

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&

HON'BLE MR. JUSTICE NINALA JAYASURYA

W.A.Nos.724, 725, 726, 729, 730, 733, 740, 741, 743, 754, 755, 758, 764 to 774, 776 to 783, 785, 786, 789, 790, 791, 799, 804, 811, 813, 816, 818, 819, 824, 825, 828, 830, 835 to 846, 848, 849, 850, 853 to 863, 870, 871, 875, 876, 878, 879, 881 to 885, 887, 891 to 908, 911, 912, 915, 917, 918, 919, 922, 924, 925, 928 to 932, 934, 938, 940 to 950 of 2021; W.A.Nos.1 to 5, 9, 11, 12, 14, 15, 16, 18, 21, 25, 28, 30, 31, 33, 37 to 50, 56 to 62, 64 to 71, 73, 76, 79, 84, 89, 90, 97, 98, 100, 101, 105, 106, 108, 109 to 115, 118 to 125, 130, 132 to 138, 146, 150, 155, 158, 160 to 162, 164, 165, 167, 170 to 176, 178, 179 to 188, 190, 191, 193, 198, 199, 200, 202, 208, 209 to 231, 233, 235, 236, 239, 243 to 252, 254 to 259, 263, 264, 265, 267, 269 to 273, 275, 276, 278, 279, 280, 281, 283, 284, 302, 303, 304, 305, 307, 308, 309, 310, 312, 313, 315, 316, 318 to 325, 330, 332, 334, 337, 343, 346, 348 to 354, 357, 358, 365, 367 to 371, 379, 380, 384, 385, 395, 397, 403, 405, 408, 417, 418, 420 to 423, 425, 428, 429, 443, 445, 453, 454, 478, 479, 480, 485, 488, 493, 499, 508, 510, 516, 568, 625, 2878, 4888, 11873, 14828, & 16572 of 2022; W.A.Nos.97, 99, 100, 101, 102, 103, 104, 105, 108, 111, 112, 113, 114, 115, 116 & 117 of 2023; W.A.Nos.991, 989, 1059, 1067, 1069, 1070, 1074, 1076 & 1079 of 2022 and W.A.Nos.4 to 10, 14, 22 to 25, 27, 32, 34, 35, 36, 37, 40, 41, 43, 44, 47, 48, 50 to 59, 61 to 71, 73 to 88, 90 to 93, 95, 96, 119 to 134, 136 to 138, 141 to 144, 147 to 153, 155, 156, 159, 160, 166, 175 to 186, 191, 199, 201, 210, 217, 224, 225, 233, 238, 248, 250, 268, 352, 361, 371, 372, 373, 376, 386, 387, 432, 479, 487, 491 to 493, 576, 578, 579, 582, 592, 594, 596, 599 & 604 of 2023 & 603 of 2023.

W.A.No.724 of 2021:

The State of Andhra Pradesh,
rep., by its Principal Secretary to Government,
Panchayat Raj and Rural Development Department,
Velagapudi, Amaravati, Guntur District,
Andhra Pradesh & 7 others.

...Appellants

Versus

Nagaboyina Satyavathi,
W/o.Kasiviswanath, aged 39 years,
Occ:Properties, R/o.Nabeepeta Village,
Nallajarla Mandal, West Godavari District & 2 others.

... Respondents

Counsel for the Appellants	: Learned Advocate General a/w GP for Panchayat Raj & Rural Development
Counsel for the 1 st respondent	: Smt.Nimmagadda Revathi
Counsel for the 2 nd respondent	: Sri N. Srihari, learned Standing Counsel
Counsel for the 3 rd respondent	: Government Pleader for Finance & Planning

Along with batch

Dt.:12.10.2023

PER DHIRAJ SINGH THAKUR, CJ

The present batch of appeals under Clause 15 of the Letters Patent have been preferred against a common judgment and order dated 05.10.2021 passed in WP.No.11511 of 2021 and other connected matters.

1.1 Since the issues of fact and law are common, we propose to dispose of all the present Letters Patent Appeals by way of a common judgment and order.

1.2 For facility of reference, facts as contained in the records of WA.No.724 of 2021 are being referred to.

2. Briefly stated, the material facts are as under:

2.1 A batch of writ petitions came to be preferred by the petitioners wherein the petitioners sought a writ of *Mandamus* directing the respondents to release the payment on account of the cost of the material supplied and work done under the various schemes of Mahatma Gandhi National Rural Employment Guarantee Act, 2005, and the regulations framed thereunder.

2.2 The case of the petitioners was that the material had been supplied and works executed in entirety and further that the expenditure of material supplied and the work executed had been entered into in the relevant measurement books and verified by the concerned engineers who had supervised the work. It was thus urged that withholding the amount which was otherwise due and payable to the petitioners was illegal and arbitrary.

2.3 The stand of the respondents and in particular the Panchayat Raj and Rural Development Department was that there were large scale allegations received from general public as also public representatives in regard to execution of projects under Mahatma Gandhi National Rural Employment Guarantee Scheme [MGNREGS] by the Panchayat Raj and Rural Development, Water Resources Development and Higher Education Departments. A Government Memo bearing No.1202/Vig.I/2020-4, dated 05.05.2020, came to be issued wherein, based upon the report of the General Administration Department recommending initiation of disciplinary action against erring Government officials, the General Administration Department also recommended that the department of Panchayat Raj and Rural Development gets verified all works taken up under MGNREGS to curb payment to fraudulent works and to safeguard the Government funds.

2.3.1 The Government Memo, dated 05.05.2020, accordingly ordered as under:

“Government, after careful examination of the matter, hereby decided that all the material component works taken up under MGNREGS in Panchayat Raj Rural Development Department during the period from 1st October, 2018 to 31st May, 2019 shall be verified by the Vigilance & Quality Control wings of Panchayat Raj Engineering Department, Rural Water Supply & Sanitation Engineering Departments, Technical persons in SSAAT and Quality Control wing of Commissioner, Panchayat Raj and Rural Development by forming Teams. As the number of works executed under MGNREGS are quite large, the enquiry/verification of works shall be taken up with the works executed with higher denominations. The verification of the works shall be started immediately and should be completed in a time bound manner not later than a period of six months.”

2.4 It appears that the Principal Secretary to Government, Panchayat Raj and Rural Development Department, *vide* Memo No.1263069/RD.II/A1/2020, dated 05.11.2020, based upon the report of the Commissioner, PR & RD, stated that out of a total 7,95,494 works executed under MGNREGS, a sample consisting of 11,918 works had been verified by the special vigilance teams and out of the works verified by the vigilance teams, it was noted in 62.51% of the works, the vigilance teams either recommended rejection of the works or found that the amounts paid ought to be recovered in regard to the said projects. It was thus reported that in monetary terms both recovery and rejection calculated together came to 21.02% in District Coordination Committee [DCC] works and 6.33% in Mandal Coordination Committee [MCC] works. The

Government finally in the Memo, dated 05.11.2020, in paragraph No.3 ordered as under:

“3. Accordingly, the Govt., after careful examination of the matter, hereby approve the proposal of Commissioner, PR & RD and accordingly permit to release an amount of Rs.409.69 Crores for the total 7,27,205 number of works that are having estimated cost upto Rs.5.00 lakhs with the deduction of 21.02% for DCC works and 6.33% for MCC works as proposed.”

2.5 By virtue of another Memo, dated 12.05.2021, the Government permitted the release of pending payments of the works above Rs.5,00,000/- executed between the period from 01.10.2018 to 31.05.2019 by applying the recovery of 21.02% of the DCC works and 6.33% for MCC works. Paragraph No.3 of the Memo, dated 12.05.2021, is reproduced hereunder:

“3. Accordingly, the Government after examination of the matter, hereby approve the proposal of Commissioner, PR & RD and accordingly permit him to release pending payment of the works above Rs.5.00 Lakhs which were taken-up under MGNREG Scheme between the period from 01.10.2018 to 31.05.2019 applying the abstract of findings on recovery for the works verified that is applying recovery of 21.02% for DCC works and 6.33% for MCC works duly following all the guidelines prescribed by the GoI, MoRD and State Government from time to time in release of payments.”

2.6 It is in the aforementioned backdrop that the writ petitions were filed challenging the action of the official respondents

in withholding the amounts which amounts according to the petitioners were legitimately payable to them.

2.7 The learned single Judge by virtue of common judgment and order, dated 05.10.2021, impugned in the present appeals allowed the writ petitions and set aside Memos, dated 05.11.2020 and 12.05.2021, issued by respondent No.1 in the writ petitions to the extent it ordered the deduction of 21.02% for DCC works and 6.33% for MCC works while making payments to the petitioners.

2.8 The basis for setting aside the Memos, dated 05.11.2020 and 12.05.2021, primarily was that decision to deduct the amounts mentioned in the aforementioned Memos was without affording to the petitioners any opportunity of being heard. It was also held that no notice was issued to the petitioners with regard to the alleged enquiry conducted by the official respondents based upon which the Memos were so issued.

2.9 An objection raised by the official respondents before the learned single Judge with regard to the maintainability of the writ petition on contractual matters was also rejected by placing reliance upon the Apex Court judgment in *ABL International Limited v. Expert Credit Guarantee Corporation of India Limited* [(2004) 3 SCC 553] to the extent it held that there was no absolute

bar of entertaining a writ petition even if the same arose out of a contractual obligation or involved disputed questions of fact.

3. Learned Advocate General, Mr. S. Sriram, appearing for the appellants-State vehemently urged that the view expressed by the learned single Judge in setting aside the Memos, dated 05.11.2020 and 12.05.2021, was legally not correct. It was urged that there was sufficient material with the Government based upon verification conducted in as many as 11,918 works wherein the vigilance teams had found that works done was either to be rejected or even recoveries were required to be ordered. It was, in those circumstances, urged that the Government had taken a decision to pay the amount on account of material supplied/work done less the percentage reflected in the two Memos dated 05.11.2020 and 12.05.2021.

3.1 It was urged that the aforementioned two Memos, in fact, were enabling orders which would facilitate payment to the petitioners notwithstanding the fact that the entire amount could have been withheld by the Government pending vigilance enquiry into each one of the contracts executed by the petitioners under the said schemes.

3.2 It was also urged that in view of the settled position of law, where there was enough material like in the present case which was available in the shape of report of the vigilance department, who had conducted the verification in 11,918 works, the State would have been justified in refusing to pay what was even otherwise made payable by way of two Memos dated 05.11.2020 & 12.05.2021. The petitioners, it was stated could very easily be relegated to avail their common law remedies.

3.3 It was also urged that in another batch of writ petitions [WP.No.955 of 2021 & batch], as many as 73 cases, involving identical issues came to be decided by virtue of judgment and order, dated 16.03.2021, wherein direction was given to the Government to release the payment for all works upto Rs.5,00,000/-, after deduction of 21.02% for DCC works and 6.33% for MCC works within thirty days and further that if the enquiry revealed that there was no deficiencies in the work for these category of works, the deducted amount be also released. In case of works of value of above Rs.5,00,000/-, two months period was given to the respondents to complete the enquiries and to pass appropriate orders in each case so that the petitioners receive the entire payment due to them.

3.4 It was thus urged that while one single Bench of this court permitted the Government to conduct an enquiry before payment is made in terms of works with the value of Rs.5,00,000/- and directed payment of the amount minus the deduction as envisaged under Memo, dated 05.11.2020, the judgment and order impugned in these appeals proceeded to totally quash the said Memo along with another Memo, dated 12.05.2021, taking away the right of the Government to conduct an enquiry.

3.5 It was also urged by learned Advocate General that the writ appeals preferred by the Government in the cases filed by the petitioners and standing at item Nos.408 to 566 in the cause list were all cases where vigilance teams had found that the work was deficient and sub standard. That is stated to be one reason why the Government is stated to have filed review petitions before the writ Court highlighting this particular aspect of the matter.

3.6 The learned Advocate General however very fairly stated that even when the Memos dated 05.11.2020 and 12.05.2021, did not envisage payment of any amount other than prescribed under the two memos after making deductions at the rates prescribed therein, yet, it was urged that following the judgment of the learned single Judge rendered in WP.No.955 of

2021 & batch, the State may be permitted to verify and conduct the enquiry if necessary with regard to the works executed by the petitioners and in case the works were not found defective or sub standard, even the balance amount would be paid.

4. Learned counsel for the respondents – writ petitioners however are not averse to such a proposal.

5. With the consent of the counsel for the writ petitioners as also the learned Advocate General, the following order is being passed:

(a) The petitioners would be paid, if not already paid, the amount in terms of the Memos dated 05.11.2020 and 12.05.2021, within one month from today.

(b) The Government would be at liberty to conduct an enquiry after affording to the petitioners an opportunity of being heard with regard to the works executed by them within the period from 01.10.2018 to 31.05.2019. The enquiries, if initiated, would be completed within four months from today.

(c) In case the works are as per standards, the petitioners would be paid not only the balance amount but also interest calculated at the rate of 6% per annum on the entire amount with

effect from the date when the bills were submitted by the petitioners for payment till the date of final payments.

(d) Such of the petitioners who had executed works much before the period of 01.10.2018 would be paid, if not already paid, the entire amount due and payable to them within a period of one month from today, with interest calculated at the rate of 6% per annum with effect from the date when the bills were submitted by the petitioners for payment till the date of final payments.

6. The common judgment and order impugned shall stand modified accordingly.

7. The Writ Appeals are accordingly disposed of. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

NINALA JAYASURYA, J

Vjl

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
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WA.No.724 of 2021 & batch

Dt:12.10.2023

Vjl