

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos. 15870 OF 2007

ORDER:

This writ petition was originally instituted by one Sri K. Ramachandra Reddy, a resident of Tirupati and who has retired from the service of the State Government as a lecturer in Physics Department, Government College, Kadapa. Subsequently, one Sri B. Sarath Chandra Kumar Reddy, Advocate, Kadapa got impleaded as second petitioner on 06.02.2009. Upon the death of Sri K. Ramachandra Reddy, the original petitioner, his wife Smt. Shankamma and his two sons namely Sri K.V. Jayarami Reddy and Sri K. Narendra Kumar Reddy got impleaded as petitioners 3,4 and 5 on 29.04.2010. Incidentally, on the same day, they withdraw from the writ petition. Thereafter, Sri S. Ravi Shankar Reddy, University Engineer, S.V. University got impleaded as sixth petitioner. Further, by an order passed by this Court on 25.02.2008, the State Government of Andhra Pradesh represented by its Chief Secretary to the Government was got impleaded as fifth respondent.

This writ petition is instituted seeking a *Writ of Mandamus* for declaring the action of the first respondent, the Government of Andhra Pradesh, represented by its Principal Secretary to the Government in the Higher Education Department, in not taking any action pursuant to the D.O.Note No.3407-A/29/TFR/2007, dated 10.01.2007 issued by the second respondent namely, the Government of Andhra Pradesh by its Secretary to the Finance Department, as illegal and arbitrary and consequently to direct the respondents to take remedial measures as suggested by the Adviser in his reports dated 11.10.2006 and 17.01.2006 and to initiate appropriate action against the engineers/concerned of the University as directed in the orders dated 18.01.2007.

The State Government established three new universities in furtherance of Act 28 of 2006, namely, Telangana University at Nizamabad, Adikavi Nannayya University at Rajahmundry and Yogi Vemana University at Kadapa respectively of them. Yogi Vemana University at Kadapa was allocated an amount of Rs.20.69 crores for the year 2006-07 and Rs.17.00 crores for the financial year 2007-08 for purpose of providing necessary infrastructure including construction of buildings. The State Government also passed orders through their G.O.Ms.No.56 Education Department dated 15.05.2006 appointing the Vice Chancellor of Sri Venkateswara University, Tirupati as in-charge Vice Chancellor of Yogi Vemana University at Kadapa. The In-charge Vice Chancellor of Yogi Vemana University at Kadapa, apart from sanctioning execution of various works by calling for tenders, has also accorded sanction for departmental execution of seven civil works worth approximately Rs.1.115 crores. When serious allegations have surfaced in the media complaining about poor quality of execution of civil works, the State Government reacted by requesting, through their Memo No.11210/B.1.2/2007 Transport, Roads and Buildings Department dated 25.09.2006, Sri F.C.S. Peter, Quality Control Advisor of the Roads and Buildings Department and Sri N. Krishnam Raju, Advisor, A.P. Housing Board to examine the quality of constructions undertaken at Yogi Vemana University, Kadapa and to submit their report. Accordingly, the inspection team comprising of Sri F.C.S. Peter and Sri N. Krishnam Raju has undertaken inspection of the construction of multi storied buildings at the Yogi Vemana University, Kadapa, comprising of Natural & Physical Sciences Blocks, Guest House, A Type Hostel Building and B Type Hostel, Dining & Mess attached thereto. The estimated contract value for these works was of the order of Rs.44.60 crores approximately and the agency entrusted with execution of the works was M/s. S.V.E.C Constructions Limited, Hyderabad. The observations made by this team at the site were recorded in paragraph 4.1 of their report dated 11.10.2006 submitted to the Principal Secretary to the Government, Transport, Roads & Buildings Department. It is noted therein that:

- i. No approved working and detailed structural drawing are available at site. But the work is under progress without these detailed plans.
- ii. From the available drawings at site, the standard evaluation of planning and the structural frame members are abnormal.

- iii. The specifications drafted for the work are not as per the standard codes.
- iv. The University Engineers have reported that the structural drawings prepared by the Consultant are supplied partly only to take up the foundations. No design calculations are supplied by the consultant.
- v. The job chart of the consultant is not clear in respect of this work. No agreement is concluded between the employer and consultant, but only a memorandum of understanding has been recorded.

In paragraph 4.2 of their report, they have noticed that the concrete at site is operated as nominal mix. No concrete batching plant is set up at site. Clause 3.3(viii) of the agreement clearly specifies that the contractor should erect three numbers of batching & mixing plants for concrete mixing of 15-20 cubic meters capacity. In paragraph 4.3, the agreement specification for VRCC item was provided “120/1:1 1/2 :3 nominal mix”, using 20 mm granite machine crushed metal. The Inspection Team found the specification as defective. The design mix and nominal mix are different to each other. The University engineers should have objected to using of nominal mix as this is contrary to code of practice IS 456-2000. The required strength of concrete cannot be achieved with the present practice at site. In paragraph 4.4 of the report, it was noted that no log of cement consumed daily is maintained. In paragraph 4.6, it was noted that number of honey combs are observed in the concrete in the tapered footings. In paragraph 4.7, it was noted that the quality of concrete is not satisfactory and frequent decisions are not carried during the progress of concrete. No test results are recorded since 26.08.2006 till the date of inspection on 05.09.2006. In paragraph 4.7, it was observed that filling of trenches and basement is done with available soil and with vanka sand, in lump without spreading layers, watering and compaction. The specification for filling of foundations and basement has to be with carted sand from approved quarry, in layers not exceeding 150 mm thick, each deposited layer is to be watered and compacted. This is not done. The entire filling in basement and trenches has to be removed and redone as per specifications. In paragraph 4.20, the norms provided for natural science and physical science blocks are not as per NBC standard as the minimum clear width of corridor provided is 2.10 meters against 2.50 meter as per

the NBC standard. Paragraph 5 of their report contained the remarks. In paragraph 5.5, it was noted that quality audit of both the inputs as well as outputs is not done. They have concluded their report with the following remarks:

“We are of the opinion that the performance of the Field Staff and standard of construction is to be improved. The Engineers should be aware of that the defects in construction, usage of substandard materials, poor workmanship and negligence in quality control and supervision, all cause the failure of the structure, inspite of engaging a consultant, specifically for this work, the Engineers have not obtained the required detailed drawings design details and not even supervision at any level.”

On 17.01.2007, Sri F.C.S. Peter, Adviser, Quality Control for Roads & Buildings Department and Director General, National Academy of Construction, Hyderabad, has submitted another report to the Secretary to the Finance Department of the Government relating to the seven works which the in-charge Vice-Chancellor of Yogi Vemana University has ordered for departmental execution. In paragraph 3, it was observed that, though permission was accorded to execute the works departmentally, the University Engineer, S.V. University, Tirupati has not followed the required procedure to execute the works departmentally. It was further noted therein that, when works are executed departmentally, the materials are to be procured in advance and be taken into the store, entered into the Store Register and then issued to the work. There is no such record maintained. It was further noted in paragraph 5 of this report that, though, it was written in the M books that the works were executed departmentally, they were actually executed through contractors in place of departmental execution. The measurements recorded were for finished items. No construction material is procured. This clearly concludes that the works were executed through contractors. In paragraph 6, no statutory payments were recovered for seigniorage, VAT and other taxes, and this is found to be a serious lapse. In paragraph 7 of this report, the Registrar of S.V. University, Tirupati has issued advances periodically to the University Engineer, Tirupati. In turn the University Engineer has issued advances to the Assistant Engineer of the University stationed at Kadapa, in five different installments totaling to Rs. 1,07,90,000/-. Thereafter, it was observed in paragraph 8 that the advances were also given by the

University Engineer work-wise and the procedure adopted by him is not correct. In paragraph 9 of the report, it was recorded that the advances received were not deposited immediately in bank by the Assistant Engineer, Kadapa on the day of receipt of cash. No cash book is maintained. It was further noted that the Assistant Engineer should have deposited the amount in bank and payments should have been made through cheques only. It is further noticed that the Assistant Engineer does not have any clerical assistance and therefore he should not have been issued such huge advances by the University Engineer. The Assistant Engineer has made all payments in cash, may be to the contractors who executed the works. The procedure adopted by him in this regard is not correct. In paragraph 10, it is noted as under:

“There are also no vouchers available even for a single payment in support of payments made. This is a serious lapse.”

In paragraph 11 , though the University Engineer, Tirupati was camping at Kadapa for 15 days between 13.07.2006 to 10.11.2006, there are no inspection notes available of the inspection carried out by him. It was observed that though he was aware of the execution of the works, he did not check measure a single item. In paragraph 13(b), it was noted that the thickness of RCC pre-cast slab is found to be 40 mm against 50 mm required. In paragraph 14(a), it was noted that the action of the Vice Chancellor of S.V. University, Tirupati in having issued huge advances to the University Engineer is not correct. The action in having issued advances without settlement of earlier advances is not correct. In paragraph 15, Sri F.C.S. Peter has suggested the following measures:

“The following measures are suggested:

- a. In cases of urgency the competent authority can take up the works on nomination and no departmental execution of works should be permitted. This suggestion is made as the University staff is not conversant with the procedures of departmental execution.
- b. The works need thorough verification and necessary recovery made for the short fall. This may be entrusted to the Superintending Engineer (R&B) Inspection & Quality Control

Circle, Hyderabad.”

In conclusion, it was noted in the report that the procedures adopted and the way the amount was spent are questionable.

As was noticed supra, it is these two reports, which the original writ petitioner relied upon for seeking a *Writ of Mandamus*.

At the outset, it must be noted from the communication No.YVU/RIAct/2006 dated 31.01.2007 of Yogi Vemana University, Kadapa, that one Sri S. Ravi Shankar of Tirupati, 299 S.D. Layout, Tirupati has obtained a copy of the report submitted by Sri F.C.S. Peter, Technical Advisor on 18.01.2007 under the provisions of Right to Information Act. However, there is no material to indicate as to the source of securing the information of the report submitted on 11.10.2006 pursuant to the inspection undertaken by Sri F.C.S. Peter and Sri N. Krishnam Raju on 05.09.2006. It is also not known as to how Sri K. Ramachandra Reddy, original writ petitioner has secured this information from Sri S. Ravi Shankar, 299 S.D. Layout, Tirupati.

From the affidavit filed in support of the WPMP.No.601 of 2009, moved by Sri S. Ravi Shankar, seeking impleadment in this writ petition as sixth petitioner, it is noted that he is a resident of Sarojinidevi Layout, Tirupati and that while working as University Engineer of S.V. University, Tirupati, he was placed under suspension. It is thus clear that Sri S. Ravi Shankar was the real source for inspiration and the strength for instituting the above writ petition. Obviously, the family members of Sri K. Ramachandra Reddy, upon realizing this fact got impleaded as his legal representatives in the writ petition and also sought for permission for dismissal of the writ petition as withdrawn on the same day.

From the affidavit filed in support of WPMP.No.15634 of 2008, soliciting impleadment, the second petitioner Sri B. Sarath Chandra Kumar Reddy has clearly described that he was discussing the issues raised in this writ petition with Sri K. Ramachandra Reddy and as a result of that, he solicited impleadment. As was already noticed, Sri B. Sarath Chandra Kumar Reddy is a practicing advocate at

Kadapa.

When once, serious allegations have surfaced with regard to poor quality of execution of works involving expenditure of public money, the State Government has promptly reacted by constituting an Inspection Committee comprising of Sri F.C.S. Peter and Sri N. Krishnam Raju, two technical experts. They have inspected the constructions which are executed by the contracting agency on 05.09.2006 and made available their report. Sri F.C.S. Peter has also undertaken inspection of the works ordered to be executed departmentally by the In-charge Vice Chancellor of Yogi Vemana University, Kadapa. He has also submitted his report in that regard on 18.01.2007.

When both these reports have been noticed by my illustrious Brother Justice Goda Raghuram, who heard this writ petition on 25.02.2008 passed a very exhaustive order on that day. Apart from impleading the Chief Secretary to the Government as the fifth respondent, Justice Goda Raghuram concluded his order in the following terms:

“In page 10 of the counter, it is optimistically stated that all structures are well and that the uncured concrete of 2006-07 appears to have been cured properly. Honeycombs in the RCC members are also said to have been rectified.

Though no counter affidavit has yet been filed by the fourth respondent University, which has undertaken the execution of the civil works in the above callous manner, the learned counsel for the fourth respondent University would state that since no information was received from the third respondent University or from respondent Nos. 1 and 2, the fourth respondent was in a position to take up to the defective constructions.

Prima Facie, such a contention is extravagant. The fourth respondent as the executing agency of the civil works ought to have constantly monitored the quality of the constructions through its Engineers or technical staff and should have drawn up periodical reports as to the quality of the construction. The acceptance of an obligation to execute the civil works in the third respondent University by the fourth respondent University tantamounts to an acceptance of the fourth respondent's technical and administrative

capacity to take on the said obligation with the requisite degree of excellence. It was, therefore, the obligation of the fourth respondent to have delivered upon this accepted responsibility and in a manner consistent with an execution, which would be non-pejorative to the health of the people, who visit the third respondent University.

The quality of construction by the fourth respondent University is substandard by any standard. Clearly, criminal culpability is discernible. It is not a case of marginal negligence. The nature of defects in the construction pointed out by the National Academy of Construction would legitimize an inference of venality in the administration and execution process. This prima facie calls for an expeditious, serious and relentless prosecution of all concerned not only the interests of the public exchequer but in the interests of the general public, who would inhabit or visit the precincts of the third respondent University.

From the counter affidavit of the first respondent and the contentions urged on behalf of the fourth respondent, it appears to this Court that the well-entrenched and traditional executive strategy of passing the buck is re-enacted in full vitality. This state of the morbidity of the works disciplined.

In the aforesaid circumstances, as the fifth respondent is the fount of all the executive power in the State as the highest officer in the hierarchy of the State bureaucracy. The said respondent is directed to forthwith initiate appropriate measures including if considered appropriate prosecution of all the persons responsible irrespective of their position for the gross failures in the design, entrustment, execution, supervision or verification of the civil works pertaining to Sri Yogi Vemana University as revealed in the reports of the National Academy of Construction, Hyderabad, dated 11.10.2006 and 17.01.2007. This obligation of the State is a corollary of the rights under Article 21 of the Constitution of India. The fifth respondent shall file a counter affidavit along with an action taken report by the next date of hearing.”

The above order has been passed by this Court after perusing the counter affidavit filed by the Principal Secretary to the Government in the Higher Education Department wherein it was noted that the Yogi Vemana University, Kadapa has suspended Sri Sk. Hidayatullah, Assistant Engineer of S.V. University, Tirupati, who was entrusted with the task of execution of departmental works and this counter affidavit has also traced out the follow-up action initiated by the State Government

pursuant to the report made available by the inspection team comprising of Sri F.C.S. Peter and Sri N. Krishnam Raju with regard to execution of multi storied structures at Yogi Vemana University Campus, Kadapa and also the report of Sri F.C.S. Peter with regard to departmental execution of certain works. The counter affidavit has also adverted to the non-destructive tests that have been got conducted subsequently by the rectification committee constituted and the finding recorded by them that in general all structures satisfy the structural requirements to carry the designed loads. It should also be noted that the State Government in the Finance Department through their U.O.Note 3407-A/29/TFR.I/2007, dated 18.01.2007, requested the Principal Secretary to the Government in the Higher Education Department to frame charges against the engineers/concerned of the University and to take steps for rectification of the defects with the Assistant of Adviser, Quality Control for Roads & Building Department, Quality Control Wing of R&B Department and that general instructions shall be issued to all the authorities of universities not to undertake any work for departmental execution in any university. It should be kept in view that the Yogi Vemana University, Kadapa, through their orders contained in their memorandum dated 25.08.2007, noted therein that Sri Sk. Hidaytullah, Assistant Engineer, Yogi Vemana University who has been paid an advance of Rs.10.50 lakhs for undertaking construction work in the university campus at Kadapa had failed to settle the advances inspite of repeated instructions and written communications and further Sri Sk. Hidayatullah has not revealed all the facts relating to the claims and withdrawal of Rs.16.90 lakhs in his reply dated 22.06.2007. Therefore, pending enquiry into the matter, Sri Sk. Hidaytullah has been placed under suspension with immediate effect. It should also be noted that Sri Venkateswara University through their communication addressed to the Registrar, Yogi Vemana University on 30.05.2007 has taken a stand that the works have been executed departmentally duly following the procedure and keeping the urgency for the accommodation for undertaking class room work and hence there is no need for initiating any action against the engineers concerned for the work executed.

Strange are the ways of functioning of Sri Venkateswara University, Tirupati, it might seem.

As a part of remedial measure, The State Government has also constituted a committee comprising of the Superintendent Engineer, Inspection and Quality Control Circle R&B, Hyderabad, the Executive Engineer, Quality Control Division, Kadapa and the Deputy Executive Engineer, Quality Control Sub Division R&B Kadapa and the Assistant Executive Engineer, Quality Control Division, R&B Department, Kadapa, who have undertaken an inspection of the constructions carried out by Yogi Vemana University on 19.07.2007 and 21.07.2007 and based thereon, they drew up their report dated 03.08.2007 and submitted the same to the University Engineer, Yogi Vemana University, Kadapa. In paragraph 4 of their general remarks, they noted that, inspite of instructing the field staff to attend with necessary particulars of advances made to the contractors with supporting measurements books, hand receipts/vouchers and other relevant records, but however, the field staff failed to comply with the same. It is also observed that the Assistant Engineer concerned is not available during the inspection and in the absence of such particulars, such committee felt it highly difficult to probe the advances made to the contractors and to fix the responsibility. In paragraph 5 of their report dated 03.08.2007, the Committee noticed honey combs and the lumps of dead mortar are visible at some locations. They are to be thoroughly cleaned, saturated with water after removal of loose pockets and carefully pointed out and rendered true with mortar of cement and fine aggregate mixed in the proportions used in the grade of the concrete and finished off to have a dry and consistent surface as per A.P.S.S. specifications. It was further suggested by them that pressure shall be applied in filling and pointing to ensure thorough filling in all voids. In paragraph 9 of this report, it was noted that as per the agreement conditions, overlaps or any wastage in steel are at the cost of contractor. But overlaps/chains to support steel were recorded by the field staff and payment was made to the contractor. Therefore, they suggested that all such payments are to be recovered from the contractor from his forthcoming bills and compliance be sent to their office for purpose of verification. They also noted that the Field Engineers shall check up the work and see that the work is executed to specified standards and specifications.

Yogi Vemana University at Kadapa has drawn a detailed basis for laying charges against Sri Sk. Hidayatullah, Assistant Engineer and furnished the same through their report dated 04.10.2007 submitted to the Principal Secretary to the Government

in Higher Education Department. Though, Yogi Vemana University has suspended Sri Sk. Hidayatullah on 25.08.2007, Sri Venkateswara University, Tirupati acting through its Registrar, Sri C.K. Mohan Rao passed orders through memo No.E.III. (4)/2007 dated 10.09.2007, permitting Sri Sk. Hidayatullah to rejoin duty in Sri Venkateswara University Engineering Department, Tirupati on or before 10.09.2007 pending sanction of Earned Leave applied for by him from 21.04.2007 till he rejoins duty, subject to production of Medical and Fitness Certificates and an undertaking that he will be held responsible for settlement of the advances within a month and for any lapses or defects in the works for which the advances were drawn by him at the Yogi Vemana University, Kadapa. However, the S.V. University, Tirupati, has failed to adhere to these conditions and failed to render Sri Sk. Hidayatullah accountable for not adjusting the advances drawn by him for executing works departmentally at Yogi Vemana University Campus, Kadapa.

It will also be appropriate to notice that when Sri G. Veera Siva Reddy, M.L.A, Kamalapuram and Sri G. Mohan Reddy, M.L.A, Lakkireddipalli, Kadapa District have made serious allegations with regard to the irregularities committed by the contractors in the execution of the buildings at Sri Yogi Vemana University, Kadapa, such as using local steel other than the ISI mark steel and use of Kamalapuram and Muddanur Stone instead of Rayachoti granite and mixing two parts of 12mm and one part of 20 mm metal instead of total 20 mm metal for foundations, using of mud instead of sand in foundations and submitting of works by the contractor which lead to irregularities, the State Government in its General Administration Department directed the Director General (Vigilance and Enforcement) & E.O. Prl. Secretary to Government in General Administration Department to conduct a thorough enquiry and submit his report. Accordingly, the Director General (Vigilance & Enforcement) has undertaken an inspection of the site where construction work was carried out and submitted his alert note No.82 dated 25.05.2007 to the Government. In paragraph 9 of this report, the field observations have been noted therein. In that:

- i. It was observed that most of the foundations for all buildings were completed by the date of inspection and hence the Vigilance & Enforcement Department officials have collected the filled up sand from the basement, the sand and metal (20 m & 40 mm) used for

construction, cement and steel stacked at the site and got them tested at S.V. Polytechnic, Tirupati and in the S.V. Engineering College, Tirupati. As per lab report, the test results are within the permissible limits of specifications.

- ii. Further, measurements of foundations were verified and found to be fairly tallying with the recorded measurements.
- iii. The sectional weight of steel as observed in the laboratories is less than the values stipulated in the agreement in case of 16 mm dia to 32 mm dia but within the tolerable limits and the diameter and weight of steel was found to be within the tolerable limits and specifications. In paragraph 4 of this report, the Director General after interacting with Sri G. Veera Siva Reddy, one of the M.L.A's who complained in the matter, noted that Sri G. Veera Siva Reddy had pointed out that he lodged a complaint based upon the news item, but however, when he visited the work along with an Engineer, he observed that quality of construction is good and contents of news items are false and baseless. Therefore Sri G. Veera Siva Reddy while regretting the inconvenience caused to the Vigilance & Enforcement Department, withdrew his complaint. However, the Director General (Vigilance & Enforcement) carried out further inspection and recorded his findings and also made appropriate recommendations. Importantly, he recommended that the required drawings from the Design Cooperative, Mumbai, consultant be obtained immediately so that milestones can be achieved by the contractor as per the agreement and also ensure that the time schedule for submission of plans clause may be incorporated in future agreements. He also made a recommendation that a sum of Rs.75,456/- which is liable to be recovered towards C.M Relief Fund @ 0.15% and fine towards 0.1% for quality control by the NAC may be recovered from the running bills of the contractor.

This report submitted by the Director General of Vigilance & Enforcement would show a satisfactory progress of the works.

The Registrar of Sri Venkateswara University, Tirupati has filed a detailed counter affidavit in this case during April 2008. It was noted in paragraph 2 thereof that the proposed construction of multi storied buildings at Sri Venkateswara University P.G. Centre at Kadapa was estimated to be of the value of Rs.65 crores and hence the University engaged DECOOP of Mumbai as a consultant firm for the designs and drawings of the structures. It was stated therein that, the Works and Buildings Committee met on 02.06.2003 to authorize the Vice-Chancellor for finalizing the approval of estimates and tenders for the proposed execution of civil works. It was specifically stated in paragraph 2 by the Registrar of the Sri Venkateswara University as under:

“.....The University Engineer Sri S. Ravi Shankar one of the Members of the Committee misbehaved in the committee meeting and which resulted in keeping him under suspension. The present writ petition is filed basing on the information furnished to him by the 3rd respondent under the right to information claiming to be in public interest.”

In paragraph 5 of this counter affidavit, it was explained that, the S.V. University has submitted his remarks to the State Government through the Chairman, State Council of Higher Education vide its letter dated 15.12.2006. It was mentioned specifically that, the De-Coop consultant supplied the drawings in part wise to easy handling and execution of the work and hence there are 18 parts of drawings and the work is also executed part wise and the respective drawings were shown at the time of inspection. Most significantly, it was stated therein that De-Coop people were called for a meeting held at NAC, Hyderabad on 19.10.2006. They have submitted the detailed designs and discussed on this various technical issues raised earlier. The De-Coop people clarified that there will be little bit of higher reinforcement made in their design as the site comes under seismic zone. The designs were submitted to the inspection team for offering any remarks. From this statement, it becomes clear that the meeting of the design consultant for the structures had occurred at National Academy of Construction, Hyderabad premises on 19.10.2006 which is subsequent to 05.09.2006, the date on which, Sri F.C.S. Peter, Advisor, Quality Control R&B Department and Additional Director General of National Academy of Construction

and Sri N. Krishnam Raju, Quality Control Consultant of A.P. Housing Board, Hyderabad, inspected the site and submitted their report on 11.10.2006. It is significant to note that after the consultant, Design Cooperative Limited have met and clarified the whole issue at the National Academy of Construction, Hyderabad, no further adverse report has emanated from Sri F.C.S. Peter's team. Therefore, it can be inferred that the team of Sri F.C.S. Peter were satisfied with the clarifications furnished by the consultant with regard to the designs and the execution of works carried out till then.

After the Chief Secretary has been impleaded by this court on 25.02.2008, a detailed counter affidavit has been filed in the matter on 15.04.2008. After adverting to the various developments, it is stated in paragraph 3 of this counter affidavit by the Chief Secretary that Sri Venkateswara University authorities have countered the inspection reports of Sri F.C.S. Peter and have stated that most of the objections/defects pointed out in the report have been rectified/taken care for future guidance. In view of these deferring perceptions, in order to ascertain the actual position of ground realities through an independent and fresh inspection of works and connected records, Government in their G.O.Rt.No.245 Higher Education (UE.I) Department dated 13.03.2008 have constituted a Technical Committee comprising of Sri T. Babu Raj, Chief Engineer (I/c) (Buildings), Roads and Buildings Department, Hyderabad and Prof. Ram Mohan Rao, Director of Bureau of Industrial Consultancy, Jawaharlal Nehru Technological University, Hyderabad, to inspect the works covered in the report of Sri F.C.S. Peter, Quality Control Adviser for Roads and Buildings Department and to submit a report to the Government. It was further stated that the Government have also deputed Sri S. Srinivasulu, District Audit Officer, SA(RA), Kurnool, as Special Audit Officer to audit the connected records of Sri Venkateswara University and Yogi Vemana University and to report about the financial and procedural irregularities if any, committed in undertaking works of the University. It would also be appropriate to notice that an additional counter affidavit sworn to by the Chief Secretary to the Government has also been filed in the matter on 21.06.2008, wherein, it was brought out that the Technical Committee appointed through G.O.Rt.No.245 dated 13.03.2008 have submitted their inspection report on 02.05.2008. This Technical Committee has conducted the following tests on

09.04.2008 on the RCC foundations/footings of

- i. Natural Sciences & Physical Sciences building
- ii. Guest House buildings and
- iii. Hostel buildings

The non-destructive tests conducted are:

- i. Rebound Hammer tests on Concrete Members
- ii. Ultrasonic Pulse Velocity tests on Concrete Members.
- iii. Destructive Tests like core cutting tests on the concrete members.

This Technical Committee has opined that the structural soundness of the works, which were earlier inspected by Sri F.C.S. Peter Committee is found to be satisfactory based upon the field and laboratory test results and is based upon the structural designs. In paragraph 7 of this additional counter affidavit it was made clear that the Government requested this Committee to submit its further report latest by 09.06.2008 with regard to the works got executed departmentally. This counter affidavit has noted that the Special Audit Officer in his report dated 30.04.2008 has found that the Yogi Vemana University has paid an excess amount of Rs.1,01,99,753/- and suggested that the same may be recovered from the contractor. It was further noted that a substantial part of this recovery is based upon the fact that the Yogi Vemana University has paid 25% of Corporation area allowance over and above the rates of labour component, which worked out resulted in a total sum of Rs.83,63,544/-. Dealing with this part of the audit report, the Yogi Vemana University has clarified the matter by clearly bringing out that the Yogi Vemana University Campus is located at KM 12/2 OF Kadapa-Pulivendula Road and thus is located within 8 KM from Kadapa corporation limits of Kadapa City. Since Kadapa is not only the district headquarters but also a municipal corporation area, 25% additional amount for the labour component is allowable towards Corporation allowance in terms of the orders passed by the Government. Thus, it is eminently clear that the Yogi Vemana University has followed the policy of the State Government in effecting payment of 25% of the labour component towards corporation allowance, in view of the location of the site within the 8 KM radius from the Corporation limits. This apart,

the various amounts paid which have been noted in the audit report which totaled upto Rs.1,01,99,753/- have been clearly explained. It is made clear by Yogi Vemana University that the errors noticed by the Special Audit Officer with regard to the excess amounts paid to the contractors in a sum of Rs.6,36,657/- have been recovered under bill No.XII and Part vide M. Book No.400. Similarly, the arithmetical inaccuracy in calculations pointed out by the Special Audit Officers working out to Rs.4,21,883/- were rectified in L.S.XII & Part Bill. The amount of Rs.83,538/-, which is liable to be recovered from the contractor due to less weightage of steel procured by him, has been assured to be recovered in the forthcoming L.S.13th & Part bill. Similarly, excess amount paid towards steel and sand filling in a sum of Rs.27,473/- has been rectified. Similarly, less amount recovered towards deficiency in weight for steel and defects in sand filling in a sum of Rs.16,422/- would also assured to be recovered from the L.S.13th & Part bill. With regard to sum of Rs.1,50,000/- which was refunded representing the tender schedule though there is no provision, Yogi Vemana University assured that necessary details will be ascertained from S.V. University, Tirupati and necessary action will be taken thereafter. So far as Rs./3,61,004/- paid towards service tax without deducting the service tax is concerned, the necessary follow-up action in consultation with S.V. University will be undertaken. This latest additional counter affidavit, apart from recording the nature of constructions carried out, has also explained the various remedial measures taken by the State Government. The report of the Technical Committee comprising of Sri T. Babu Raj, Chief Engineer (R&B) Buildings, Roads & Buildings Department, Hyderabad and Dr. K. Rama Mohana Rao, Director of Bureau of Industrial Consultancy, Jawaharlal Nehru Technological University, Hyderabad, dated 02.05.2008 has been enclosed to this additional counter affidavit. This report concluded in the following manner:

“It can be concluded that the structural soundness of the part of the works as inspected by Sri F.C.S. Peter, Advisor, Quality Control R&B, on 11.10.2006 and 17.01.2007 is appearing satisfactory based on the field & laboratory test results and based on the structural designs.”

It should also be mentioned that the Yogi Vemana University after the audit report

was submitted, brought to the notice of the State Government in the Higher Education Department, the criteria adopted for payment of 25% over the rate on labour component towards corporation area allowance as under:

“As per the preamble of Common SSR 2005-2006 are allowance for all municipal corporations 25% extra over labour component is allowed. For all District head quarters and remaining Municipalities 20% extra over labour component is allowed upto a belt of 12 Km from municipal limits. This Yogi Vemana University is located at KM 12/2 of Kaapa-Pulivendula Road which is located within 8KM from Kadapa corporation limits i.e. in KM 4/8 of Kadapa Pulivendula Road.”

It should also be noted that the Principal Secretary to the Government in the Higher Education Department has filed an additional counter affidavit in the matter on 05.08.2009. This additional counter affidavit has been filed pursuant to the orders passed by this Court on 26.06.2009 in the above writ petition with regard to the action taken for each of the defects enumerated in the report of the Advisor of the Quality Control of the R&B Department. Accordingly, in a tabulated format, the action taken report has been furnished.

Only issue of serious significance that is debated at the Bar related to filling up of trenches and basement in 150 mm thick compact layers duly replacing the vanka sand. In this context, the learned Additional Advocate General has also made available the test report of the Superintendent Engineer R&B, Inspection and Quality Control, Kadapa dated 19.07.2012. The laboratory test results have also been furnished along with this report, comprising of the results of the Rebound Hammer Test, Ultrasonic Pulse Velocity test which revealed the concrete grading of the 41 samples collected by it of all the structures. 30 out of these 41 samples revealed the concrete quality grading as good. As the pulse velocity by cross probing revealed the values ranging between 3.5-4.5 Km/sec. Only 11 of the 41 tests revealed the value of pulse velocity between 3.03 to 3.43 km/sec and hence the value is considered as medium and not even one of any of these samples have reflected a value of less than 3 for its strength to become doubtful. Hence, the inspection

revealed that, the soundness of the concrete structure is fairly good.

In view of these findings, what emerges is that the State Government has not shown any laxity in the matter of getting the structures constructed at Yogi Vemana University Campus, Kadapa verified at varying times by varying special experts. The initial apprehensions maintained have all been specifically addressed by the subsequent inspecting agencies. The order passed by this Court on 25.02.2008 is based upon the findings contained in Sri F.C.S. Peter's report. As was already noticed supra, the consultant engaged by the S.V. University namely Design Cooperative (De-Coop) have participated in a meeting convened at National Academy of Construction, Hyderabad on 19.10.2006 after the Peter's Committee findings are recorded. There afterwards, the Peter's Committee though submitted their report on 18.01.2007 with regard to the works executed departmentally, no further adverse report has been submitted by it with regard to the quality of construction of the multi storied building got executed through contractor. Therefore, a reasonable inference can be drawn that the apprehensions raised by Peter's Committee have been specifically adverted to and explained satisfactorily by the design consultants and the tests that were conducted by the other experts subsequently on the structure revealed its soundness. Hence, the detailed order passed by this Court on 25.02.2008 has not only served the primary objective of drawing the State's attention to a serious issue concerning quality of constructions but also helped in vigorous inspections being carried out one after the other to rule out any possible laxity on the part of any one connected to the execution of works.

The role of a constitutional court, wherever serious allegations have been made with regard to the misuse of public funds is essentially that of a watch dog. The Court does not have the necessary expertise to consider or pronounce any final opinion with regard to the designs or soundness of the concrete structures raised and that domain squarely falls within the technical knowledge of experts which is an exclusive one of the expert on the subject. We have reports of experts constituted by the State Government in this regard, by entrusting the study to a learned professor heading the Bureau of Industrial Consultancy, Jawaharlal Technological University,

Hyderabad. If the subject experts after conducting the necessary and relevant tests file their report observing that the quality of the concrete structure is fairly good and that the work has been executed using quality material as per the specifications and that quality workmanship has been deployed, it is for the State Government to take a final call in that regard. The counter affidavit and the additional counter affidavit sworn to by the Chief Secretary to the Government as well as that of the additional counter affidavit sworn to by the Principal Secretary of the Government in the Higher Education Department, reveal that the Government has not spared any effort to verify the allegations relating to poor quality of construction, workmanship and the material used. In fact, the Director General of Vigilance & Enforcement has undertaken a detailed inspection and even that report revealed satisfactory progress of the works. It is no doubt true that there are certain minor irregularities still subsisting and they are not perhaps yet rectified. The University has pointed out that it is attending to replacing the vanka sand in the basement by laying sand in compact layers of 150 mm. I am sure, that Yogi Vemana University by now would have attended to this work as well. Therefore, in my opinion, the main purpose for which the writ petition has been instituted has been fairly and satisfactorily accomplished.

There is no doubt that Sri G. Vidyasagar, learned senior counsel as well as Sri S. Ravi Shankar, Assistant Engineer who has appeared in person and made submissions, would point out that, insofar as the departmentally executed works are concerned, the irregularity as pointed out in the matter of allocation of funds and disbursement of those funds and not accounting for the same properly still remain warranting appropriate action against the then university engineer as well as the Assistant Engineer of S.V. University. The counter affidavit filed by Sri Venkateswara University has made a strong case for not initiating any action against them also. So far as the State Government is concerned, it has supplied the entire material to both the universities and the S.V. University after duly considering the same has taken a stand that no serious action is warranted against the university engineer as well as the Assistant Engineer, in view of the execution of the works by them departmentally. The decision taken by the said university for undertaking execution of works departmentally was the need to put in place necessary infrastructure for undertaking class work immediately. This concern of the university cannot be brushed aside lightly. It is a valid and vital concern. How far the University

Engineer and the Assistant Engineer can get away without explaining satisfactorily the disbursements made by them is a question which has got to be addressed by the S.V. University at the first instance. All I need to observe was that the S.V. University will not spare any effort or energy to undertake such a task.

Can the direction sought for in this writ petition be issued is another facet of this question. The original writ petitioner asserted that he was raising these questions driven by public spirit, but unfortunately, he uses the material secured by Sri S. Ravi Shankar under the Right to Information Act, thus, leaving scope to suspect that he is acting on behalf of Sri S. Ravi Shankar. The reason is very simple. When Sri S. Ravi Shankar filed W.P.No.9376 of 2008 raising substantially the same questions and that writ petition has been dealt with by a Division Bench of this Court comprising of Sri Anil Ramesh Dave, Chief Justice (as he then was) and Justice R. Subhash Reddy. The Division Bench has noted the whole gamut in the following words:

“Though some allegations are made with regard to the quality of construction made by the successful bidder namely M/s.S.V.E.C. Constructions Limited, but the said Company is not even made as party-respondent to this writ petition. Even according to the petitioner, the works were awarded in the year 2006, and at no point of time, the petitioner has questioned the award of the contract. The works were approved by the Works and Building Committee and further approved by the Executive Council of the University, which is a Statutory body under the Universities Act. The petitioner, only by making the high-ranking officials of the University namely the Vice-Chancellor and Registrar of the University as parties to this writ petition, alleges irregularities at this point of time. Though the Executive Council is made a party-respondent, but members of the Executive Council, which has ultimately approved the award of the contract with the condition of payment of mobilization advance, are not made parties to this writ petition. When the works are awarded by a competent Committee and further approved by the Executive Council of the University, which is a statutory body, it is not open for the petitioner to file this writ petition at this stage, under the guise of public interest litigation, seeking directions by way of Mandamus. Further, in the absence of any public spirited activities undertaken by the petitioner and also in view of the fact that petitioner is a suspended employee of the University, we do not find any substance in the writ petition so as to grant the relief as prayed for. It appears that the petitioner, only for redressal of his personal grudges against the University officials, has filed this writ petition as

a belated attempt.”

And thereafter the writ petition was dismissed as devoid of merits.

When once a Division Bench dismisses a writ petition filed by Sri S. Ravi Shankar, the University Engineer of S.V. University, who has been suspended for alleged misconduct committed by him, he will not be justified in making a reentry by getting impleaded as sixth petitioner in this writ petition. What he failed to achieve by filing W.P.No.9376 of 2008, he now seeks to achieve by an indirect method. It is obvious that it is he who propelled the original writ petitioner. That is wholly impermissible. He was a university engineer. Instead of making available his technical expertise to the committee, it is alleged that he misconducted at the meeting. Consequently, he was suspended from service. Therefore, it is likely that he is grinding an axe against the S.V. University and some of its officers. No where did he tender any expert opinion on the issues raised in the writ petition, excepting picking holes against the S.V. University and its officials that it has failed to do so and so and it has failed to do this or that. I am therefore, convinced that the pursuit made by Sri S. Ravi Shankar is not a bonafidee one.

With regard to the second petitioner, a practicing lawyer, how far is he justified in converting the benefit of instructions or discussions, in which he has participated with the original writ petitioner, and would clothe him the necessary status to transform as a litigant is a doubtful proposition. During the course of his professional activity, if the original writ petitioner had consulted him or for that matter made available to him certain material for his study and opinion that could be possible cause of his professional activity. The information brought to his notice, has not been crosschecked by him by securing consultation with any other subject expert. But, he had rushed to the conclusion that S.V. University and Yogi Vemana University have failed to take the necessary follow-up action in the matter. That, in my opinion, does not grant him the necessary status to challenge the actions of the respondents in this case.

For all the aforementioned reasons, I do not find any justification to grant any further

relief in this case. In view of the material gathered by the State Government earnestly, this Court must trust the sense of objectivity in matters of this nature, possessed by the State Government. I, therefore, dismiss this writ petition, but however without costs. Miscellaneous applications if any, shall stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

01.04.2015

Sp