

In the High Court of Judicature for Rajasthan
Jaipur Bench

**

Civil Writ Petition No.14659/2010
M/s HS Mehta **Versus** State & Ors.**Date of Order :: 29/10/2010*****Hon'ble Mr. Justice Ajay Rastogi***

Mr. SK Saksena, for petitioner

Instant petition has been filed by petitioner Firm who entered into contract executed on 15/09/2008 (Ann. 6) for survey, investigation, design, preparation of construction drawings and construction for work of Hydraulic improvement of feeders (including desilting of feeders, settling tanks, water storeage reservoirs & bridge in place of causeway, inlet & outlet management structures for Pushkar Sarovar (Ajmer) under National Lake Conservation Plan ("NLCP").

As Cl. 32 of Terms & conditions of Contract (Ann. 6) which relates to withdrawal of work from the contractor, a discretion vests with the the Engineer-In-charge that for any reasons whatever, including inability to maintain prorate progress, if he at any time thinks that any portion of the work should not be executed or requires to be withdrawn from the contractor, he may by notice in writing to that effect, require the contractor not to execute portion of the work specified in the notice or may withdraw the portion of work from the contractor- in terms whereof, it

appears that part of the work assigned to petitioner, as alleged, was not permitted to be executed through petitioner-Firm vide notice dt. 13/09/2010 (Ann. 23) assigning reasons for withdrawal of the part of the work. However, in the notice dt. 13/09/2010 (Ann. 23) it has further been informed that petitioner Firm has already been assigned total works more than contractual amount of work order of Rs. 16.02 Crore. It appears that the petitioner-Firm failed in completing the assigned works within time schedule; as such fresh process inviting tender (NIT) was floated vide notice dt. 05/08/2010 with corrigendum dt. 13/09/2010 (Ann. 25).

Main thrust of petitioner-Firm is that without conveying in writing the fact in regard to the execution of portion of the work being specified in the notice or even if notice being issued, pre-notice was required to be served in terms of conditions of the contract – in absence whereof, the respondents authority has violated terms & conditions under cl. 32 of the contract and no reasons have been assigned to the petitioner-Firm in absence whereof, fresh notice inviting tenders dt. 11/08/2010 through publication in Dakshin Bhaskar (Ann. 18) and corresponding corrigendum thereof dt. 13/09/10 (Ann. 25) are wholly unwarranted and it is nothing but a clear abuse of process on the part of respondent-

party to the contract which requires interference by this Court. Submission made by Counsel is without any substance for the reason that in terms of Cl. 32 of the contract which relates to withdrawal of the work from the contractor, there is no condition of pre-notice being served before the contractor is being called upon not to execute a part of the work assigned or if the work is being withdrawn from the contractor and it is only an intimation being sent to the contractor and that apart, the material having come on record discloses that various correspondence with the petitioner have taken place and petitioner-Firm was finally informed assigning reason for the part of the work being withdrawn as is evident from notice dt. 13/09/2010 (Ann. 23). That apart, these are purely commercial contract and even as per submission made by petitioner, if at all there is a violation of Cl. 32 of the contract, as alleged, on which reliance is being placed, they are not statutory in character, as such that will not give any cause to petitioner-Firm to invoke writ jurisdiction of this Court U/Art. 226 of the Constitution. Further, public notice has been issued inviting tenders opened for all and if at all petitioner-Firm was interested, opportunity is available to participate in the tender process in question which respondents have initiated pursuant to NIT dt. 05/08/2010

with corrigendum dt. 13/09/10 (Ann. 25). In the opinion of this Court, the process initiated by respondents through NIT impugned herein cannot be said to be arbitrary exercise of powers nor any prejudice can be said to have caused to petitioner-Firm due to action of respondents warranting interference.

Consequently, the writ petition fails and is hereby dismissed.

(Ajay Rastogi), J.