

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.2355 of 2012

Dated 17th June, 2015

Between:

Ms.K.Tirumaleswari

...Petitioner

And

The Commissioner of Civil Supplies, Govt.of A.P., Somajiguda,
Hyderabad and others

...Respondents

Counsel for the petitioner: Sri P.V.Krishnaiah

Counsel for the respondents: GP for Civil Supplies (TS)

The Court made the following:

ORDER:

This writ petition is filed for a mandamus to set aside proceedings bearing CCS Ref.No.PDS.UC/1241/2009, dated 08.12.2010, of respondent No.1, whereby he has made substantial deductions from the amounts payable to the petitioner towards preparation of IRIS based house hold cards.

I have heard Sri P.V.Krishnaiah, learned counsel for the petitioner, and the learned Government Pleader for Civil Supplies (TS) appearing for the respondents.

The petitioner entered into an agreement with respondent No.2 on 12.05.2006, for execution of work of supply of IRIS based house hold cards for Civil Supplies Department. The petitioner raised a bill for payment of Rs.24,16,475/-, out of which, respondent No.1 has paid only a sum of Rs.16,45,180/-. In connection with another work under agreement, dated 16.11.2007, the petitioner has claimed a sum of

Rs.8,91,229/-. The petitioner has, thus, questioned the action of the respondents in withholding a sum of Rs.13,74,524/- in W.P.Nos.12983 and 13020 of 2010. By a common order, dated 10.06.2010, this Court directed the Collector (Civil Supplies)/Joint Collector to consider the representation of the petitioner and take necessary action within the stipulated time.

After the petitioner has filed contempt case, respondent No.1 has issued the impugned proceedings, dated 08.12.2010, sanctioning only a sum of Rs.66,225.76 ps instead of Rs.4,83,295/- in respect of the first mentioned agreement and a sum of Rs.2,04,346.82 ps instead of Rs.8,91,229/- claimed by the petitioner under the second agreement. This proceeding is questioned in this writ petition.

Respondent No.1 has filed a detailed counter affidavit, wherein he sought to justify the deduction of amounts. It is *inter alia* stated that based on the technical report, total amount payable to the contractor was finalised, that the claims of the Computer Service Providers (CSPs) in rural areas are processed as per the terms and conditions of the agreement entered into by the Collector (CS) and that as per the terms and conditions of the agreement, following types of penalties are imposed while making final payment to the CSPs:

“a) The number of null iris cards against the total iris based ration cards were not considered for payment. The balance number of cards after deducting the number of null iris cards have been taken for consideration for making payment to the CSPs

b) During the minimum guarantee period, if the number of cards generated is less than 60%, such cases are being penalised @ 1% for each five points reduced from the gross amount

c) If the percentage of iris taken for the total number of members covered by the total number of cards generated is less than 90%, for covered by the total number of cards generated is less than 90%, for each percentage 1% cut is imposed from the gross amount

d) Iris images performance below 60% is also being penalised @ 1% for every percentage drop.”

That as per the technical report received with regard to the petitioner, 43118 cards in rural areas and 14876 cards in *ad hoc* DPLs are available in the data base and accordingly payment was worked out duly inflicting penalties as per the above-mentioned criteria.

A detailed tabular statement has been provided in the counter affidavit, wherein deduction of penalties on various counts has been indicated. The substance of these penalties is also explained in paragraph-9 of the counter affidavit which is re-produced hereunder:

“a) In the null Iris cards delivered against the total iris based ration cards are deleted from the overall payment. The cards after deducting the number of null iris cards have been taken for consideration into making payment to the CSPs.

b) Review performance below 60% in the MGP is being penalised @ 1% for every 5% points drop in the performance during the MGP period.

c) Iris capture performance below 90% is being penalised @ 1% cut for each percentage drop and also removing iris matching with more than or equal to 10 matches.

d) Iris images performance below 60% is also being penalised @ 1% for every percentage drop.”

Though time was taken for filing reply affidavit, no such reply affidavit is filed by the petitioner.

From the respective pleadings of the parties, it is clearly evident that there is a serious dispute with regard to the claim of the petitioner. In substance, the defence of the respondents is that for various defects in execution of the work by the petitioner, the penalties have been imposed under various terms of the agreement.

Ordinarily, a writ petition for passing a money decree is not maintainable under Article 226 of the Constitution of India unless the claim of the petitioner is not disputed. In a case such as the one on hand where there is a serious dispute regarding the entitlement of the petitioner, the appropriate remedy for her is to approach the competent civil Court for adjudication of the dispute based on the oral and documentary evidence that may be produced by both the parties.

In this view of the matter, I am not inclined to adjudicate this writ petition on merits. The writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy of a civil suit.

As a sequel to dismissal of the writ petition, W.P.M.P.No.2927 of 2012 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

17th June, 2015
VGB