

THE HON'BLE SRI JUSTICE BATTU DEVANAND

W.P.NO.19898 OF 2020

ORDER:

01. The Writ Petition has been filed to issue an appropriate order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not paying an amount of Rs.8,66,355/- (Rupees Eight lakh Sixty Six thousand Three hundred and fifty five only) in respect of work relating to "Special Development Fund (SDF) 2017-18--Tadepalligudem Assembly Constituency--Construction of C.C Road in 35th Ward from MIT-219 house to Soma Enclave, Tadepalligudem basing on Memo No. PLG01-PLG0FUNDS(SDF)/43/2019, dated 09.07.2019 of the Special Secretary, Planning (VI) Department, Government of A.P., and consequential Proc. No. E-1732191/DYSO-II/SDF/2019, dated 16.07.2019 and Lr. No. E-1732191/DYSO-II/SDF/2019, dated 26.07.2020 of the 3rd respondent as illegal, irregular, ultra vires, arbitrary, highhanded mala fide and against to the principles of natural justice and violative of fundamental rights guaranteed under Articles 14, 21 and 19(1)(g) of the Constitution of India and consequently direct the respondents to release an amount of Rs.8,66,355/- (Rupees Eight lakh Sixty Six thousand Three hundred and fifty five

only) along with 18 % interest from the date of rejection of the bill to till the date of realization forthwith.

02. Heard Sri B. Jaya Prabhakara Rao, learned counsel for the petitioner and the learned Government Pleader for Finance and Planning for respondent Nos. 1,5,6 and 7, the learned Government Pleader for Municipal Administration for Respondent Nos. 2 and 4, the learned Government Pleader for Revenue for Respondent No.3 and Sri I. Koti Reddy, learned Standing Counsel for Respondent No.8 and perused the material available on record.

03. In spite of service of notice to the respondents by Order dated 21.10.2020, no counter affidavit has been filed by the respondents till date. As per Rule 12 (i) (a) of the Andhra Pradesh High Court Writ Proceedings, 1977, every Respondent in every Writ Petition intending to enter appearance and oppose any Writ Petition on which notice is issued by the High Court, shall enter appearance and file a Counter Affidavit in opposition as soon as may be and in any event not later than 120 days from the date of service of notice in the Writ Petition. But, in the present Writ Petition, no counter affidavit has been filed by following Rule 12 of the Writ Rules, and accordingly, in the opinion of this Court, not filing of the counter affidavit by the

respondents demonstrates that the respondents are not intending to oppose the Writ Petition.

04. The case of the petitioner is that the petitioner has been doing Government Contract works for the last 18 years. Respondent No.4 called for open Tenders through e-procurement Tender Notice No. 969/SDF/TPG/TS-ATO/2018, dated 16.10.2018 in respect of work "Special Development Fund (SDF) 2017-18-Tadepalligudem Assembly Constituency-Construction of CC Road in 35th Ward from MIT-219 house to Soma Enclave, Tadepalligudem". The work was estimated by the authorities for an amount of Rs.8,52,205/-. The petitioner participated and fulfilled all the conditions with regard to e-Tender in AP e-procurement tender government website on 03.10.2018 and became the successful bidder to an amount of Rs.7,66,047.07/-.

05. Respondent No.4 issued a Letter No.969/SDF/TPG-TS-ATO/18, dated 16.10.2020 informing the petitioner that the tender is accepted to an amount of Rs.7,66,047.07. Thereafter, the petitioner entered into agreement No.37/2018-19, dated 24.11.2018 with respondent No.4 in the name of his Excellency the Governor of Andhra Pradesh and the said work has been completed in accordance with the prescribed specifications and after taking into

consideration all the authorized additions and alterations, the value of work done up to date conformable with the terms of the agreement within stipulated period.

06. The said work was accepted by the Government of Andhra Pradesh, Public Health and Municipal Administration, Quality Control Division, Visakhapatnam, and issued a Quality Control Certificate No.158/VSP/2018-19, dated 18.03.2019. The said work was certified by the Quality Control and checks have been performed at random in respect of LS/CC 1st and final bill of the work amounting to Rs.7,66,047/-. The Executive Engineer (PH) Quality Control Division, Visakhapatnam, sent the Quality Control Certificate to respondent No.4 vide Letter No.127/ELR/QCD/VSP/TS-JTO-1/2018-19, dated 18.03.2019. Consequently, the petitioner submitted a lumpsum Contract Final Bill on 15.03.2019 for an amount of Rs.8,66,355/- for the gross amount and after deductions of Rs.79,269/-, the net amount of Rs.7,87,086/- as per M-Book records and requested the authorities to release the said payment which was accepted by the authorities.

07. Learned counsel for the petitioner submits that there is no dispute with regard to the work and the said amount. But, respondent No.7 rejected the bills basing on the Memo No. PLG01-PLG0FUNDS(SDF)/43/2019, dated 09.07.2019

of the Special Secretary to Government, Planning (VI) Department, Government of A.P and consequential Proc.E-1732191/DYSO-II/SDF/2019, dated 16.07.2019 of the District Collector, West Godavari District, Eluru, the respondent No.3 herein. Respondent No.3 sent a Letter No.E-1732191/DYSO-II/SDF/2019, dated 26.07.2020 to respondent No.4, stating that the Chief Secretary to Government and the Special Secretary to Government, Planning (VI) Department, Government of A.P., have instructed the District Collectors as follows:

- “ (i) All the works not started to be cancelled;
- (ii) All the works under progress shall be stopped and the package closed.
- (iii) Payment shall be withheld and the bills returned”.

08. Learned counsel for the petitioner would submit that the Memo No. PLG01-PLG0FUNDS(SDF)/43/2019, dated 09.07.2019 and the consequential Proceedings No. E-1732191/DYSO-II/SDF/2019 dated 16.07.2019 and the Letter No.E-1732191/DYSO-II/SDF/2019, dated 26.07.2020 of respondent No.3 would not applicable to the petitioner's case as he completed the work much prior to the issuance of the said Memo. As such, the petitioner made a representation to respondent No.4 on 21.09.2020 under R.T.I Act and as per the information furnished by Respondent No.4 in his Letter No.178/RTI/TS-

ATO/2018/121DE/TS-ATO/2020, dated 03.10.2020, it is stated that he sent the bills to Pay and Account Officer (W&P), Eluru, through CFMS, but as per deposited orders in the CFMS, the Pay and Accounts Officer (W&P), Eluru, returned the bills to his office and further orders are yet to be received.

09. Learned counsel for the petitioner further submits that the petitioner borrowed the capital from private parties with huge interest to execute the work. The petitioner is facing serious hardship for not clearing the bills which were submitted for execution of the work. Due to non-payment of the bill amount for which the petitioner is legally entitled, the petitioner is suffering irreparable loss and severe mental agony. Under the circumstances, the present Writ Petition is filed.

10. Learned counsel for the petitioner submits that though the respondents made the payment of the bill amount on 26.07.2021, for the delay caused in making the payment of the bill dated 15.03.2019 for the works executed by him, the petitioner is entitled for the interest.

11. It is an admitted fact that the petitioner has executed the work as per the Agreement dated 24.11.2018 with respondent No.4 and submitted final bill on 15.03.2019. There is no dispute in respect of the work and the bill

amount to the respondents. Because of this reason, respondent No.4 sent the bills to the Pay and Account Officer (W&P), Eluru, but the same was returned in the light of the Memo No. PLG01-PLG0FUNDS(SDF)/43/2019, dated 09.07.2019 of the Special Secretary, Planning (VI) Department, Government of A.P., and consequential Proc.No. E-1732191/DYSO-II/SDF/2019, dated 16.07.2019 and Lr. No. E-1732191/DYSO-II/SDF/2019, dated 26.07.2020 of the 3rd respondent.

12. In the considered opinion of this Court, withholding the amount for which the petitioner is legitimately entitled is nothing but depriving the petitioner. Due to illegal action of non-payment of the amounts promptly by clearing the bills submitted by the petitioner after execution of works, the petitioner could not feed and see the welfare of his family properly and he could not make payments to his employees/workers and he could not make payments to the material suppliers and he has to pay interests for the debts incurred by him for execution of works. Due to this situation, petitioner's respect and dignity in the society will be deteriorated. As such, the petitioner's right to life with respect and dignity will be defeated which is violative of Article 21 of the Constitution of India.

13. As such this Court holds that withholding the amount, for which the petitioner is legally entitled, is illegal, arbitrary, and unjust and violative of Article 21 of the Constitution of India.

14. As seen from the record, the respondents made payment to the bill amount on 26.07.2021. The delay caused in making the payment from 15.03.2019 to 26.07.2021. There is no any fault on the part of the petitioner. The respondents are responsible for the said delay in making payment to the petitioner for which he is legally entitled. As such, it is appropriate and reasonable to compensate the petitioner for the loss caused to him by the respondents.

15. A larger bench of the Hon'ble Apex Court in ***Secretary, Irrigation Department, Government of Orissa and others v G.C.Roy***¹ opined as extracted hereunder:

"A person deprived of the use of money to which he is legitimately entitled has right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages".

¹ AIR 1992 SC 732

16. The High Court of Andhra Pradesh in ***J. Devendra Reddy v Kakatiya University and another***² held that withholding of the amount payable to the petitioner for the contract works, constitutes patent arbitrariness on the part of the respondents.

17. As such, this Court holds that the petitioner is entitled for the interest at 12% p.a., from the date of expiry of one month from the date of submission of bill i.e., 15.03.2019 to till the date of payment i.e., 26.07.2021.

18. Accordingly, the Writ Petition is disposed of directing the respondents to pay interest at 12% p.a. from the date of expiry of one month from the date of submission of bill i.e., 15.03.2019, to the date of payment i.e., 26.07.2021 within a period of Two (02) months from the date of receipt of a copy of this Order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

Date: 23.08.2021

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² 2015 (3) ALD 97

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