

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.28534 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in disconnecting the raw water supply to the petitioner through the letter bearing No.1102M/3221(A)/KWS-23/TS-ATO/2011, dt.15.10.2011, issued by the 4th respondent in pursuance of the directions of the respondents 1 to 3 herein as illegal and arbitrary and for a consequential direction to the respondents to restore raw water supply of 0.1 MGD to the petitioner from Summer Storage Tank at Samalkot forthwith pursuant to the Govt.Memo bearing No.24068/A1/2004, dated 05.12.2005 and Govt.Memo No.6210/A1/2006-08, dated 27.09.2007.

The case of the petitioner is that it is a registered partnership firm engaged in the business of water treatment and supply of industrial water and water infrastructure at Kakinada. It is also registered as a small scale industry by the Department of Industries, Government of Andhra Pradesh. The petitioner applied for permission to supply 0.10 MGD raw water from the storage tank at Somalkot and the Government has also accorded permission to the petitioner as the said quantity was available with the Government for the reason that the earlier allotment of 0.10 MGD made to M/s.Golden Agro Tech Industries, Kakinada was cancelled on the ground that the said company failed to pay the charges of water to the Government. Thereupon, the said surplus water was allotted to the petitioner vide Memo No.24068/A1/2004, dated 05.12.2005 on temporary basis subject to certain conditions. Thereafter, the petitioner set up the industry with a cost of Rs.3

crores. The petitioner supplies water to various boilers of respective industries through a pipeline from its storage tank avoiding road transport and saving oil consumption. It is stated that the Government issued modified orders vide Memo No.6210/A1/2006-8, dated 27.09.2007, permitting the petitioner to use the above said quantity on permanent basis. In pursuance of the same, the petitioner entered into agreement with the 4th respondent on 01.12.2007 for a period of 3 years. After completion of the 3 years period, the respondents have not renewed the agreement on the ground that the new tariff was not fixed by the Government and postponing the renewal inspite of repeated requests of the petitioner. However, the water has been supplied to the petitioner as per the earlier tariff and the petitioner has been regularly paying the billed amount without any default. While that being so, the 4th respondent served a letter bearing No.1102M/3221(A)/KWS-23/TS-ATO/2011, dated 15.10.2011 informing that the raw water supply to the petitioner is stopped and thereafter, on 19.10.2011, water supply was disconnected. Aggrieved by the same, present writ petition is filed.

This Court vide interim order dated 21.10.2011, directed the respondents to continue water supply to the petitioner in terms of the Memos dated 05.12.2005 and 27.09.2007 subject to the petitioner paying tariff, as fixed by the respondents from time to time.

Now counter is filed along with vacate stay petition admitting that the Government has allotted 0.10 MGD of raw water to the petitioner vide Memo dated 05.12.2005 purely on temporary basis at a tariff of Rs.2.00 per K.L and thereafter, issued another memo dated 07.01.2006 followed by a revised Memo dated

27.09.2007 stating that the raw water supply to the petitioner is only on temporary basis in super session of the orders issued on 07.01.2006. In the said memo it is stated that water charges will be collected on commercial basis i.e. @ Rs.4.00 per K.L. and the agreement would be for three years period and for every three years, the water tariff will be revised. Accordingly, the petitioner has entered into an agreement on 01.12.2007 and the said agreement has expired on 30.11.2010. After expiry of the agreement, the petitioner has not made any request for renewal of the agreement, as such, the averments of the petitioner that the respondents have postponed his request for renewal is false. Since the agreement of the petitioner was expired and that they have not made any request for extension of the agreement, the 4th respondent who is agreement concluding authority has stopped the raw water supply to the petitioner. It is also stated that even though the petitioner has not made any proposal for renewal, the 4th respondent has supplied the water to the petitioner firm for more than ten months, subject to revision of tariff by the Government. Accordingly, the water tariff bills were raised against the firm for the quantity supplied. It is further stated that the petitioner is supplying water to other firms i.e., M/s.Aclmar Agro Company, M/s.Nikil Oil Refineries and M/s.Sarada Oil Ltd., on commercial basis and since the petitioner firm has not approached for renewal of agreement, the water connection was ordered for disconnection vide the impugned memo dated 15.10.2011. Hence, sought for dismissal of the writ petition.

The petitioner mainly relied on the Memos dated 05.12.2005 and 27.09.2007 for supply of water. The memo No. 24068/A1/2004, dated 05.12.2005, states that permission was accorded to the

petitioner company for supply of 0.10 MGD on temporary basis subject to certain conditions at a tariff of Rs.2.00 per K.L and the same will be applicable for a period of 3 years and the memo No. 6210/A1/2006-8, dated 27.09.2007 is issued stating that the water charges will be collected on commercial basis i.e. at Rs.4 per K.L and the agreement will be for three years and for every three years the water tariff will be revised, apart from other conditions. Now, as per the counter affidavit water connection is disconnected only on the ground that petitioner has not renewed the agreement, after the same is expired in the year 2010, but not for any other purpose. Petitioner has not filed any document to show that he requested for renewal of the agreement except making some averments in the writ affidavit. Even after filing counter affidavit petitioner has not filed any reply nor denied the contents of the counter affidavit and no document is filed. Even as per Memo No.6210/A1/2006-8, dated 27.09.2007, it is mentioned that the agreement will be for a period of three years. Even after filing counter by the respondents, petitioner should have come forward seeking renewal of the agreement. But the petitioner has not come forward. The so called memos dated 05.12.2005 and 27.09.2007 are only for certain periods and it is purely on temporary basis. In the absence of the agreement petitioner cannot have any right for supply of water, since the memos are only for temporary basis. As such, petitioner has not shown any legal right for supply of water without entering into agreement with the respondents. As such, I do not see any merits in the writ petition.

Accordingly, the writ petition is dismissed. However, it is open for the petitioner to seek for renewal of the agreement for supply of water subject to availability of water and subject to rules and regulations if any. If petitioner has any grievance against the

Memos dated 05.12.2005 and 27.09.2007, it is open for the petitioner to challenge the same in appropriate proceedings. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

16.06.2015

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