

WP(C) 2515/2013
BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA

Heard learned counsel for the parties. This writ petition is directed against the communication dated 3.12.2012 by which the particular contract awarded to the petitioner was terminated invoking the clause 52.4 of the General Conditions of Contract (GCC). The petitioner is also aggrieved by the Annexure-24 NIT dated 26.2.2013. The said NIT was issued for completion of the balance work. In the meantime, the petitioner preferred an appeal under Clause 24.1 of the GCC for revocation of the impugned order of termination dated 3.12.2012. The said appeal was disposed of by Annexure-22 order dated 27.2.2013. By the said order, the appeal was dismissed upholding the impugned order dated 3.12.2012.

In the counter affidavit filed by the respondents it has been stated that the petitioner having invoked the alternative remedy by way of preferring the appeal against the termination of contract, the instant writ petition is not maintainable. It has been stated that in spite of granting several extensions, when the petitioner could not complete the work, the impugned order had to be passed terminating the contract and thereafter pursuant to the impugned NIT and upon evaluation of 3 bids received from the bidders, the contract has been awarded to one Shri Amar Chand Dey vide Work Order dated 24/04/2013, 29/04/2013 and 08/05/2013 and also Shri Abdul Hannan vide Work Order dated 23/04/2013. It has been stated that the contractors have already started their works.

The contract earlier awarded to the petitioner having been terminated as per the GCC and the petitioner having already invoked the provision thereof seeking remedy under the same, there could not have been simultaneous proceeding by way of the present writ petition. Moreover, pursuant to the termination of the contract and the impugned NIT, the balance work has already been awarded to 3rd parties. It will always be open for the petitioner to pursue such legal remedy as may be available to him under the provisions of GCC.

In view of the above, the writ petition is disposed of directing the respondents to dispose of the appeal that has been preferred by the petitioner under Clause 24.2 of the GCC (Annexure-27), as expeditiously as possible. As per the provisions of the GCC, the petitioner was to nominate his own representative towards disposal of the appeal. Till disposal of the appeal, the Bank Guarantee as deposited by the petitioner as Performance Guarantee may not be encashed. However, its validity shall be extended, if necessary.

Interim order operating in this proceeding stands vacated.