

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.34221 of 2011

ORDER:

Heard Sri K.V.Janardhan Rao, learned counsel for petitioner and Sri B.Raj Kiran, learned Standing counsel for respondent.

2. The petitioner was engaged as a contractor to carry out the work of modernization of Kandukur branch of Nellore Division of the respondent-Corporation vide letter dt.13-10-2010 for work of value Rs.30,86,965/-. Work order was also issued to petitioner vide letter dt.15-02-2011.

3. Petitioner contends that it had executed the work and submitted the final bill along with 3rd R.A. bill by letter dt.17-07-2011, that it had completed the work to the satisfaction of the respondent and was expecting settlement of the final bill, but on 22-09-2011, the respondent sent a letter stating that they had received a notice along with an agreement from one Smt.Goli Rajeswari informing about the change of ownership of the firm, and therefore the petitioner should submit No Objection Certificate from the current owner of the firm.

4. Thereafter the petitioner got issued a legal notice dt.26-09-2011 stating that petitioner alone is entitled for the said payment, that there is no change in the ownership in so far as the work is concerned, and Smt.Goli Rajeswari

cannot claim for payment of any amount. It was pointed out that the said lady approached the petitioner with a proposal to continue the business under the name of M/s.Metalic Systems and Interiors, and the said firm is not yet floated nor did she joined as partner in the existing business of the petitioner firm and there was no registration of the said firm before the Registrar of Firms also. He contended that there is no question of submitting of No Objection Certificate from Smt.Goli Rajeswari when there is no transfer of ownership of the firm.

5. After this legal notice, the respondent sent a letter dt.10-10-2011 and asked the petitioner to submit an indemnity bond on stamp paper attested by a Notary. The petitioner complied with the said requirement by submitting an Indemnity bond on 11-11-2011. It then addressed a letter dt.14-10-2011 to the respondent to expedite the process of payment of 3rd R.A. bill without delay. Since no payment was forthcoming from the respondent, the present Writ Petition is filed.

6. Learned counsel for petitioner contends that the action of respondent in not making payment to petitioner of the amount covered by 3rd R.A. bill is arbitrary and violates Article 14 and 300-A of the Constitution of India. He pointed out that in a legal notice got issued by respondent through an Advocate i.e. Sri K.R.L. Sarma on 26-11-2011 to the firm M/s.Metalic Systems and Interiors

run by Smt.Goli Rajeswari, the respondent had admitted that the work was executed by petitioner only and payments had also been made only to petitioner for the portions of work done earlier, and that the firm M/s.Metalic Systems was no way concerned with the said work. Learned counsel for petitioner contends that in view of this admission by the respondent in the said legal notice dt.26-11-2011, it was not open to respondent to refuse to make the payment for the amount covered by 3rd R.A. bill to petitioner.

7. In the counter-affidavit filed by respondent, it is pleaded that Smt.Goli Rajeswari is a necessary party and that she ought to have been impleaded by petitioner. It is contended that the petitioner's Managing Partner had sold their business M/s.Metalic Systems with all assets under an agreement dt.27-04-2011 to Ms.Goli Rajeswari and therefore the payment due under the contract of modernization is also payable as an asset to Ms.Goli Rajeswari. It is denied that the petitioner is entitled for any payment unless he produces a No Objection letter from the said Goli Rajeswari. In para-10 of the counter, it is admitted that the petitioner had completed the work, and in para-12 it is admitted that

3rd R.A. bill is due to be paid to the petitioner firm, which had executed the work. No where in the counter-affidavit the respondent disputed the fact that in the legal notice

dt.26-11-2011 issued by Sri K.R.L. Sarma, Advocate on its behalf, the respondent admitted its liability to make payment to petitioner and that it refused to make payment to Ms.Goli Rajeswari.

8. In **ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Limited and Others**^[1], the Supreme Court has held that if there are no disputed questions of fact under Article 226 of the Constitution of India, the relief of payment of money cannot be denied.

9. In the present case, having admitted its liability to make the payment to petitioner firm in the legal notice dt.26-11-2011 got issued by it through the Advocate Sri K.R.L. Sarma to M/s.Metalic Systems and Interiors run by Ms.Goli Rajeswari, and having insisted the petitioner to submit an indemnity bond to reimburse the amount if the respondent suffers any loss or damage on account of payment of 3rd R.A. bill to petitioner, which requirement was also complied by petitioner, the respondent clearly acted arbitrarily and in violation of Articles 14 and 300 of the Constitution of India in refusing to make the payment covered under 3rd R.A. bill to petitioner.

10. Therefore the Writ Petition is allowed and the respondent is directed to release the amount covered by 3rd R.A. bill/final bill to petitioner within three (03) months

from the date of receipt of a copy of this order with interest @ 9% p.a. from the date of submission of the said bill till the date of payment. The respondent shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) to petitioner.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-06-2016

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[\[1\]](#) (2004) 3 SCC 553