed by the single judge observing as under:

“ This Writ Petition is filed to declare the action of the respondents in not considering the petitioner as official sub-contractor and in not issuing experience certificate for which the petitioner performed works pertaining to providing drinking water to Sangareddy segment from Singur as source in Medak District including operation and maintenance for 10 years under Telangana Drinking Water Supply Project – Mission Bhagiradha, as illegal and arbitrary.

2. Heard Sri S. Viplav Simha Reddy, learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj, appearing for the respondents. With the consent of both the counsel, this writ petition is disposed of at the admission stage itself.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a sub-contractor and it is having all the requisite eligibility criteria in accordance with G.O.Ms.No.94, dated 01.07.2003 and G.O.Rt. No.987, dated 08.12.2016. He would further

submit that the respondent authorities have issued service certificates dated 02.01.2019 and also 09.01.2019 wherein they have specifically stated that the petitioner has performed the work entrusted to it successfully and satisfactorily. Having issued the said service certificates, the respondents are not issuing the experience certificate in respect of the very same work. He would further submit that the petitioner has submitted representations dated 04.12.2018 and 12.12.2018 to the 4th respondent and despite receiving and acknowledging the said representations, the 4th respondent did not act upon them.

4. On the other hand, learned Government Pleader for Panchayat Raj would submit that in fact, the respondents 2 and 3 are the concerned officers to consider the representations of the petitioner and to issue the experience certificate to the petitioner. Representations said to have been submitted by the petitioner are prior to the service certificates. However, respondent Nos.2 and 3 will consider the representations of the petitioner.

5. In view of the above said submission, liberty is given to the petitioner to submit a fresh representation to the respondents 2 and 3 within a period of one week from the date of receipt of a copy of this order, raising all the contentions, which are raised in the present writ

petition duly enclosing the copies of service certificates. On receipt of such representation, the respondents 2 and 3 shall consider the same and pass appropriate orders within a period of three (3) weeks thereafter.”

8. The reply affidavit filed by the petitioner to the counter affidavit filed by the respondents, in particular, para 4 reads as under:

“Para 4. It is pertinent to mention that the assertion of the 4th respondent that the issue of experience certificate arouses, subsequent to the completion of the contract work including the maintenance of 10 years after the execution of the project work. It is to be made clear that the said contention is very much irrational and vague for the fact that the respondents are misrepresenting the importance of the clause 8 of the G.O.Rt.No.987 dated 08.12.2016 to its fullest effect, as amended 27.1 never says or never specifies that the issue of experience certificate arouses subsequent to the completion of the contract work including the maintenance of 10 years. The principle enunciated in G.O.Rt.No.987 dated 08.12.2016 has to be interpreted in a fairly in its true effect. The rejection order of the 3rd respondent dated 14.08.2020 never speaks about the issues contended in the counter affidavit, the rejection order never raised such issues as are raised in counter, the counter affidavit is giving new colour to the cause in

issue. The said counter is devoid of merits and lacks authenticity.”

DISCUSSION AND CONCLUSION :

9. It is the specific case of the petitioner that in pursuance to the orders of this Court dated 15.07.2020 passed in W.P.No.8850 of 2020, the petitioner made a representation dated 22.07.2020 duly enclosing the necessary documents, but however, the 3rd respondent did not consider the same and unilaterally, erroneously, mechanically without even issuing notice to the petitioner and calling for qualification or explanation from the petitioner by providing reasonable opportunity of hearing to the petitioner passed the order impugned dated 14.08.2020. It is further specific case of the petitioner that Clause 8 of G.O.Rt.No.987, dated 08.12.2016 has been mis-interrupted and mis-understood by the 3rd respondent in view of the fact that the amended Clause 27.1 never specifies about the experience certificate being issued subsequent to the completion of the contract work including the maintenance of 10 years and therefore, the petitioner

contends that the averments made in para 9 of the counter affidavit filed by the 4th respondent cannot be sustained. The petitioner filed a detailed reply affidavit to the counter affidavit filed by the 4th respondent contending the same.

10. A bare perusal of the order impugned dated 14.08.2020 clearly indicates the reasons for rejecting the petitioner's representation made in pursuance to the orders of this Court dated 15.07.2020 passed in W.P.No.8850 of 2020 are that there is no mention of main contractor and also no service certificates had been enclosed, hence no action could be taken.

11. The petitioner specifically at para 17 of the affidavit filed in support of the writ petition, stated, that in pursuance of the orders of this Court in W.P.No.8850 of 2020 dated 15.07.2020 the petitioner made a representation dated 27.07.2020 duly enclosing all the necessary documents, but however, without considering the service certificates submitted by the petitioner along with the representation unilaterally

Petitioner's case has been rejected. Curiously, this Court opines that the reasons mentioned in para 9 of the counter affidavit filed by the 4th respondent are not even referred to in the order of rejection of petitioner's representation dated 27.07.2020 made in pursuance to the orders passed in W.P.No.8850 of 2020. This Court opines that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The Apex Court in the judgment reported in (1978) 1 SCC 405 in Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others at para 8 observed as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may

here draw attention to the observations of Bose, J. In Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

12. The petitioner brings on record the letter of the 4th respondent dated 09.01.2019 vide letter No.AE/DEE/MB GRID/Sangareddy/PH-II/2018 addressed to the 3rd Respondent seeking to consider and approve the petitioner herein as the main agency for O & M and nominate the petitioner company to undertake subject work. A bare perusal of the contents of the letter dated 02.01.2019 of the 4th respondent addressed to the 3rd respondent vide

No.AE/DEE.MB GRID/Sangareddy/Ph-II/GKR Exp-I/2018 also clearly indicate the recommendations of the 4th respondent to the 3rd respondent in favour of the petitioner herein in confirmation with the eligibility of the sub contract as per Clause 27 of General Instructions to bidder of Volume-I- Part-A and G.O.Rt.No.987, dated 08.12.2016 of PR and RD (RWS.IV) Department. In fact the relevant para of the said letter dated 02.1.2019 reads as under :

“Vide ref. 5th and 6th cited the prime contractor has stated that the sub-contractor M/s. GKR Infracon (India) Pvt., Ltd., Hyderabad are ready to execute the project on back to back basis and they have complete resources of execution of entire project. The prime contractor has stated that they have satisfied their capacities and they have no objection towards sub-contractor executing the entire agreement quantities”. Curiously denying reasonable opportunity to the petitioner herein the order impugned is passed by the 3rd Respondent mechanically and the same clearly indicates that an unfair procedure had been adopted to reject the request of the Petitioner for nomination of the Petitioner for entrustment of total Operation and Maintenance Works relating to providing drinking water to Sangareddy segment from Singur as source in

Medak District including Operation and Maintenance for 10 years under Telangana Drinking Water Supply Project (TDWSP) and the Petitioners case had been rejected unilaterally without even examining Petitioner's representation dated 22.07.2020 nor the documents enclosed with it".

13. This Court opines that the order dated 15.07.2020 passed in W.P.No.8850 of 2020 had not been considered by the 3rd respondent in true spirit. The petitioner's representation dated 27.07.2020 made in pursuance to the orders of this Court had been rejected mechanically, unilaterally, irrationally without even providing reasonable opportunity to the petitioner to enable the petitioner to submit the required clarification/explanation and the same is in clear violation of principles of natural justice and totally contrary to the spirit of the orders of this Court passed in W.P.No.8850 of 2020 on 15.07.2020. In fact, a bare perusal of Clause 15 of G.O.Ms.No.94, dated 01.07.2003 of I and CAD (PW-COD) Department extracted at para 7 of the affidavit filed by the Petitioner in support of the present Writ Petition and Amended Clause 27.1 of the

Tender Document Agreement as per Clause 8 of G.O.Rt.No.987, dated 08.12.2016 stipulating the said Amendment as applicable only to Mission Bhagiratha works referred to and extracted at para 10 of petitioner's affidavit indicates that the 3rd Respondent has passed the order impugned dated 14.08.2020 in a routine mechanical manner without application of mind without even examining the Petitioners case applying the relevant G.O's in clear violation of principles of natural justice.

14. Taking into consideration of the above referred facts and circumstances duly considering the law laid down by the Apex Court in (1978) 1 SCC 405 in "Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others" on the point that the reasons mentioned in the impugned order cannot be construed by fresh reasons in the shape of an affidavit (in the present case counter affidavit), the writ petition is allowed and the order impugned vide Lr.No.AE/DEE/TDWSP/Sangareddy/Ph-II/2015-16, dated 14.08.2020 passed by the 3rd respondent is set

aside. The 3rd respondent is directed to consider afresh the representation dated 22.07.2020 of the petitioner as official sub contractor with respect to the tender work pertaining to providing drinking water to Sangareddy segment from Singur as source in Medak District under Telangana Drinking Water Supply Project duly taking into consideration the Clause 15 of G.O.Ms.No.94 Irrigation and CAD, dated 01.07.2003 and also clause 8 of G.O.Rt.No.987, dated 08.12.2016 with the amended clause 27.1 of the Tender Document /Agreement duly considering the recommendations made in Petitioner's favour vide letters dt. 02.01.2019 and 09.01.2019 addressed by the 4th Respondent to the 3rd Respondent and pass appropriate orders within the period of three weeks from the date of receipt of copy of the order duly putting the petitioner on notice by providing reasonable opportunity of hearing to the petitioner in conformity with the principles of natural justice and duly communicate the decision to the petitioner by passing a reasoned speaking order. However, there shall be no order as to costs.

Miscellaneous petitions if any, pending shall stands closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
b/o
kvrn