(2012) 1 ALT 209

Andhra Pradesh High Court

Case No: Writ Appeal No. 1019 of 2011

D. Nageswaraiah	APPELLANT
Vs	
Government of A.P., Irrigation and Command Area Development Department and others	RESPONDENT

Date of Decision: Nov. 23, 2011

Citation: (2012) 1 ALT 209

Hon'ble Judges: Madan B. Lokur, C.J; P.V. Sanjay Kumar, J

Bench: Division Bench

Advocate: K. Rathanga Pani Reddy, for the Appellant;

Final Decision: Allowed

Judgement

Madan B. Lokur, C.J.
The appellant is aggrieved by an order dt. 8.8.2011 passed by a learned single Judge in W.P. No. 22256 of 2011. The appellant is a contractor who had entered into an agreement with the respondents for execution of certain works under the Telugu Ganga Project Main Canal on nomination basis. The appellant seems to have executed the works within the stipulated time and the final bill was paid to the appellant on 29.10.2007.

2. It is submitted by the appellant that the defect liability period was twenty four months and this period expired on or about 30.10.2009. Since the defect liability period had expired, the appellant sought release of the earnest money deposit (EMD) and further security deposit (FSD). Unfortunately, this amount was not paid to the appellant.

3. On the contrary, a letter was issued by the respondents on 18.7.2011, the material portion of which reads as follows:

As per report of Regional Vigilance and Enforcement department, the Government has instructed to effect the recovery on the above work for Rs. 2,58,820/- towards Excess payment. Hence the deposits i.e. FSD, EMD, for Rs. 48,721/- was forfeited.

In this connection you are requested to pay the balance amount for Rs. 2,10,099/- immediately. Otherwise action will be taken as per clauses of APDSS.

The receipt of this letter may please be acknowledged.

4. A perusal of the above letter shows that a decision has already been taken by the Government that the appellant has been given excess payment of Rs. 2,58,820/-. In view of this, the FSD and EMD of Rs. 48,721/- was forfeited and accordingly the appellant was directed to pay the balance amount of Rs. 2,10,099/- failing which action would be taken against him in accordance with law.

5. The aforesaid letter indicates that a decision was taken ex parte and recovery was sought to be made without indicating how the excess payment was arrived at.

6. Feeling aggrieved, the appellant preferred a writ petition which came to be dismissed by the learned single Judge on the ground that since a dispute arose under a contract the matter ought to be taken up by the appellant before the competent Civil Court.

7. We are not in agreement with the view expressed by the learned single Judge inasmuch as the dispute did not relate to the terms of the contract but related to the ex parte recovery sought to be made by the respondents from the appellant. It appears to us that the learned Single Judge misdirected himself on the issue raised. The appellant was given no notice of the possible reason for recovery nor the basis for the quantification of the amount sought to be recovered. The order of recovery passed on 18.7.2011 was ex facie arbitrary and without any basis. It is this that gave rise to the grievance of the appellant and not any particular term of the contract.

8. We have heard the learned counsel for the respondents in the appeal filed by the appellant challenging the order of the learned single Judge. Unfortunately there is still no reason forthcoming for arriving at the conclusion that excess payment was made to the appellant nor is there any basis forthcoming to indicate how the excess payment of Rs. 2,58,820/- was quantified. Admittedly no show cause notice of any kind was given to the appellant before the order dt. 18.7.2011 was passed. There is therefore a clear failure of principles of natural justice resulting in passing of an order which is on the face of it not sustainable. In our opinion, the order dt. 18.7.2011 is completely arbitrary and the arbitrariness is a writ large on the face of the order.

9. Under the circumstances, we set aside the decision of the learned single Judge and allow the writ petition and quash the order dt. 18.7.2011 passed by the respondents. The appeal is allowed. The miscellaneous application is also allowed.