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G.Thrideep Vs. State and Others

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Court : Kerala

Decided On : Jun-25-2015

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : G.Thrideep

Respondent : State and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE25H DAY OF JUNE20154TH ASHADHA, 1937 WP(C).No. 14248 of 2007 (U) ---------- PETITIONER(S): ---------- G.THRIDEEP, S/O.P.GOPINATHAN, GOVERNMENT CONTRACTOR, `THRIPTHI', PALAYAMKUNNU P.O. VARKALA, THIRUVANANTHAPURAM. BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA SRI.K.I.SAGEER RESPONDENT(S): ---------- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF WATER RESOURCES, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER, IRRIGATION, THIRUVANANTHAPURAM.

3. SUPERINTENDING ENGINEER, IRRIGATION SOUTH CIRCLE, THIRUVANANTHAPURAM. R1 TO3BY ADV. GOVERNMENT PLEADER

MR.A.MOHAMMED SAVAD THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2506-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: VS WP(C).No. 14248 of 2007 (U) ---------- APPENDIX PETITIONER(S)' EXHIBITS : ---------- EXT.P1 : TRUE COPY OF THE SELECTION NOTICE NO.D7-3091-2005-ISC DATED812.2008 SIGNED BY THE3D RESPONDENT. EXT.P2 : TRUE PHOTOCOPY OF THE SCHEDULE OF WORK DULY SIGNED BY THE3D RESPONDENT DATED1612.2006 EXT.P3 : TRUE COPY OF THE

ORDER

NO.D7-3091-05-SC DATED273.2007 ISSUED BY THE3D RESPONDENT. EXT.P4 : TRUE COPY OF THE REPRESENTATION DATED174.2007 FILED BY THE PETITIONER BEFORE THE3D AND2D RESPONDENTS. RESPONDENT(S)' EXHIBITS : ---------- EXT.R3(a) : COPY OF THE LETTER NO.D7-3091-2005-ISC DATED218.2006. EXT.R3(b) : COPY OF THE PETITIONER'S LETTER DATED - NIL EXT.R3(c) : COPY OF THE TENDER AND RELEVANT AGREEMENT. EXT.R3(d) : COPY OF THE SELECTION NOTICE DATED812.2006 EXT.R3(e) : COPY OF THE REPRESENATION DATED91.2007 EXT.R3(f) : COPY OF THE REPRESENATION DATED111.2007. /TRUE COPY/ PA TO JUDGE VS A.M.SHAFFIQUE, J ---------- W.P.(C).No.14248 of 2007 ---------- Dated this the 25th day of June, 2015

JUDGMENT

Petitioner challenges Ext.P3, an order issued by the Superintending Engineer, Irrigation South Circle, Thiruvananthapuram on 27.03.2007, by which the Earnest Money Deposit (EMD) submitted by the petitioner for a particular work has been forfeited after terminating the contract.

2. The facts involved in the writ petition would disclose that the petitioner, who is a contractor, is awarded with a work in terms of Ext.P1 dated 08.12.2006. As per the terms of the work order, work has to be completed by 3 months from the date of handing over the site. Ext.P2 is the schedule of work. Petitioner also has

deposited the earnest money for carrying out the terms and conditions of the work.

3. In Ext.P3, it is stated that though the work was awarded in favour of the petitioner, he did not turn up to reply. In fact, his rate originally was 49% above the estimated rate. The contractor submitted that he is W.P.(C).No.14248 of 2007 2 willing to carry out the work at 20% above the estimated rate as accepted by the Chief Engineer. He also extended the firm period of his tender up to 31.12.2006. Selection notice was therefore issued to the contract on 8.12.2006 and he was directed to attend the office for executing agreement on or before 23.12.2006. He did not turn up for executing agreement and therefore the work was terminated. The petitioner submits that he had approached the third respondent and filed a representation requesting that he should be permitted to furnish security deposit and to execute the agreement. However, it was not permitted by the third respondent and therefore the action taken pursuant to Ext.P3 is bad in law. Further it is stated that Ext.P3 has been issued in violation of the principles of natural justice.

4. Counter affidavit has been filed by the third respondent inter alia stating that the notice inviting tender was issued fixing last date of tender on 13.12.2015. The petitioner submitted tender for the work by 49% above the estimated rate. It was the lowest tender. Negotiation was made with the lowest tenderer W.P.(C).No.14248 of 2007 3 and he agreed to reduce the quoted rate to 47.99% above the estimate rate. The third respondent recommended the reduced rate of 47.99% above the estimated rate to the Chief Engineer, Irrigation South Circle. The Chief Engineer accepted the tender of the petitioner at 20% above the estimated rate less cost of departmental materials with direction to obtain a written willingness from the contractor agreeing to do the work at the rate accepted by the Chief Engineer. Third respondent intimated the fact to the petitioner and direct him to intimate his willingness to do the work at the rate accepted by the Chief Engineer. Ext.R3(a) is the said letter. Petitioner, as per Ext.R3(b) has informed his willingness to do the work at the rate accepted by the Chief Engineer. By informing the willingness to do the work the offer of the department is accepted by the petitioner without raising any further demands. This according to the respondent forms the concluded contract between the parties. The preliminary agreement was

executed by the petitioner with the third respondent which was produced as R3(c). Since the petitioner had agreed to undertake the work at 20% W.P.(C).No.14248 of 2007 4 above the estimated rate, it is contended that there is breach of contract on the part of the contractor and the department is justified in issuing Ext.P3.

5. A perusal of the records would reveal that the petitioner has agreed to undertake the work at 20% above the estimated rate as per Ext.R3(c) letter and thereafter, when Ext.R3(d) letter of acceptance was issued, there was no response from the petitioner. Though the petitioner has a contention that he was not permitted to furnish the security deposit and execute the agreement, there is no material to arrive at such a finding. If the petitioner was willing to execute the work on the agreed terms, there is no reason why the respondent authority should have refused such a permission. Further, the petitioner is raising dispute regarding the forfeiture of EMD. The dispute between the parties arises out of issue relating to disputed questions of facts, which comes under the realm of private law, which cannot be adjudicated by this Court, in a writ petition filed under Article 226 of the Constitution of India. In fact, there is considerable dispute between the petitioner and the respondents as to whether W.P.(C).No.14248 of 2007 5 there was refusal on the part of the respondents in permitting the petitioner to execute the agreement and furnish the security deposit. Such an issue cannot be decided in a writ petition filed under Article 226 of the Constitution of India. In the result, I do not find any merit in this writ petition and accordingly it is dismissed. Sd/- A.M.SHAFFIQUE JUDGE vs

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