

THE HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No.29575 OF 2014

ORDER:

Heard Mr. N. V. Sumanth, learned counsel for petitioner, and learned Assistant Government Pleader for Irrigation.

The petitioner challenges Memo No.3022/Ser.VIII (V&E-2)/2008-5 dated 09.02.2011 issued by the 1st respondent, Lr.No.AB/A4/TEO/85PAO/Encl dated 19.11.2013, Lr.No.AB/A4/ TEO/690M/Encl dated 18.12.2013 and Lr.No.AB/DAO/516M, dated 15.09.2014 issued by the 3rd respondent as illegal, violative of principles of natural justice and unconstitutional.

To appreciate the grievance of petitioner, this Court is of the view that reproducing the contents of the letter dated 15.09.2014 would avoid narration of admitted facts and circumstances of the case.

"From	To
Sri M.V. Krishna Rao, B.Tech,	The Sub-Collector,
Executive Engineer,	Nuzvid,
NSLBC O&M Division,	
Nuzvid – 521201	

Lr.No.AB/DAO/516M Dt.15.09.2014

Sir,

Sub:- I & CAD Dept – Certain allegations against NSP Officers & Sri Nune Rosi Reddy, Contractor on bad quality of works in NSLBC repair works – Requesting to recover the remaining amount of Rs.6,32,697/- from the contractor – Reg.

Ref:- 1) V&E report No.97 (690/V&E/E 1/2008),
Dt.30.08.2010.

2) Govt.MemoNo.3022/Ser.VII(V&E-2)/2008-5,
Dt.09.02.2011

3) T.O.Lr.No.AB/A4/TEO/85 PAO, Dt.19.11.2013

4) T.O. Lr.No.AB/A4/TEO/690 M, Dt.18.12.2013.

I submit that in the reference 1st cited, the V&E

recommended to recover Rs.11,45,191/- for the bad quality of works in NSLBC by Sri Nune Rosi Reddy, Contractor, resident of Obulapuram, Tolukodu (Posi), Reddygudem (M), Krishna District and in the reference 2nd cited Government of Andhra Pradesh, I & CAD ensured the recovery from the contractor.

In response to the above, this division requested the Pay & Accounts Officer, Works & Projects, Vijayawada in the reference 3rd cited to adjust the deposits of previous works in this division of Sri N. Rosi Reddy, Contractor i.e., T.E.O.4/13-14.

Further, the Pay & Accounts Officer, Works & Projects, Vijayawada credited Rs.5,12,494/- worth of deposits to R&R and informed this division.

This office informed again and instructed Sri N.Rosi Reddy, Contractor, Obulapuram to pay the remaining Rs.6,32,697/- in the shape of D.D. in the name of Executive Engineer, O&M Division, Nuzvid vide reference 4th cited, besides in the reference 3rd cited earlier. But he did not come forward to pay the remaining amount till to date.

Hence, I request the Sub-Collector, Nuzvid to take appropriate action to recover the remaining amount from Sri N. Rosi Reddy, Contractor at your end.

Yours faithfully,
Sd/-
Executive Engineer,
NSLBC O&M Division, Nuzvid.

Encls.1) Copy of V&E report – 1 No
2) Copy of Govt. Memo – 1 No.
3) Copy of TEO – 1 No.”

The complaint of the petitioner is that recovery ordered by the 3rd respondent *prima facie* is unsustainable in fact and law.

It is alternatively contended that without making available copy of Vigilance Report No.97 (690/V&E/E1/2008) dated 30.08.2010, Ex.P2, the respondents ought not to have directed recovery of Rs.11,45,191/- and adjusted Rs.5,12,494/- available with the Department and same is unsustainable.

Learned Assistant Government Pleader replying to the first contention contends that the sequence of events in the matter would thoroughly establish that complaint against the deficient quality of execution of work was received during the performance guarantee period. The complaint was made over to the Vigilance and Enforcement Department for enquiry and report and therefore it cannot be said that the recoveries sought to be effected through letter dated 15.09.2014 are unsustainable in fact and law. Assistant Government Pleader replying to the contention of counsel for the petitioner that copy of V & E Report dated 30.08.2010 was not submitted before hand, fairly states that the counter affidavit of the Executive Engineer/the 3rd respondent is silent on this aspect of the matter and prays this Court to pass appropriate orders.

From the stand taken in the counter affidavit, it is clear that letter dated 15.09.2014 is issued without supplying the copy of V & E Report dated 30.08.2010. Without getting into further enquiry as to whether Ex.P2 is given by the Department to petitioner before communicating the letter dated 15.09.2014, I am satisfied that the Writ Petition can be disposed of by this order.

The petitioner is given four (4) weeks time from the date of receipt of a copy of this order to give explanation/objections to the report dated 30.08.2010. The petitioner is given liberty to treat the letter dated 15.09.2014 as show cause notice to effect recovery from him and can file detailed objections to the proposed recovery. The 2nd and 3rd respondents are directed to consider the explanation filed by the petitioner and dispose of the representation within a further period of 12 weeks thereafter.

Subject to the above, the Writ Petition is disposed of. No order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

S. V. BHATT, J

Date:22.04.2016

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