Super Constructions Vs. State of A.P. and Others

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Court : Andhra Pradesh

Decided On : Jul-09-1997

Reported in : 1998(3)ALD223

Judge : T.N.C. Rangarajan, J.

Acts : Constitution of India - Article 226; Indian Contract Act, 1872 - Sections 23

Appeal No. : W.P. No. 21003 of 1996

Appellant : Super Constructions

Respondent : State of A.P. and Others

Advocate for Def. : Government Pleader, for Transport,

Advocate for Pet/Ap. : Mr. V. Ravinder Rao, Adv.

Judgement :
ORDER

1. This writ petition seeks a direction to the respondents to pay the amount due to the petitioner on the basis of the quoted rate without any reduction. The undisputed facts are that with reference to the work of constructing a central verge on the inner ring road at Tamaka, the petitioner had quoted a rate of Rs. 135/- per cubic metre whereas the estimated cost even according to the Department was Rs.1,133/- per cubic metre. Finding the quotation to be very low, an undertaking

was required from the petitioner that the work will be completed without any default and such an undertaking was given. Subsequently, a fresh undertaking was required from the petitioner by the Superintending Engineer by his letter dated 1-2-1992 asking the petitioner to state that if the quantity is reduced, the difference between the estimated value of the contract value for the reduced quantity will also be deducted from the bills. The petitioner wrote on 1-2-1992 that this was an unfair undertaking but yet agreed togive the undertaking in order to obtain the contract. The contract was awarded to the petitioner and while the work was going on the total quantity was reduced. Consequently, while settling the bills, the Department insisting upon the enforcement of the second undertaking and reducing from the payable amount to the petitioner, the amount of difference between the estimated value and the contracted value in respect of the work which was deleted from the contract. The learned Counsel for the petitioner submits that this undertaking was unconscionable cannot be enforced by the respondents. The learned Government pleader strongly opposed the writ petition and relied on the counter affidavit in which it is contended that the petitioner had voluntarily given the undertaking and he is bound by the same. The learned Government Pleader also submitted that the writ petition was not maintainable since this was a matter of contract and relied on the decision of the Supreme Court in Tata Cellular v. Union of India, : AIR 1996 SC11 . However, I am unable to accept these objections. The Government Department is not expected to insist on unconscionable condition in any contract and enforce the same in terrorem. The Supreme Court has held in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath, : (1986)IILLJ171SC that any condition in a contract which is opposed to public policy is void under Section 23 of the Contract Act and cannot also be supported on the ground of voluntary agreement by the parties. In the present case, when the petitioner had agreed to carry out the work at a rate per cubic metre it is in the hope of making profit on the entire completed work offered on contract. When the work itself is reduced, the amount that the petitioner will get will be reduced and correspondigly his profit element is also reduced. That itself is a concession to the Government because normally when a contract is entered into for carrying out particular quantity of work, the party to the contract expects that the quantity agreed to will be given, and therefore, the contractor wilt also be able to get the total amount at the rate agreed

on the total quantity of work given on contract. To say that apart from reducingthe amount of work given, the difference between the estimated cost and the contractual cost in respect of the work which is not required to be done will be recovered from the contractor is nothing less than absurd. It is a penalty on a contractor for not doing the work which is not entrusted to him and can never be accepted as a reasonable provision in a contract. The doctrine of legitimate expectation requires that even in a matter of agreement, the Government Bodies should maintain fair play. It is, therefore, not expected mat such unconscionable clauses will be put in an agreement or that Government would defend such a clause. The decision of the Supreme Court in Tata Cellular v. Union of India, (supra) cited by the learned Government Pleader is itself authority for the proposition that where the decision making authority exceeds his powers or abuses his powers, judicial review can be invoked for correcting the same. In the present case, the Superintending Engineer being in position to dictate terms has insisted on an unconscionable clause being incorporated in a contract. Even though it is a matter of agreement, a public authority is not expected to abuse his powers in such a manner. I have, therefore, no hesitation in setting aside the demand on the basis of the second undertaking given by the petitioner. The respondents are directed to pass the bills without taking into account the second undertaking and pay the amount due to the petitioner within two weeks from the date of receipt of a copy of this order.

2. Accordingly, the writ petition is allowed with costs Rs. 1,000/-.