

**Court No. - 40**

**Case :-** WRIT - C No. - 30781 of 2023

**Petitioner :-** Ashok Kumar

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Rishi Yadav, Suresh Singh

**Counsel for Respondent :-** CSC

**Hon'ble Mahesh Chandra Tripathi, J.**

**Hon'ble Prashant Kumar, J.**

1. Heard learned counsel for the petitioner and Shri Ambrish Shukla, learned Additional Chief Standing Counsel for the State respondents.

2. By means of present writ petition, the petitioner is assailing the validity of order dated 08.09.2022 passed by Executive Engineer, Naurara Khand, Lower Gang Naher, U.P. at Lucknow-fourth respondent by which recovery proceeding was asked to be initiated against the petitioner for recovery of a sum of Rs.1,11,583/-.

3. Petitioner claims to be Contractor, executing work of Irrigation Department. It transpire from the record that the petitioner was allotted certain work relating to 'Earth work in foundation in dry ordinary soil (loam clay or sand) including lift up to 1.5M and lead upto 30M including back filling, watering and ramming of excavated earth into the structure and the sides of foundation trenches or into the plinth with removal and disposal of surplus earth as directed by Engineer in charge upto a distance of 30m from the foundation trenches. Record in question reflects that in an open vigilance enquiry, it transpired that the petitioner had done mining of earth, without obtaining permission from District Magistrate, while executing work under the contract and finally the liability of Rs.1,11,583/- was fastened upon the petitioner in view of the Government Order dated 15.10.2015.

4. The main plank of argument advanced by learned counsel for the petitioner is that the Government Order dated 15.10.2015, based on which the order impugned is passed, would have no bearing in the case of petitioner, as the work was conducted and final payment was made in the year 2013.

5. Learned Additional Chief Standing Counsel has objected the

said grounds. In support of his submission, learned Additional Chief Standing Counsel has placed reliance on the judgement and order dated 15.10.2020 passed in Writ C No.14553/2020 (M/s Dilip Singh Contractor vs. State of U.P. and others) and submits that so far as the Government Order dated 15.10.2015, which was subject matter of challenge in the aforementioned matter, the Division Bench has already upheld the same. The said Government Order dated 15.10.2020 is relevant and would definitely apply in the present matter and as such, no interference is required in the matter.

6. In the present case, admittedly an open inquiry was conducted by the Vigilance Department in the year 2021, wherein, some irregularities were found qua the petitioner. Finally the liability was fixed upon the petitioner and he was asked to pay the amount to the tune of Rs.1,11,583/-. Admittedly at present the Government Order dated 15.10.2015 is holding the field. The validity of said Government Order was upheld by the Division Bench of this Court while passing the order dated 15.10.2020 passed by the Division Bench of this Court.

7. Considering the facts and circumstances, we find that there is no illegality or infirmity in the order impugned. The writ petition sans merit and the same is accordingly ***dismissed***.

**Order Date :- 12.10.2023**

A. Pandey