

SUPREME COURT OF INDIA

State of Madhya Pradesh & Ors.

Vs.

Ruchi Printers

C.A.No.4817 of 2016

(V.Gopala Gowda and Arun Mishra,JJ.,)

05.05.2016

JUDGMENT

Arun Mishra,J.,

SLP (Civil)No.32730 of 2013

1. Leave granted.

2. The State has preferred the appeal as against the judgment and order passed by the High Court of M.P. in the writ appeal and the writ petitions decided by a common order dated 4.9.2012 dismissing the writ appeal and allowing the petitions, thereby directing the State Government to accept all materials which was ready for delivery on 22.5.2008 and quashing order dated 30.1.2009 cancelling the communication dated 22.5.2008. Further direction has been issued to make payment to the printers as per the terms and conditions of the order dated 16.1.2008 read with order dated 25.2.2008.

3. Facts in short referred to from SLP [C] No.32730/2013 - *State of M.P. & Ors. v. M/s. Ruchi Printers* indicate that the State Printing & Writing Articles Department of Madhya Pradesh through its Controller, invited quotations vide letter dated 2.1.2008 for printing Bhu-Adhikar and Rin Pustikas. On 16.1.2008 printing order was placed with M/s. Ruchi Printers for supply of 37,07,726 copies of Bhu-Adhikar and Rin Pustika. At least half of the booklets were to be supplied in the first lot till 8.2.2008 and the rest were to be supplied before 25.2.2008. On 25.2.2008 the Deputy Controller wrote a letter on behalf of the Controller while approving the modified booklet. The printers were asked to ensure the supply after printing the allotted work. On 28.3.2008 another letter was written that the time limit fixed was already over so rest of the work may be completed till 31.3.2008. After 31.3.2008 no booklets shall be accepted. The decision dated 28.3.2008 was questioned by filing writ petitions. Said writ petition filed by M/s. Ruchi Printers had been allowed by Single Bench vide common judgment and order dated 6.11.2008. State was directed to accept the supply of 10.75 lakhs of Rin Pustikas from M/s. Ruchi Printers and to make payment in accordance with the terms and conditions of the contract. In another W.P. No.10319/2008 decided by

same order, the single Bench asked the petitioner to approach the State Government and the Government to consider the claim in respect of the materials already supplied and to settle the claim if not already settled. No other relief was given.

4. Aggrieved by the order passed in the case of Ruchi Printers, State preferred a writ appeal which was heard and decided with writ petitions by impugned common order.

5. It was submitted on behalf of learned counsel appearing on behalf of the State that the High Court has erred in law in allowing the writ petitions and dismissing the writ appeal. As per the initial order, booklets were required to be supplied by 25.2.2008. Time was essence of contract. Though time was extended but it was made clear that after 31.3.2008 no such booklets will be accepted, later on its format had been changed for the subsequent year as such they were of no use to the State. The payment was required to be made only on account of booklets which were supplied till 31.3.2008. Letter dated 22.5.2008 was cancelled by the State Government on 30.1.2009 and supply after 31.3.2008 had not been accepted as it was of no use due to change of format. The writ petition could not be said to be an appropriate remedy for claiming the amount in case of non-statutory contract. The High Court has erred in directing the State Government to accept the booklets printed till 22.5.2008.

6. Learned counsel appearing on behalf of the respondents has supported the impugned judgment and orders passed by the High Court and has submitted that in the writ petition filed by Ruchi Printers, order had been passed by Single Bench on 6.11.2008 to make payment within three months as per the communication dated 22.5.2008. Thus there was no justification to recall the communication dated 22.5.2008 by issuance of letter dated 30.1.2009. As the booklets had been printed the High Court had rightly directed to accept the supply. Thus no case for interference is made out.

7. After hearing learned counsel for the parties, we are of the opinion that the order for printing booklets was placed with printers on 16.1.2008. The booklets were to be supplied on time bound basis by 25.2.2008. The respondents were well aware that the time was the essence of the contract and there was requirement of these booklets on time bound basis. Though communication dated 25.2.2008 approving format was issued but the respondents very well knew that the time was the essence of contract and the printing of booklets was to be completed at the earliest. However as supplies were not made as stipulated, even within one month after 25.2.2008, another communication dated 28.3.2008 was issued by the Controller to supply Rin Pustikas before 31.3.2008. In case any work remains incomplete, the work order be treated as cancelled. Thus, in unequivocal terms, it was made clear that no booklets were to be received after 31.3.2008 and whatever booklets were ready they were to be supplied by 31.3.2008. Thus, in our opinion, there was no rhyme or reason for printers to print any booklets after cancellation of order w.e.f. 31.3.2008 till 22.5.2008. Printing of booklets after 31.3.2008 was wholly unauthorized. No doubt about it that on 22.5.2008 the Under Secretary had issued a communication that certain specified number of booklets may be accepted. However, the said communication had been recalled on 30.1.2009. The High Court, in our opinion, was not at all justified in enforcing the communication dated 22.5.2008 which was palpably illegal and there was reason for the printers to print the

booklets after 31.3.2008. In view of aforesaid fact, the communication dated 22.5.2008 had been rightly cancelled on 30.1.2009 as these booklets were no more required by State Government due to further change of format of booklets. Even otherwise timely supply was necessary as per order dated 16.1.2008 though the communication dated 25.2.2008 was silent as to the time within which the supply was to be made. The printers were very well aware that booklets were required urgently and time was essence of the contract and time for supply could not have been more than what was originally stipulated. Sufficient time had been given to them to supply the booklets and the booklets supplied by them till 31.3.2008 had been accepted by the appellants and payment has also been made. Thus after the order for printing booklets stood cancelled on failure to supply within the stipulated period, the contract came to an end, there was no reason for the printers to print the booklets. No communication has been placed on record between 31.3.2008 and 22.5.2008 asking printers to print and supply the booklets. No right could be said to have accrued on the basis of palpably illegal communication dated 22.5.2008. The Division Bench of the High Court in the circumstances of the case has erred in directing that the booklets printed till 22.5.2008 be accepted. Booklets printed after 31.3.2008 were without any work order in existence. The communication dated 25.2.2008 did not confer on them a right to print books after 31.3.2008. Whatever booklets they had supplied till 31.3.2008 were accepted. Thus, the High Court has erred in the facts of the case to interfere in contractual matter and by granting the relief. However, we observe that in case payment has not been made to the printers for booklets which were supplied till 31.3.2008, it shall be made forthwith.

8. Thus, the impugned judgment and order is set aside, the appeals are allowed. Parties to bear their own costs.