

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.13385, 13471, 13473

and 13973 of 2015

COMMON ORDER:

These four writ petitions are being disposed of by this common order, as they involve the same point of law.

2. These four writ petitions are filed by the residents of Makkuva, Turumamidi, Kasipatnam and Chappabutchimpeta Gram Panchayats of Makkuva Mandal in Vizianagaram District.

The issue relates to the execution of flood damage works of Major, Medium, Minor Irrigation Sectors due to Hud-Hud Cyclone in Vizianagaram District. The Government issued G.O.Rt.No.727 Irrigation & Command Area Development (ERD) Department, dated 10.11.2014 delegating powers for sanction to the District Collectors up to Rs.10.00 lakhs for execution of the said works.

The relevant portion of the said Government Order reads as follows:

“Government after careful examination, hereby permit the Engineer-in-Chief (Irrigation), Irrigation & C.A.D. Department, Andhra Pradesh, Hyderabad to take up immediate permanent restoration works of flood damages of Major, Medium, Minor Irrigation sectors and also delegate powers for sanction to the District Collector, Srikakulam, Vizianagaram, Visakhapatnam and East Godavari district up to Rs.10.00 lakh per each source for the above works with the following guidelines:-

1. Immediate restoration works (non-mechanical) up to Rs.5.00 lakh of estimated cost should be entrusted to W.U.As wherever existing, otherwise they shall be carried out through User Groups on nomination basis.
2. Permanent restoration works costing above Rs.5.00 Lakh and upto Rs.10.00 Lakh shall be entrusted by calling Short Tenders with publication in local edition and dispensing Tender Digest to save time.
3. Permanent restoration works costing above Rs.10.00 Lakh and upto Rs.50.00 Lakh shall be submitted to Government with a Detailed Project Report (DPR) for according Administrative Approval immediately.

4. Permanent restoration must be taken up instead of temporary restoration as major of repairs would be earth work in nature.
5. As far as possible mechanical restoration shall be done through tender process, labour portion of these works should be linked up with NREGS. As per MGNREG Act, works are to be decided by Grama Sabha. Hence, Irrigation & CAD officers should encourage Gram Panchayat members and Water User Association members to propose the labour component of the work in Gram Sabhas and seek approval for granting MNREGA resources.
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3 .In pursuance of the said G.O., the District Collector, Vizianagaram issued proceedings on 09.01.2015 according administrative sanction for 26 works at an estimated cost of Rs.42.10 lakhs for immediate restoration and for 265 works at an estimated cost of Rs.939.85 lakhs including earthwork component for taking up immediate permanent restoration through the Ayacutdar Committees (User Groups). The said proceedings also permit the Executive Engineer, Irrigation Division, Parvathipuram to entrust the above works costing up to Rs.5.00 lakhs to the Ayacutdar Committees (User Groups) in accordance with the Grama Sabha Resolutions. In respect of Makkuva Mandal, 142 works were identified and 15 works were categorized for temporary restoration and 125 works were categorized for permanent restoration. These four writ petitions relate to the Permanent Restoration for Medium Irrigation works of Vengalaraya Sagaram Reservoir Project in respect of said four villages of Makkuva Mandal. Challenging the violation of procedure in entrusting the works by the fourth respondent to the respondents 5 & 6, these writ petitions are filed.

4. This Court, by order dated 14.05.2015, granted stay of entrustment and carrying out permanent restoration works of flood damages/breaches of Medium Irrigation Sector and vacate stay petitions are filed by the official respondents as well as respondents 5 & 6.

5. The learned counsel for the petitioners submits that though the Grama Sabha passed a resolution in favour of the petitioners, the works were not entrusted to them

but are entrusted to the respondents 5 and 6 contrary to the procedure envisaged in the said G.O. and proceedings issued by the District Collector.

6. The learned Government Pleader for Irrigation and Command Area Development submits that on the recommendations of the Deputy Executive Engineer, the Executive Engineer entrusted the works to the respondents 5 & 6 and works were already completed.

7. The learned senior counsel appearing for the respondents 5 & 6 submits that the agreements were executed in their favour and the works entrusted to them were already completed and they are entitled for the amounts for the executed works.

8. As per G.O.Rt.No.727, dated 10.11.2014, the works costing up to Rs.5.00 lakhs should be entrusted to the Water Users Associations wherever they are in existence, otherwise they shall be carried out through User Groups on nomination basis. Admittedly, all these works are costing less than Rs.5.00 lakhs and it is also an admitted fact that the Water Users Associations are not in existence. In such circumstances, the works should be carried out through User Groups on nomination basis. For identifying the User Groups and entrustment of the work, the learned counsel for the petitioners relied on the proceedings of the District Collector dated 09.01.2015 and submits that the User Groups should be entrusted with the work in accordance with the Grama Sabha resolutions.

9. It appears that there are some contradictions in G.O.Rt.No.727 dated 10.11.2014 and in proceedings of the District Collector, dated 09.01.2015. The said G.O. does not say the entrustment of works to the User Groups on the basis of Grama Sabha resolutions, whereas the proceedings of the District Collector states that it should be with Grama Sabha resolutions.

10. Be that as it may, the works entrusted to the respondents 5 & 6 on the basis of the resolution passed by the User Groups only but without Grama Sabha resolution. A perusal of the resolution passed by the User Groups shows that it was endorsed by the concerned Tahsildar. Now, the learned counsel for the petitioners filed a certificate dated 13.06.2015 issued by the Tahsildar, Makkuva Mandal stating that the Convener was selected as per the recommendations of the Irrigation Department and he merely countersigned at their request. The Tahsildar did not attend the Grama Sabha held on 19.01.2015 and the certificate was issued only with regard to the extent of land held by the Convener as Ayacutdar. Normally, in respect of User

Groups and election of a Convener from the User Groups, the Conveners should have land holding in the respective villages in order to be a member of the said User Group, but it is not known as to how the respondents

5 & 6 alone become members of all the User Groups in the said Makkuva Mandal.

11. However, it is submitted by the learned counsel for the respondents that the works were completed by the date of passing of the interim order by this Court dated 14.05.2015. But, the learned counsel for the petitioners raised an objection stating that some works were not completed by that date. He also submitted that the petitioners filed Contempt Case No.997 of 2015 alleging violation of the orders passed by this Court and it is pending. This Court is satisfied that the works were either completed or at the advanced stage of completion as on today and in that view of the matter, this Court is not inclined to entertain the present writ petitions. However, it appears that some procedural irregularities were committed by the fourth respondent, which requires an investigation into facts and this Court does not want to take up that task.

12. Accordingly, the second respondent-District Collector, Vizianagaram is directed to go into the aspects raised by the learned counsel for the petitioners in these writ petitions with regard to the procedural irregularities committed in entrusting the works to the respondents 5 & 6 and take necessary action against the fourth respondent, if it is so warranted.

13. With the above observations and directions, all these writ petitions are dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed.

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RAMALINGESWARA RAO, J)

Date: 09.09.2015

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