

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Contempt Case No. 2023 of 2015

Order:

This contempt case is filed alleging non-implementation of the order passed by this Court in WP No.11475 of 2006 dated 21.01.2014.

2. The petitioner was a class-I Contractor, who executed a work "providing cement concrete road up to 100' road from 2nd cross road to 4th cross road, 3rd reach, Auto Nagar, Vijayawada". The said work was awarded on 08.07.1997. He completed the work and handed over the same to the respondents on 09.01.1998. When the final bill was not paid in spite of rectification of minor works, he filed WP No.4358 of 2000 and the same was disposed of on 11.06.2007 recording the payment of undisputed amount. He submitted a representation on 22.01.2002 with regard to the balance amount to the second respondent, who forwarded the same to the first respondent and when no action was taken by the first respondent, he filed another WP No.19953 of 2003 and the same was disposed of by this Court on 23.09.2003 directing the first respondent to take a decision on the representation of the petitioner within a period of six weeks. The Government issued a letter on 27.01.1999 to the second respondent to settle the bills as per the eligibility and, when the final bill was not paid, he filed WP No.6034 of 2005 and the same was disposed of on 28.04.2005 directing the respondents to take necessary steps for payment of balance bill amount within a period of two months. When the said order was not complied with, he filed CC No.26 of 2006 and the same was closed on 08.03.2006 when the learned Standing Counsel showed a cheque for Rs.10,83,073/- drawn in favour of the petitioner. When the Government issued a memo dated 25.02.2006 imposing a penalty of 5% on the value of the work done by the Contractor for the defects pointed out by the Enquiry Officer, the petitioner filed the above writ petition in WP No.11475 of 2006 challenging the imposition of penalty. This Court has considered the

merits of the case and by an order dated 21.01.2014, held that the imposition of penalty on the petitioner in Government Memo No.23636/E-1/2002-28, dated 25.02.2006 was illegal and the order of the the first respondent was accordingly set aside.

3. Now the present contempt case is filed stating that the amount of Rs.10,83,073/- paid after filing the contempt case No.26 of 2006 was after deducting penalty of 5% and since the Memo No.23636/E-1/2002-28, dated 25.02.2006, issued by the first respondent, was set aside by this Court, he is entitled for the withheld amount.

4. The petitioner submitted a representation in the month of August 2014 in response to which the Government of AP issued a Memo No.16520/Budget.1/2014-1, dated 20.11.2014 to the second respondent – Municipal Corporation, Vijayawada, requesting to take necessary action as per the Rules in the matter. In spite of the same, the second respondent did not make the payment. Alleging willful disobedience and challenging non-implementation of the order dated 21.01.2014 passed in WP No.11475 of 2006 the above Contempt Case is filed on 24.08.2015.

5. In the above Contempt Case, notice before admission was ordered returnable in four weeks. Even after receipt of the notice, no counter affidavit is filed and in those circumstances Form-1 notice was issued for appearance of the Contemnor. He filed an application on 04.01.2016 for dispensing with his presence on the ground that he had to attend a review meeting on that day and this Court was not satisfied with the reason shown by the Contemnor and the Contemnor was asked to appear in person before this Court on 22.01.2016 and accordingly, he appeared in person on 22.01.2016 and his presence was dispensed with until further orders.

6. A counter is filed by the Contemnor stating as follows.

“It is submitted that the Hon’ble Court directed me to appear on 04.01.2016 by its order dated 04.12.2015 for not implementing the order dated 21.01.2014 passed by this

Hon'ble Court in WP No.11475 of 2006. I assumed the charge as Commissioner of Vijayawada Municipal Corporation in January 2015. The order passed by this Hon'ble Court was not brought to my notice by the concerned staff of the Engineering Department in time. Since, the administrative activities have been conducted in Vijayawada in view of bifurcation of the State, the staff of the Municipal Corporation are burdened with additional work. Except the above reason there is no willful or intentional delay in complying with the order of the Hon'ble Court. There is no disobedience on part of the Corporation in implementing the orders of this Hon'ble Court. Therefore, there is no negligence on part of the Corporation in this regard. The Corporation has obtained instructions from the Government immediately and issued a cheque No.064911, dated 18.12.2015, drawn on SBI to an amount of Rs.4,58,548/-. The same was received by the petitioner on 22.12.2015."

7. A perusal of the above counter shows that the Contemnor assumed charge as Commissioner in January 2015, the order passed by this Court was not brought to his notice by the concerned staff of Engineering Department in time and the staff of the Corporation were burdened with additional work. It further states that the Corporation has obtained instructions from the Government and immediately issued a cheque on 18.12.2015 for an amount of Rs.4,58,548/- and the same was received by the petitioner on 22.12.2015. He says that there is no negligence on the part of the Corporation.

8. The affidavit of the Contemnor does not disclose what action was taken by him as a responsible Municipal Commissioner when the order of this Court was not brought to his notice. There is no explanation from him for not responding to the notice issued by this Court on 05.11.2015 before admitting the Contempt Case. There is also no explanation for the delayed action taken by the Corporation when the Government issued a memo way back on 20.11.2014 for taking necessary action as per the Rules in the matter. The statement of the Contemnor that he took action after obtaining instructions from the Government and there was no negligence on his part cannot be appreciated in the facts and circumstances of the case as it is not a

correct statement of fact. The petitioner who is a Contractor and who completed the work in 1998 approached this Court thrice for payment of the amount due to him. In the third round of litigation also when this Court passed an order on 21.01.2014, no action was taken by the Corporation for payment of the amount. Even after filing the Contempt Case also when a notice was issued before admission, the Contemnor showed carelessness in responding to the notice. Even after admitting the Contempt Case, the Contemnor sought dispensing with his presence on the ground that he had to attend a review meeting which is a part of his normal functioning, disregarding the orders of this Court. This clearly shows that the Officer who is at the threshold of his career has not been diligent enough in complying with the order of this court. The Officer who is young should understand the legitimacy and the importance of the orders of this Court and his duty to implement the order which has become final. The delayed implementation of the order on the threat of contempt proceedings cannot be construed as an action purging the contempt.

9. In the circumstances, taking in view the lack of experience in dealing with the orders of the Court, this Court takes a lenient view and imposes on the Contemnor the punishment of a fine of Rs.10,000/- (Rupees Ten Thousand only) to be paid to the A.P. Legal Services Authority within a period of one month failing which to undergo simple imprisonment for a period of seven (7) days. The said amount of fine shall be borne by him from his person and a copy of this order shall be communicated to his Controlling Officer in order to bring this to his notice.

10. The Contempt Case is, accordingly, allowed.

A.

RAMALINGESWARA RAO, J.

Date: 19th February 2016
Nsr

