

**THE HON'BLE SRI JUSTICE S.V.BHATT**

**WRIT PETITION No.5652 of 2009**

**ORDER:**

Heard Sri Nandigam Krishna Rao for petitioner and Sri Jagan for respondents.

The petitioner prays for Mandamus declaring the proceedings of 1<sup>st</sup> respondent bearing No.PDS2/Movt./FG5(24)/1936/2008-09, dated 24-02-2009 terminating food grains transport contract for the year 2008-09, blacklisting the petitioner from participating in future tenders and forfeiting EMD and other sums payable to petitioner as illegal, arbitrary, violative of principles of natural justice and unconstitutional.

The operative portion of the impugned order on which much emphasis has been laid reads thus:-

“The Joint Collector & EOED., Rangareddy vide reference 9<sup>th</sup> cited informed that he has conducted enquiry by issuing a Notice to Sri K.Rajender and in turn the contractor has submitted his reply to the Notice vide his letter dated 18-10-2008. On examining the issue the Joint Collector & EOED., Rangareddy informed that the explanation given by Sri K.Rajender is far from satisfactory and the contractor has not offered any explanation on some of the contraventions of Agreement provisions mentioned in the notice issued to him on 15.11.2008 and requested to terminate the contract of Sri K.Rajender.

On examining the entire issue, it is observed that a qty. of 13.167 MTs. Of PDS Rice in 266 bags was diverted to the Ramakrishna Binny Rice Mill, Karmanghat, Rangareddy Dist. While in the custody of Sri K.Rajender, the Stage I Foodgrains Transport Contractor for the year 2008-09 for Rangareddy Dist. The same was redhandedly caught and seized by the Vigilance & Enforcement Authorities. Therefore, the diversion of PDS rice while in transit from FCI, Cherlapalli to Kapra MLS Point is proved beyond any

reasonable doubt. As per the agreement, Sri K.Rajender is responsible for all the acts of his representatives, partners, agents and employees including truck owners/drivers/cleaners of the trucks in which stocks are loaded for transportation. Therefore, in the present case, Sri K.Rajender failed to handover the subsidized rice stocks meant for distribution under PDS to the poorest of the poor at Kapra MLS Point and that the said rice stock was diverted to Rice Mill where it was caught red-handedly by Vigilance & Enforcement Authorities. The Corporation therefore has recovered an amount of Rs.2,37,006.00 from the transport contractor towards double the economic cost of 13.167 MTs. of rice diverted to the rice mill where it was caught.

Hence, the Stage I Foodgrains Transport Contractor has till date failed to deliver a qty. of 13:167 MTs. of PDS Rice taken delivery of by him from FCI, Cherlapally on 30.08.2008 at Kapra MLS Point.

In view of the above, a show cause notice was issued to Sri K.Rajender by enclosing the detailed enquiry report furnished by the Joint Collector & EOED., Rangareddy, to show cause as to why his contract should not be terminated forthwith.

Sri K.Rajender vide reference 11<sup>th</sup> cited requested to furnish the enquiry report and to extend the time for submission of explanation to the notice for a period of three weeks from the date of furnishing the enquiry report.

Accordingly vide reference 12<sup>th</sup> cited, another Show Cause Notice was issued along with the enquiry report of the Joint Collector & EOED., Rangareddy with a direction to submit his explanation on or before 31-01-2009. The said notice was acknowledged by the individual on 29.01.2009 but he failed to submit his explanation within the time allowed. He has failed to submit his explanation to the Show Cause Notice even after 3 weeks (the time sought by Sri K.Rajender to submit his reply vide his representation 11<sup>th</sup> cited) from the date of receipt of the Show Cause Notice a second time.

It is therefore construed that he has no explanation to offer and as per clause 8(vi) of the Agreement, the contract of Sri K.Rajender, Stage I Foodgrains Transport Contractor for the year 2008-09 for Rangareddy Dist. is hereby terminated duly forfeiting the pending bills, if any, Security Deposit and Bank Guarantee. Sri K.Rajender is also hereby black-listed

prohibiting him from participating in any future tenders of APSCSCL.”

This court directed learned Standing Counsel to produce record from the office of respondents. The original record is produced for perusal of the Court. One of the main complaints of petitioner is that the premise on which the impugned order was passed is that the petitioner did not submit explanation on or before 31-01-2009 as directed by 4<sup>th</sup> respondent. From the papers filed by petitioner, it is clear that on 31-01-2009 the petitioner in fact has submitted explanation on all the allegations levelled against him. The explanation submitted by petitioner is not available in the record. The another submission of petitioner is that black listing the contractor without notice is impermissible in law and in a case where the Corporation has not suffered any financial implications, effecting forfeiture of approximately 35 to 40 lakhs amounts to appropriation of petitioner's money without recourse to law.

After considering the preliminary objection and to afford an opportunity to petitioner particularly as directed by this Court in W.P.No.20077 of 2008, Standing Counsel Mr.Jagan submits that the order impugned in the writ petition can be set aside and remit the matter to 1<sup>st</sup> respondent for re-examination and disposal in accordance with law.

The statement of Standing counsel is placed on record and this court having regard to the above statement is not referring or recording any finding on the merits of the matter.

I am satisfied that the writ petition can be ordered as follows:-

The impugned proceeding is set aside. The matter is remitted to 1<sup>st</sup> respondent for re-examination and disposal in accordance with

law. To avoid further delay in the matter and to ensure fairness in action, this court considers it appropriate to give liberty to petitioner, if so advised, to file additional explanation within four weeks from today, by bringing to notice of 1<sup>st</sup> respondent events that taken place during pendency of this writ petition. The 1<sup>st</sup> respondent considers disposing of the matter, after remand, within eight weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is ordered. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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**S. V. BHATT, J**

Dt: 28-04-2016

Prv

