

HON'BLE SRI JUSTICE R.KANTHA RAO

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Writ Petition No.17376 of 2014

ORDER:

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This writ petition is filed seeking Writ of *Mandamus* to declare the action of the respondents in with-holding the amount due to the petitioner in excess of Clause 3.3 of instructions to tenders, as illegal and arbitrary and for consequential direction to the respondents to release the amounts due to him in terms of L.S. Agreement No.32/PJP/201-11 dated 24.11.2010.

2. It is submitted by the petitioner that he is a contractor. He entered into an agreement with the respondents for construction of Aqueduct at KM 24.276 of OVP Left canal of PJP near Shakapur Village, Pebbair Mandal, Mahabubnagar District, through L.S. AGT.No.32/ PJP/2010-2011 on 24.11.2010. As per the agreement the initial value of the work was Rs.73,09,808/-. He completed the work within nine months from the date of agreement. The petitioner paid an amount of Rs.2,09,500/- by way of bank guarantee towards earnest money. The petitioner is entitled for an amount of Rs.10,10,136/- towards final bill, in addition to the above amount of Rs.6,22,380/- which was deducted from the bills towards retention money (final security deposit). Thus, according to the petitioner, the respondents have an amount of Rs.18,42,186/- in their custody i.e., due to the petitioner.

ii) It is further submitted that as per Clause 3.3 of the instructions to the tenderers, the department is entitled to deduct and retain amount equivalent to 7.5% towards retention money from each of the gross bills till the completion of the work. Out of 7.5% deducted from the bills 2/3rd i.e., 5% of so retained amount is liable to be paid to the petitioner upon completion of the work and the balance 2.5% when the Engineer

certifies that there are no defects during liability period. The total amount deducted towards retention money is about Rs.6,22,380/-.

iii) Nextly, it is submitted that as per Clause 5 of the Schedule-E, the petitioner is entitled for payment of final bill except the earnest money and 2½% of total value of the work towards security. According to the petitioner, the above work was completed by 24.08.2011 and the petitioner is entitled for payment of final bill and 2/3rd amount of 7.5% retained towards retention money within a reasonable time from the date of completion. Therefore, he submits that as the work has been completed and the defects liability period expired, he is entitled for the entire amount retained towards security i.e., Rs.6,22,380/-.

iv) It is further submitted that during the execution of work, certain additional works were necessitated due to the site conditions and the same have also been completed by the petitioner within the agreement period. Thereafter, the department prepared the revised estimate and the same has been approved on 28.08.2011. The version of the petitioner is that after number of oral representations, as there was no response from the respondents, he made a representation to the respondents on 21.01.2013 for release of the amounts due to him. Thereafter are no disputes either with regard to the execution of work or the rates or the amounts due to him, but the amounts due to the petitioner were unlawfully withheld by the respondents. It is submitted by the petitioner that on account of withholding the amounts due to him, the respondents have been adversely affecting his performance with regard to other ongoing works and the respondents are violating his right to profess the chosen filed.

v) Aggrieved by the action of the 2nd respondent, the petitioner filed WP No.25037 of 2013 and this court by order dated 04.09.2013, directed the respondents to consider the representation of the petitioner. As the 2nd respondent did not take any action even after passing of the aforesaid order by this court, the petitioner filed Contempt Case i.e., CC

No.2275 of 2013. In the said contempt case, the 2nd respondent addressed letter dated 18.01.2014 to the petitioner and in the said letter, it is stated that the revised estimates are pending with the Government for consideration and the payment due to him shall be released immediately after receipt of the said approval. Basing on the said undertaking given by the 2nd respondent, the contempt case was closed on 28.01.2014 leaving it open to the petitioner to take appropriate steps if he is still aggrieved by the action of the respondents.

vi) Thereafter, the petitioner approached respondents 2 and 3 for follow up action, but the petitioner was informed that the revised estimate which is pending with the Government is not specific to the work executed by him but to the revised estimate for the entire project to which he has no concern. In this connection, it is submitted by the petitioner that if he were to be informed that the additional quantities executed by the petitioner were subject to the approval of the entire project, he would not have ventured to execute them. It is said that after completion of the work, the petitioner was informed that since variation is very marginal, approval will be obtained immediately.

3. Under these circumstances, the petitioner filed the present writ petition seeking the aforesaid relief.

4. In the counter-affidavit filed by the 3rd respondent, the agreement conditions which have been mentioned in the affidavit filed by the petitioner in support of the writ petition have not been denied. It is submitted by the 3rd respondent that the validity of the bank guarantee has not been extended by the agency and therefore payment of earnest money to the agency does not arise. Further, it is submitted by the 3rd respondent that revised estimate has already been sent to the Government through proper channel for obtaining approval and the same is pending with the Government. Nextly, it is submitted that as the

final bill has not been preferred and claimed due to the fact that revised approval is awaited from the Government, the balance payment i.e., earnest money deposit and further security deposit will be released in the final bill after approval from the Government. The submission of the petitioner that the work was completed by 24.08.2011 is said to be not correct. According to the 3rd respondent, the petitioner has submitted for extension of time on 18.02.2012 up to August, 2012 and the actual date of completion of work in all respects is 21.02.2012. According to the 3rd respondent, the defect liability period has been completed on 20.02.2014. The 3rd respondent submitted that the amount of Rs.6,22,381/- will be released soon after obtaining revised estimate approval from the Government.

ii) According to the 3rd respondent, balance amount of Rs.9,10,306/- has to be paid to the petitioner subject to the sanction accorded by the Government. It is submitted by the 3rd respondent that soon after approval of revised estimate from the Government, the payment will be released as the sanction of revised estimate is beyond the sanction limits of the 2nd respondent.

5. I have heard Sri V. Prasad Rao, learned counsel appearing for the petitioner and the learned Government Pleader for Irrigation.

6. The assertion made by the petitioner that the work was completed in all respects by 24.08.2011 is not accepted by the 3rd respondent. Even according to the 3rd respondent, the work was completed in all respects by 21.02.2012. There is also no dispute about the fact that the revised estimate was submitted to the Government and that the 3rd respondent would pay the amount soon after the revised estimate is approved by the Government. In CC No.2275 of 2013 in WP No.25037 of 2013, the respondents undertook to release the balance amount to the petitioner soon after approval by the Government. Even in the said contempt case, the respondents submitted that the proposal

of approval of the revised estimate was sent to the Government and they were pending with the Government. Since the amount to be paid to the petitioner is only a small amount, there is no justification in contending that the payment of balance amount to the petitioner depends upon the revised estimate of the entire project.

7. From the facts and circumstances of the case, it obviously appears to this Court that the amounts have been retained by the respondents since long time without any proper justification and therefore, the petitioner is entitled for the relief prayed for in the present writ petition.

8. The writ petition is accordingly allowed and the respondents are directed to release the amount due to the petitioner in terms of L.S agreement No.32/PJP/2010-11 dated 24.11.2010, within a period of two months from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

R.KANTHA RAO, J

Date: 23.02.2015
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HON'BLE SRI JUSTICE R.KANTHA RAO

Date: 23.02.2015

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