

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Contempt Case No.1291 of 2015

Order:

This Contempt Case is filed alleging non-implementation of the order dated 17.06.2015 passed by this Court in WP No.17315 of 2015.

2. The said Writ Petition was filed by the petitioners herein stating that Tender Notice No.3/2014-15, dated 20.02.2015, was issued for the work of restoration to the Buddi drain from KM 0.000 to KM 16.780 for an estimated value of Rs.307 Lakhs. The sixth respondent in the writ petition was qualified. It was alleged in the writ petition that earlier, when the Superintendent, Somasila Project Circle, Nellore, submitted proposals for blacklisting the sixth respondent, he approached this Court and filed WP No.22171 of 2008, wherein this Court directed the Superintending Engineer, Somasila Project Circle to consider the representation of the sixth respondent and pass appropriate orders and, accordingly, the representation of the sixth respondent was considered and rejected, vide orders dated 18.03.2010, and aggrieved by the same the sixth respondent filed WP No.8231 of 2010. It was further alleged that though the sixth respondent filed WP No.8231 of 2010, he submitted the tender by giving false information stating that no litigation and criminal history was there. It was further alleged that in view of his past history, the sixth respondent may not complete the work which is an important work made for protecting the villagers from floods.

3. This Court, by an order dated 17.06.2015 in WP No.17315 of 2015, granted interim stay of all further proceedings till the production of the record and consideration of case by this Court, while posting the case to 24.06.2015 for orders. When the matter was listed on 25.06.2015, at the request of the learned counsel for the petitioners, it was adjourned to 02.07.2015 and thereafter from time to time.

Ultimately, the writ petition itself was dismissed, by an order dated 03.09.2015, holding that the sixth respondent was not disqualified to execute the work as on the date of award of the work and whether the work awarded in favour of the sixth respondent was subsequent to passing of the orders of this Court or not would be separately enquired into. This Court dismissed the Writ Petition keeping in view of the nature of work and public interest involved and also taking into consideration that the writ petition was filed by three ryots. However, in view of the allegation of possible non-completion of the work by the sixth respondent the Chief Engineer, NTR Telugu Ganga Project, Tirupati, Chittoor District, was directed to supervise the work periodically and see that the sixth respondent executes the work as per the quality standards and conditions of the agreement. The said order has become final.

4. Now the present Contempt Case is filed mainly against the fourth respondent – Superintending Engineer, Irrigation Circle, Nellore, who entered into an agreement with the sixth respondent in the writ petition on 22.06.2015 in spite of the order of this Court on 17.06.2015. It was alleged in the affidavit filed in support of the Contempt Case that on 17.06.2015 itself an intimation was given to the fourth respondent over phone to his Cell No.9440903325 from Cell No.9052377779 regarding the interim order and in spite of the same the agreement was entered on 22.06.2015 in order to favour the sixth respondent.

5. The only point that arises for consideration in the present Contempt Case is whether the fourth respondent – Superintending Engineer, Irrigation Circle, Nellore, had wilfully violated the orders of this Court dated 17.06.2015 and entered into an agreement with the sixth respondent on 22.06.2015.

6. In order to ascertain the facts in the case, the affidavits from the Chief Engineer, Superintending Engineer, learned Government Pleader, Liaison Officer and Assistant of the office of learned

Government Pleader apart from that of the Superintending Engineer were asked to be filed. A reply affidavit was also filed by the fourth respondent – Superintending Engineer.

7. The Chief Engineer, who is the third respondent, filed an affidavit stating that a representation was received from the petitioners stating that the sixth respondent – contractor had shown litigation history as NIL, even though a writ petition is pending in this Court. He further stated that the registration of the sixth respondent was renewed as special class contractor by the Commissioner of Tenders on 16.05.2015 and in view of the same he was not considered as a blacklisted contractor. The tender was processed as per the procedure. It was further stated that the fourth respondent entered into an agreement with the contractor on 22.06.2015 with *bona fide* intention in view of urgency of the matter.

8. The fourth respondent – contemnor also filed a separate counter affidavit stating that though he received a telephone call on 19.06.2015 from an unknown person no details were furnished to him. Accordingly, he executed the agreement in favour of the Contractor on 22.06.2015. The copy of the order was received by him on 23.06.2015. Thereafter, on 30.06.2015 a letter was addressed to the learned Government Pleader asking for opinion on the issue. He ultimately stated that he executed the agreement in favour of the sixth respondent with a good intention and in view of urgency of the matter.

9. Learned Government Pleader filed an affidavit stating that on 17.06.2015 itself, when the interim order was passed by this Court, he instructed the Liaison Officer and the Clerk of his office to intimate the respondents about the passing of the interim order, but he had not enquired with them subsequently as to whether they have addressed any letter or sent any telegram message to the respondents with regard to passing of interim order.

10. The Liaison Officer stated in his affidavit that in view of the endorsement made on the file with regard to passing of the interim order on 17.06.2015 he informed the same to the office of the Superintending Engineer, Irrigation Circle, Nellore to produce the records immediately.

11. One P. Eswaraiah, who is working as Typist and incharge Clerk in the office of the learned Government Pleader also filed a separate affidavit stating that on 17.06.2015 the matter was informed to the Liaison Officer.

12. The oral evidence of the fourth respondent - Superintending Engineer and the Liaison Officer was recorded and there is no clinching evidence to show that the Superintending Engineer has received a written communication with regard to passing of the interim order by this Court on 17.06.2015 either from the office of the learned Government Pleader, the Liaison Officer or from the petitioners. The petitioners informed the fourth respondent – Superintending Engineer by written communication only on 30.06.2015. If the petitioners were interested in implementation of the order, even without receiving a copy of the order they should have informed the Superintending Engineer, who is the competent authority to enter into the agreement, about the passing of interim order in writing either on 17.06.2015 or on 18.06.2015. In the absence of any evidence as to the communication of the order in writing by any of the parties to the writ petition, the entering into of agreement by the Superintending Engineer on 22.06.2015 cannot be said to be in wilful violation of the orders of this Court. Even though there is a lurking suspicion, but suspicion cannot take the place of proof. The petitioners themselves contributed to the order becoming infructuous and the learned Government Pleader, who did not maintain a written channel of communication, is also responsible.

13. A copy of this order shall be communicated to the learned

Advocate-General to the State of Andhra Pradesh to tone up the administration in the offices of the learned Government Pleaders with regard to communication of orders of this Court promptly. This Court wasted valuable time in trying to examine the root of the matter after granting interim order and also in probing whether there was wilful disobedience on the part of the Superintending Engineer to enter into the agreement five days after passing of the interim order by this Court.

14. As stated above, in view of lack of clinching evidence with regard to violation of the orders of this Court, dated 17.06.2015, this Contempt Case is dismissed. There shall be no order as to costs.

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A. RAMALINGESWARA RAO, J

Date: 26th February 2016
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