



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR.JUSTICE A.V.SESHA SAI

WRIT APPEAL No.919 of 2022

M/s.Celkon Impex Private Limited,
having its office in Sy.No.217/220/
221/222/223/224/227, IT Park,
Renigunta, Tirupathi, Andhra Pradesh,
Represented by its GM (Operations)
Gunnam V.Suresh and another

... Appellants

Versus

The State of Andhra Pradesh
Rep. by its Secretary,
School Education (SHA) Department,
A.P.Secretariat, Velagapudi,
Guntur District and another

... Respondents

Dt.: 09.08.2023

(Per Dhiraj Singh Thakur, CJ)

The present Writ Appeal has been preferred against the Order dated 01.04.2022 passed in W.P.No.12623 of 2021, to the extent that the Writ Court while allowing the writ petition directed the respondents to pay the petitioners only in regard to 779 units of Advanced Digital Class Rooms (in short 'ADCRs') at the contractual



rate and not with regard to the entire 2,000 units which had been allegedly supplied by the Appellants/Petitioners.

1.1 With a view to understand the background in the context of which the present controversy arises, it is pertinent to mention a few material facts in brief:

The Appellants/Petitioners formed a consortium and responded to a tender notice No.6796/APSSA/MIS/A8/ 2018/2, dated 21.02.2019, inviting applications for the supply and maintenance of ADCR's. The petitioners were declared as successful bidders in the said bidding process and work order was issued in their favour on 08.03.2019. A contract agreement was also executed on 09.03.2019 with the 2nd respondent which set out the terms and conditions of the supply of ADCR's including the terms of payment, according to which, 90% of the payment was to be released against the delivery of the ADCR's and the balance 10% was payable upon successful installation of the hardware. The condition prescribed in the work order which is relevant to the present controversy reads as under:

“2. Delivery: *Delivery within 90 days from the date of receipt of Purchase order and distribution list. The items should be supplied to the respective schools and offices within 90 days from the date of the*



Purchase Order. SSA concerned officer has right to reject the articles not received within the stipulated period. In case of delay in supplies, penalty of 2% is applicable on order value.”

2. The case setup by the petitioners in the writ petition was that although the work order was issued on 08.03.2019, the distribution lists were provided by 2nd respondent vide e-mails on or after 15.05.2019. Accordingly, the petitioners contended that the period of supply and delivery of 90 days prescribed in the work order would have to be calculated with effect from 15.05.2019 and not with effect from the issuance of the work order dated 08.03.2019.

3. A communication dated 03.07.2019 then was issued by the 2nd respondent directing the petitioners to stop the supply of ADCR's to Modern Primary Schools in the State of Andhra Pradesh until further orders. This was issued on the premise that the petitioners had failed to supply the ADCR's within the prescribed 90 days from the issuance of the work order dated 08.03.2019.

4. The petitioners would contend that if 90 days period was to be calculated from 15.05.2019, they could have supplied and delivered the product by 15.08.2019 and further informed that all



deliveries were made prior to 02.07.2019 before the issuance of the impugned communication dated 03.07.2019.

5. A communication dated 08.07.2019 also is stated to have been addressed by the petitioners to the 2nd respondent/the State Project Director, Sarva Shiksha Abhiyaan, informing the said authority that the supply of 2,000 ADCR's had been completed on 02.07.2019. Apart from the above, a communication dated 29.08.2019 was addressed to the concerned Minister for Education, containing details of various dates on which the supplies were made at different destinations as per the list given by the SSA, the list of which pertains to deliveries made in the Schools in the East Godavari District on 02.07.2019.

6. The appellants appear to have preferred writ petition bearing W.P.No.8705 of 2021 in which, by way of an interim order, the Writ Court was pleased to direct the disposal of the representations filed by the petitioners dated 08.12.2020 and 29.01.2021 in accordance with law. These representations came to be disposed of vide the order in Rc.No.6796/APSSA/MIS/A8/2018, dated 11.05.2021 which was also impugned by the petitioners in the writ petition bearing W.P.No.12623 of 2021.



7. In the said order dated 11.05.2021, the respondents admitted that, based upon the material available with them, on 02.07.2019, only 779 ADCR's were supplied as the supplies were directed to be stopped on 03.07.2019. With a view to show that the alleged supplies were all made beyond 03.07.2019, reference has been made in the order impugned to communication dated 17.08.2019, in which, the appellants are alleged to have supplied 429 ADCR's on 17.08.2019 and another 667 ADCR's on 09.05.2020 and further the claim of the appellants that they had supplied 2,000 ADCR's within time was held to be unacceptable and contrary to the terms and conditions of the agreement.

8. In the background of the aforementioned facts, the appellants filed W.P.No.12623 of 2021, in which, in paragraph Nos.31 and 33, it was stated as under:

“31. It is submitted that accordingly, the 2nd Respondent had categorically accepted that 779 ADCRS which were delivered before 02.07.2019 are eligible for payment. It is submitted that according to Clause 5 of the agreement, the Petitioners are entitled to 90% of the payment upon delivery of the ADCRS and 10% of the payment upon installation and commissioning of the same. It is submitted that the Respondents have accepted that 1217 ADCRS have been installed. Therefore, the Petitioners are duly entitled for the payment with regard to 779 ADCRS that were delivered and installed. However, the



Respondents herein have failed to make the payment with regard to the 779 ADCRs which, even according to the Respondents, are eligible for payment. Aggrieved by the said default on part of the Respondents, the present Writ Petition is preferred before the Hon'ble High Court.

33. It is submitted that the contract agreement dated 09th March 2019 entered into between the Petitioners and the 2nd Respondent consists of an arbitration clause; however, it is submitted that the alternative remedy is not efficacious in the facts and circumstances of the case as the Respondents themselves have accepted the fact that 779 ADCRs which were delivered before 02.07.2019 are eligible for payment and yet there was no payment made with regard to them and the refusal to disburse the amounts on the part of the Respondents is vitiated by malafides and arbitrariness and therefore, violative of Article 14 of the Constitution of India. It is submitted that this Hon'ble Court, under Article 226 of the Constitution of India, is empowered to exercise its jurisdiction to check such illegal and arbitrary actions of the State even in contractual matters.”

9. Finally, the relief which was prayed for by the petitioners was in the following terms:

“38. Hence, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of "Writ of Mandamus" declaring the action of the Respondents, more particularly, the 2nd Respondent in not disbursing the amounts to the Petitioners in relation to the work undertaken by the Petitioners for the supply, installation and commissioning of "Advanced Digital Class Rooms (ADCRs)" under the Tender Notice No.6796/APSSA/MIS/A8/2018/2, issued by the 2nd Respondent and the Contract Agreement dated 09th March 2019, despite categorically admitting in Rc. No. 6796/APSSA/MIS/A8/2018 dated 11.05.2021 that



779 ADCRS which were delivered before 02.07.2019 are eligible for payment, as being illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India, and consequently direct the 2nd Respondent to clear the pending payments due to the Petitioners immediately, and pass such other order or orders in the interest of justice.”

10. The main objection of the respondents in the reply affidavit was with regard to the maintainability of the writ petition in the light of the fact that the petitioners had an equally efficacious remedy by way of arbitration in terms of the arbitration clause contained in the agreement executed between the parties. The existence of the arbitration clause in the agreement, however, is not disputed. Apart from the above, the stand taken by the respondents was that, by 02.07.2019, only 779 ADCR's were supplied and, thereafter, the supply of ADCR's were stopped by the Stop Supply Order dated 03.07.2019 and that any supplies made thereafter were not to be considered.

11. The issue was considered by the Writ Court which, by virtue of order dated 01.04.2022, held the petitioners to be entitled to receive payment for 779 units at the contractual rates and not the reduced rate suggested by the Committee without applying the penalty clause to such units. It held that the 90 days period for supply of the units was to be counted from 15.05.2019 onwards



when the distribution lists for delivery were provided to the petitioners. It rejected the plea of the respondents that the 90 days period for supply of ADCR's was to expire on 06.06.2019 calculating the period from the date of issuance of the supply order.

12. The State is not in appeal against the order dated 01.04.2022. It is the petitioners who have challenged the order passed by the learned Single Judge on a limited ground that the appellants' right to receive payments ought not to have been restricted to 779 ADCR's but ought to have been extended to pending payments for the entire 2,000 units of ADCR's which were delivered and installed at various locations.

13. We, however, are not satisfied with the argument so advanced by the learned counsel for the appellants. The averments made in the writ petition in paragraphs 31 & 33 as also the relief prayed for by the appellants which have been discussed in the preceding paragraphs of this judgment would show that the appellants had restricted the claim only to the supplies made and admitted to have been received by the respondents by 03.07.2019 by which date the appellants had been directed to stop the supplies. Learned counsel for the respondents also questioned the claim of the appellants as



regards date of supplies which, according to him, were being confused with the date of dispatch by the appellants.

14. A reference to the decision rendered by the concerned authority on the representations filed by the appellants on 11.05.2021 pursuant to the directions issued by the Writ Court in W.P.No.8705 of 2021 also suggests that there is a dispute regarding actual date of receipt of supplies. As many as 429 ADCR units are stated to have been supplied on 17.08.2019 after a lapse of 162 days and as many as 667 ADCR units are stated to have been supplied on 09.05.2020.

15. In the light of these disputed figures, it would not have been necessary for the Writ Court to embark upon finding the exact number of units supplied more so in view of the fact that the appellants had in W.P.No.12623 of 2021 claimed payment only in regard to the admitted figure of 779 ADCR's. Beyond 779 units, there is clearly a dispute with regard to the number of units that had been received by the respondents at various locations within the prescribed time limit.



15.1 The averments made either in the writ petition or the memo of the appeal do not at all support the argument of the appellants as were advanced before us.

16. The judgment rendered by the Writ Court, in fact, is in total consonance with the ratio of the judgment of the Hon'ble Apex Court in the case of *Surya Constructions Vs. State of Uttar Pradesh and Others* [(2019) 16 SCC 794] which held, following the judgment in the case of *ABL International Limited Vs. Export Credit Guarantee Corporation of India Limited* [(2004) 3 SCC 533], that where an amount which is payable to the applicant is undisputed, the Writ Courts can exercise powers under Article 226 of the Constitution of India in a case where the action of the State is arbitrary even when the same is in the realm of a contract. In the present case, the Writ Court did not fall into any error in directing payments only to the extent of the admitted number of units which stood supplied to the respondents before the issuance of the stop supply order on 03.07.2019.

17. Having heard learned counsel for the parties, we cannot persuade ourselves to take a view different from the one which had



been taken by the Writ Court. We find no merit in the present writ appeal.

18. Accordingly, this writ appeal is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

A.V.SESHA SAI, J

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HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

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