

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.31683 of 2014

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue writ of Mandamus or any other appropriate writ to declare that the action of the respondents in proceeding to recover the alleged excess payment made towards price adjustment costs in respect of the works which are completed and settled from out of the bills payable to the present work in progress i.e. CPWSS to effected 44 coastal habitations with desalination process of Ulavapadu and Gudluru Mandals, is arbitrary, illegal and violative of principles of natural justice and without jurisdiction and consequently direct the respondents not to recover any amount from the petitioner towards the alleged excess price adjustment costs in respect of the completed works in the department and grant such other relief as it deems fit in the circumstances of the case.”

Heard learned counsel for the petitioner and learned Government Pleaders for Panchayat Raj and Rural Development and Finance and Planning for respondents.

According to the learned counsel for the petitioner, petitioner is a registered special class contractor having vast experience in civil construction works. It is further stated that the works covered by the agreements executed in the years

2006 and 2008 were successfully completed and final bills were paid.

On the instructions of the Superintending Engineer, RWS&S Circle, Ongole for recovery of the amount proposed by the V&E Department, the Executive Engineer (FAC), RWS&S Division, Ongole addressed a letter bearing No.A1/688/2014, dated 09-10-2014, requesting to recover the amounts indicated therein from the work bills of the petitioner herein.

According to learned counsel for the petitioner, the Executive Engineer addressed the said letter to recover the amounts on account of price adjustment concerning the completed contracts and the said recovery is sought to be made on the basis of the appraisal report of the Vigilance and Enforcement Department, dated 02-05-2014.

The sum and substance of the case of the petitioner herein is that without giving any notice and without affording any opportunity, the respondents have resorted to the impugned action.

This Court while ordering rule nisi on 21-10-2014 passed the following order in W.P.M.P.No.39607 of 2014:

“Heard the learned counsel for the petitioner and the learned Government Pleader for Irrigation appearing for the respondent Nos.2 to 6, learned Government Pleader for Panchayat Raj appearing for 1st respondent and the

learned Government Pleader for Finance appearing for 7th respondent.

The impugned order dt.09-10-2014 issued by 5th respondent directing 7th respondent to affect recovery from the bills payable by 1st respondent to the petitioner is a unilateral decision by the respondents without issuing any prior notice to the petitioner. It is not open to the respondents to straight away proceed to make recovery without adjudication by an independent body as to the alleged liability of the petitioner.

Therefore there shall be interim direction as prayed for.”

Counter-affidavit filed by the Executive Engineer, RWS &S Division, Ongole also does indicate as to whether the respondents issued any notice prior to resorting to the impugned action. Therefore, the averment in the affidavit filed in support of the writ petition is required to be taken as true and correct.

It is settled and well established proposition of law that any action which has civil consequences must necessarily be preceded by notice and opportunity to the persons likely to be affected by such action. In the instant case, the same is conspicuously absent. It is also important to note that pursuant to the interim orders granted by this Court the authorities released the amounts also.

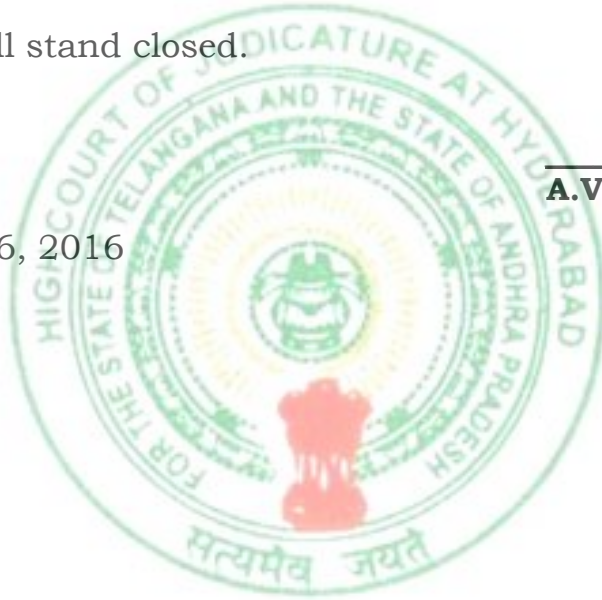
Having regard to the submissions made by learned counsel for the petitioner and learned Government Pleader and taking into consideration the averments in the counter-affidavit, the writ petition is disposed of, keeping it open for the respondents herein to proceed, in accordance with law, after giving notice and opportunity of hearing to the petitioner. There shall be no order as to costs.

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

December 26, 2016

Pn

A.V. SESA SAI, J



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