

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO.8872 OF 2023

ORDER:

The present writ petition is filed seeking the following relief:

“.....To declare arbitrary and highhanded action of the respondent no.2 in not determining the final bill and subsequently not releasing the final bill amount of Rs.30,150,48.47 (Rupees Thirty Lakhs Fifteen Thousand Forty Eight Rupees and Forty seven Paise only) to the petitioners company for the completed contract civil works of development locations in Island area of East Godavari District Andhra Pradesh which is violation of Article 14, 19 (1) (g) and 21 of constitution of India, 1956 and against the principles of natural justice and consequently direct the respondent no.2 to release the final bill amount of the petitioner of Rs.30,150,48.47 (Rupees Thirty Lakhs Fifteen Thousand Forty Eight Rupees and Forty seven Paise) only along with interest from the date of submission of the final bill to the respondent no.2 and to direct the respondent no.2 to release the petitioners machinery equipments held with the respondent no 2 and pass....”

2. Heard B.Nageswara Rao, the learned counsel for the petitioner and Sri D.S.Siva Darshan, learned standing counsel for 2nd respondent.
3. Learned counsel for the petitioner in elaboration to what has been stated in the affidavit contended that, the petitioner's company has entered into an agreement with the respondents organisation dated 12.05.2017 wherein four (04) works orders have been assigned to the petitioner and the petitioner has completed the works in time, for which the respondent organization has released the bill amounts to the petitioner only for three work orders and failed to pay Rs.30,15,048.47/- for the completed works. He

further submitted that, the petitioner has submitted the bills with regard to completed work in 2020 due to covid pandemic and the authorities have endorsed the bills on 20.12.2021 but failed to release the bill amounts. He further submitted that, the petitioner has made several representations to the 2nd respondent for release of the pending amounts and the authorities have not acted upon the same, as such the petitioner issued legal notice dated 15.09.2022. In spite of the said legal notice, the authorities have not released the bill amount to the petitioner causing huge loss to the petitioner. As such filed the present writ petition and prayed to pass appropriate orders in that regard.

4. On the other hand, learned standing counsel on counter submitted that, the petitioner has failed to submit the work completion certificate and the authorities are seriously disputing the petitioner's claim in the writ petition. He further submitted that, a reply dated 02.11.2022 was given to the legal notice issued by the petitioner, duly raising objections to the claim made by the petitioner and accordingly sought certain documents to verify the entitlement of the petitioner's claim. The said reply filed along with counter was placed on record and has drawn the attention of the Court to the same. He further submitted that, in spite of asking the relevant documents, the petitioner did not submit any of the documents and filed the present writ petition, which cannot be entertained by this Court under writ jurisdiction.

5. Learned standing counsel further submitted that, Clause 6 of the agreement holds that, within 10 days of the completion of the work, the contractor shall give notice of such completion to the Project Manager/Engineer-in-Charge and within ten days of the receipt of such notice the Project Manager/Engineer-in-Charge shall inspect the work and if there is no defect in the work shall furnish the contractor with a certificate of completion. In the present case, the petitioner has neither pleaded anything nor placed any material to show that the petitioner has completed the work as stipulated under Clause 6. Without placing any material on record and without pleading anything in that regard, the petitioner cannot ask for work completion certificate in present writ petition. He further submitted that, until these aspects are dealt with, the petitioner cannot say that the authorities have failed to pay and release the amounts. He further submitted that, if at all the petitioner has any grievance; he can always approach the competent Civil Court. As such prayed to pass appropriate orders in that regard.

6. Perused the record.

7. The petitioner's main grievance is that, the authorities have released bill amounts only for 3 work orders and failed to pay the remaining amount to the petitioner for the completed works. As the authorities have not acted upon the representations so made by the petitioner, a legal notice dated 05.09.2022 has been issued and the authorities have given a reply dated 02.11.2022. A perusal of the reply notice shows that, the authorities have asked for certain

documents to be submitted by the petitioner but the petitioner has not submitted the same and instead filed the present writ petition. It is further noticed that, in counter as well as in the reply, the authorities are disputing the entitlement of the petitioner's claim and as per agreement there is arbitration clause when disputes arises. The Constitutional Courts have categorically held in this regard that, if at all there is any serious dispute with regard to contractual obligations, the parties cannot invoke writ jurisdiction and has to approach competent forum, as per agreement i.e., either arbitration or competent Civil Court. In the present case, the material clearly shows that, there is serious dispute with regard to work as well as payment. In these circumstances, this court cannot adjudicate these aspects in writ jurisdiction, as such, the writ petition is liable to be dismissed.

Accordingly, the writ petition is **dismissed**. However this order does not preclude the petitioner from approaching the competent forum, in accordance with law, if so advised. In the event, if the any proceedings are initiated by the petitioner, this order should not come in the way while deciding or adjudicating the same. No costs.

Miscellaneous applications, pending if any, shall stand closed.

04.09.2023,
BRS

JUSTICE RAVI CHEEMALAPATI