

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**WRIT PETITION Nos.955,805, 824, 853, 865, 931, 950, 960, 969, 970, 1032, 1033, 1050, 1064, 1070, 1073, 1076, 1084, 1091, 1094, 1100, 1103, 1144, 1147, 1159, 1204, 1205, 1419, 1423, 1433, 1439, 1443, 1446, 1453, 1454, 1498, 1621, 1626, 1642, 1703, 1740, 1779, 1797, 1798, 1806, 1817, 1832, 1840, 1857, 1862, 1881, 1885, 1948, 1965, 1970, 1978, 1979, 1980, 1992, 2001, 2003, 2005, 2009, 2026, 2029, 2038, 2041, 2190, 2197, 3078, 3091, 3096, 3109 of 2021**

**COMMON ORDER:**

The petitioners in these batch of Writ Petitions are the people who are claiming to be paid for supplying materials to the Panchayat under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (in short "Act of 2005").

The lead argument was advanced in W.P.No.955 of 2021.

The Panchayat Raj Department is the main answering respondent supported by the Gram Panchayat concerned.

Learned counsel for the petitioners relies upon the earlier orders which were passed in number of writ petitions of similarly placed petitioners. It is his contention that the Writ is maintainable and the issue of privity of contract that is now raised by the respondent State is not correct. He points out that the petitioners rely upon what is called the 'Fund Transfer Order' (In short "FTO"). This is given, as per the learned counsel, after the documents are reviewed and

the work done is assessed totally. He points out that the Government of Andhra Pradesh transfers the funds to the Panchayat which in turn has to make the payment. As per him the fact that the fund transfer order is issued, clearly indicates that the work has been executed and that the material has been supplied. Nevertheless, learned counsel also points out that in view of the objection raised, he has also filed copies of the Measurement Book with his rejoinder, which show the supply of material / execution of work etc. Relying upon the counter affidavit filed, learned counsel points out that the respondents have refuted the petitioners' claim that the work done is undisputed. On the other hand, they state that in view of the pending vigilance enquiry the writ petitioners claim is disputed. He points out that the amount payable to the petitioners is "disputed" because of the alleged vigilance enquiry and not on the ground that the work is not done or that the material is not supplied. He argues that the dispute is not about the individual work *per se* or of the quantum etc. Learned counsel for the petitioners points out that this issue was already considered by the learned single Judges of this Court in various orders which are annexed to the Writ Petition as material papers. He mentions that in all the cases directions were given to complete the enquiry and make the payment within the time stipulated. Even otherwise he points out that the memo of the Government is dated 05.05.2020 which stipulated a period of six months for

completion of the enquiry into all the works that were executed under this the Mahatma Gandhi National Rural Employment Guarantee Scheme (in short “MGNREGS”). Learned counsel points out that the enquiry should have been completed by the date the counter was filed and the information should have been given to this Hon’ble Court. He also argues that once the State’s action in failing to pay the amount is clear, this Court can entertain the Writ and direct the payment. Even in the judgment reported in ***Joshi Technologies International INC v Union of India***<sup>1</sup>, which is relied on by the learned counsel for the State, it is pointed out that money claims are not generally entertained except in exceptional circumstances. Therefore, learned counsel submits that he was compelled to approach this Court as there is gross delay and State inaction coupled with a failure to pay without valid reasons.

For the State Sri Kiran, learned Government Pleader for Panchayat Raj, argues that the amount claimed is not admitted; that the Writ is not a proper remedy and that in the absence of privity of contract the petitioners cannot claim a direction as prayed for. He also states that the public law remedy cannot be entertained at the behest of a person who supposedly worked for the Panchayat and that the writ is not the proper remedy. He also argues that the large scale fraud has taken place in these works and the matters are under

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<sup>1</sup> (2015) 7 SCC 728

investigation. Therefore, he submits that legally and factually the petitioners are not entitled to any relief. Learned counsel argues that subject to his objections about the maintainability of the Writ he has made other submissions in this writ. It is his contention that the judgment reported in **Joshi Technologies** case (1 supra) is clearly applicable to the facts and circumstances. Therefore, it is his contention that all the writs should be dismissed and no relief can be given to the petitioners.

For the Panchayat a similar argument is advanced.

This Court after considering the submissions notices that the fact remains that it is asserted by the petitioners that they had engaged unskilled labourers and supplied the material like cement, sand, steel etc., to the 5<sup>th</sup> respondent. This fact is not denied specifically and more so by the Panchayat. The material was supplied for the works under the Act of 2005. As rightly pointed out by the learned counsel for the petitioners, this Act of 2005 is a special enactment with overriding effect over any other Act / Scheme. It is an employment guarantee scheme that is provided and catered for under the Act of 2005. Under the scheme of the Act unskilled manual workers from every household in the rural areas are encouraged in the rural areas by this Act to do some productive work, which further benefits the local Panchayats and the local population by creating sustainable /

enduring assets. It is for this reason that the Central Government agrees to form a scheme for meeting 3/4<sup>th</sup> of the material cost and the State Government shall meet the other 1/4<sup>th</sup> of the material cost. This Court agrees with the submission that in order to ensure that the payment to the people who work or the people who supply the material is not denied, the scheme provides for a sort of a “guarantee” by stipulating that the Central Government shall bear 3/4<sup>th</sup> of the material and the State shall bear other 1/4<sup>th</sup> of the material cost. These factors cannot be lost sight of. The works to be executed are also specified in the Schedule-I as the “minimum features”. The material component shall be upto 40% of the project cost. It is also directed that the wage rate should be fixed for the labour. Therefore, in the opinion of this Court, the work executed cannot be equated to a regular “commercial work” executed by a person for the State.

The provisions of the Act make it clear that it is a welfare legislation meant to create employment / eradicate unemployment in rural areas and in the process to create durable assets for rural India. Thus, it is clear that a public element is involved in these works with State participation and funding. The “States” presence is therefore all pervasive in this scheme. The law on the interpretation of welfare legislation is also very clear. As held in number of cases

including ***K.H. Nazar v Mathew K Jacob and Others***<sup>2</sup> case by the Supreme Court of India “Judges ought to be concerned with the colour, content and the context of such statutes”. Therefore, in view of the settled law and keeping in mind the purpose for which the legislation is enacted, this Court has to hold that there is a public element involved in this and that it is not a pure case of the State entering into a commercial contract.

Apart from this when State or State instrumentalities act in an arbitrary manner or fail to act within time the Writ Court does have jurisdiction to entertain the matter. Even the case law cited by the learned counsel for the petitioner supports this to an extent. Besides this Court notices that there is no method / mode for settlement of disputes provided for. Section 23 of the Act and Rule 14 of Schedule-I for example provide for constant monitoring of the works / books to be maintained etc. Despite this, there is no strict denial of the exact quantum of work executed.

Coming to the issue of privity of contract, in the rejoinder that is filed, petitioner relies upon the receipts issued by the petitioner for acknowledging the receipt of payment of Rs.21,536/- covered by two FTOs bearing FTO No.8050419002808 and FTO No.8050419002820. Both the FTOS pertaining to the works executed in Jagannadhapuram

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<sup>2</sup> (2020) 14 SCC 126

Gram Panchayat. The receipt is issued to the Jagannadhapuram Gram Panchayat, which is the 5<sup>th</sup> respondent in this case acknowledging the receipt of the payment. As mentioned earlier the respondents did not exactly deny the petitioners assertion that the material was supplied nor did they plead that the claim is false. Therefore, on the issue of privity of contract also this Court has to hold in favour of the petitioners. The State and the Panchayat, which have received the benefit of the work, cannot also deny the payment due. Having had the benefit of the work they are under an obligation to make the payment to the petitioners.

Lastly, there is an issue of the enquiry which has been pending. In a number of orders, annexed to the Writ Petition, learned Judges of this Court have directed the payment. These orders have become final also and the learned Judges considered a Government Memo dated 05.05.2020 wherein an enquiry was directed to be held to the works executed under the Act of 2005 and the report was to be submitted within a period of six months. The six months period expired in November, 2020. It is to be noted that the memo was issued after the Covid pandemic set in and still it prescribed a period of six months only for completion. Even if a liberal view is taken, and some leeway is given for the slow movement of files etc., in the Government by the date the matters were heard and the orders are being pronounced, March, 2021 has set in. Therefore, in the opinion of this

Court more than sufficient time was available with the State to complete the enquiry. No material is available of any fraud as on date in the cases of the petitioners. Petitioners' counsel at one stage agreed that the petitioners have become so desperate that they are prepared to accept any amount that is immediately offered by the State.

There is also a Government Memo dated 05.11.2020, which is filed along with the rejoinder. According to this memo permission was granted to deduct 21% for DCC works and 6.33% for MCC works and to make the balance payment for other works having an estimated cost of Rs.5,00,000/-. This has been followed by the State itself.

Therefore, in this batch of matters, after considering all the above submissions the following order is passed:-

1) A period of two months is given to the respondents to complete the pending enquiry in the case of the petitioners;

2) For all works upto Rs.5,00,000/- after deduction of 21.02% for DCC works and 6.33% for MCC works the payment should be released within 30 days. If the enquiry reveals that there are no deficiencies in the work for this category of works the deducted amount should be released and the grievance of the petitioners must be finally addressed;

3) In case of works above Rs.5,00,000/- a final period of two months is given to the respondent / State to complete the



enquiries and to pass an appropriate order in each of these cases addressing the grievance of the petitioners so that they receive the entire payment due to them.

With these observations the Writ Petitions are disposed of. There shall be no order as to costs.

Consequently, the miscellaneous applications, pending if any, shall stand closed.

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**D.V.S.S.SOMAYAJULU, J**

Date:16.03.2021  
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