HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 538 OF 2023 (T-RES)

BETWEEN:

1. M/S SKS KARKALA INFRA PROJECTS PVT. LTD
REP. BY ITS MANAGING DIRECTOR
SUJAY KUMAR SHETTY
CLASS-1 CONTRACTOR, SUVARNA COMPLEX
MANGALORE ROAD, KARKALA - 574 104

...APPELLANT

(BY SRI PRAJWAL P, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP. BY THE CHIEF SECRETARY
ROOM No.320, 3RD FLOOR
VIDHANA SOUDHA
BENGALURU - 560 001

2. DAVANAGERE SMART CITY LIMITED
REP. BY ITS MANAGING DIRECTOR
R/O AT No.1776/A85/A86
SIDDAVEERAPPA LAYOUT
SHAMANUR ROAD
DAVANGERE - 577 004

...RESPONDENTS

(SRI ADITYA VIKRAM BHAT, AGA FOR R-1 &
SRI B.K. MANJUNATH, ADVOCATE FOR R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 27.03.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No.24701/2022 & ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning an order dated 27.03.2023 passed by the learned Single Judge in Writ Petition No.24701/2022 (T-RES).

2. Briefly stated, the relevant facts are that the appellant is a Class-I contractor. Respondent No.2 had invited tenders for the work of "Old City Bus Stand Redevelopment" under the Davanagere Smart City Program on 03.11.2018. Pursuant to the said notice, the appellant had participated in the bidding process. The appellant was successful, and its bid was accepted.

3. The parties entered into an agreement (Work Order Agreement) on 01.03.2019. The appellant claims that the site was subsequently handed over to the appellant on 27.06.2020 and the appellant completed 90% of the works during the years 2021-2022. The appellant states that it had raised running account bills [**RA bills**] – 23 in number – which also included the amount paid by the appellant as Goods and Services Tax [**GST**] under the Central Goods and Services Tax Act, 2017 and State Goods and Services Tax Act, 2017. Although the RA bills were cleared, the GST component was not reimbursed to the appellant.

4. In the aforesaid context, the appellant filed the writ petition, *inter alia,* praying as under:

> "Issue a writ in the nature of mandamus directing the Respondents to pay GST to the Petitioner in terms of the RA Bills already raised by the Petitioner as per Annexure-B and also the subsequent RA bills that will be raised by the Petitioner in future with respect to Agreement No.51/2018 vide Annexure-A."

5. The learned Single Judge rejected the writ petition principally on the ground that the issues involved disputed questions of law and fact; therefore, it would not be apposite to entertain the said dispute in proceedings under Article 226 of the Constitution of

India. The learned Single Judge also noted that the contract between the parties included an arbitration clause and thus, it was open for the appellant to take recourse to arbitration in respect of the disputes that had arisen between the parties.

6. The learned counsel appearing for the appellant submits that the contract was entered into after the change in the tax regime, with the introduction of levy of GST with effect from 01.07.2017. However, the rates at which the contract was awarded were the Scheduled Rates as published in the year 2016. Thus, the said rates did not include any element of GST (CGST, SGST or IGST).

7. It is at once clear that the writ petition raises several disputed questions of facts and law. The first is whether the respondents are liable for reimbursement of any tax. The contract in question was entered into on 01.03.2019 and expressly provided that the rates were inclusive of taxes, as is apparent from the plain reading of Clause 39 of the conditions of the agreement, which reads as under:

> **"39. Tax**
>
> 39.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other taxes that the Contractor will have to pay for the performance

of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law."

8. The learned counsel appearing for the respondents has also referred to the instructions to the bidders and drew the attention of this Court to Clause 11 of the said instructions, which reads as under:

"11. Tender prices

11.1 The contract shall be for the whole works as described in Sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.

11.2 The Tenderer shall fill in rates and prices and lien item total (both in figures and words) for all items of the Works described in the Bill of Quantities along with total tender price (both in figures and words). If there is any discrepancy in the words and figure quoted, lowest of the two will prevail. **Items for which no rate or price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities**. Corrections, if any, shall be made online only before the submission of the tender.

11.3 All duties, taxes, and other levies payable by the contractor under the contract, or for any other cause, shall be included in the rates, prices and total Tender Price submitted by the Tenderer.

11.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with the provisions of Clause of the Conditions of Contract."

9. Notwithstanding the aforesaid clause, the appellant disputes that the tender prices included GST.

10. The second question relates to the quantum of the incremental taxes. Even if it is accepted that the appellant would be entitled to reimbursement of the incremental tax which it had to pay on account of the levy of GST, the quantum of the incremental taxes would require to be determined. Clearly, if the rates quoted by the appellant are inclusive of taxes other than GST, the quantum of such taxes is required to be deducted from the GST paid/payable by the appellant.

11. The next question, which would follow, is whether the appellant has in fact paid the GST. According to the respondents, the appellant would have to establish that it had paid the GST as levied.

12. Given the nature of disputes, we find no fault with the learned Single Judge in declining to entertain the writ petition filed by the appellant.

13. The appeal is, accordingly, dismissed.

14. The pending interlocutory application also stands disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB
List No.: 2 Sl No.: 9.1