

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.42803 OF 2015

ORDER

The prayer of the petitioner in this case is as under:

‘To issue a writ order or direction more particularly in the nature of writ of mandamus declaring the illegal action of the respondents to release the payment of bills for having executed part of work and to return EMD deposited in connection with the agreement No. 140/2012-13 dated 17-10-2012, for the work of Construction of KGBV building at Kamepally in Khammam district with reference to administrative sanction proc.No.4365/CW/KGBV/Ph-V/2011-12 dt.28-07-2011 of the S.P.d. RVM (SSA), Hyderabad and pass such order or orders which ever this Hon’ble Court may be deem fit and proper.’

The petitioner was awarded the work relating to construction of the Kasturba Gandhi Balika Vidyalaya (KGBV) building at Kamepalli in Khammam District under Agreement dated 17.10.2012. He claims that he completed part of the work but stay orders were granted by this Court on 17.12.2012 in W.P.No.37366 of 2012, whereby he was prevented from proceeding further. According to him, he spent about Rs.28,00,000/- towards part performance of the contract. His grievance presently is that he has not been paid for the work already executed by him despite the lapse of over three years.

The District Collector-cum-Chairman, Sarva Shiksha Abhiyan, Khammam District, filed a counter-affidavit wherein he raised a preliminary objection as to the maintainability of the writ petition on the ground that there was no violation of any statutory provision of law or a constitutional right and as the petitioner was seeking enforcement of contractual obligations. On the merits of the matter, the District Collector admitted that construction of the KGBV building at Kamepally, which was commenced by the petitioner, had to be stopped owing to the stay order dated 17.12.2012 granted by this Court in W.P.No.37366 of 2012. According to him, the petitioner would have spent about Rs.15,00,000/- towards the work executed. The District Collector concluded by stating

that the petitioner was only raising a civil dispute and would therefore have to be relegated to the proper forum for seeking relief.

In so far as the preliminary objection as to the maintainability of this writ petition is concerned, it is too late in the day for the State or its instrumentalities to claim immunity from judicial review under Article 226 of the Constitution in relation to contractual failures on their part, including discharge of their monetary obligations. As long back as in the year 1991, in ***KUMARI SHRILEKHA VIDYARTHI V/s. STATE OF U.P.***^[1], the Supreme Court pointed out the difference between contracts entered into between private parties and contracts to which the State is a party and observed that the impact of every State action would be on public interest whereby the minimum requirements of public law obligations would stand imported and such character would also be impressed upon contracts made by the State or its instrumentalities. The Supreme Court held that the mere fact that a dispute falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14.

In the present case, it is an admitted fact that the petitioner executed part of the work before it was stopped owing to the stay order granted by this Court in W.P.No.37366 of 2012. Stoppage of work was therefore not attributable to the petitioner. Further, there is no complaint of any lacuna or defect in the work executed by the petitioner. Sri Bhaskar Gorla, learned standing counsel for the Rajiv Vidya Mission (Sarva Shiksha Abhiyan), the third respondent, does not dispute this aspect.

That being so, withholding of the payments due to the petitioner for the work already executed by him is wholly unreasonable and amounts to patent arbitrariness on the part of the authorities. There is a dispute with regard to the quantum of the expenditure incurred by the petitioner but as it is stated that the work executed by him has been duly recorded in the measurement books, the State authorities would be in a position to quantify the amount due to the petitioner for the work executed by him. There is no valid reason forthcoming as to why such amount should be withheld when the petitioner had no role to play in the stoppage of the

work.

The writ petition is accordingly allowed. There shall be a direction to the respondent authorities to quantify the amount due to the petitioner in terms of the work already executed by him as per the measurement books and remit the same to him. This exercise shall be completed expeditiously and in any event, not later than three weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed. No costs.

SANJAY KUMAR, J

7th APRIL, 2016

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[\[1\]](#) (1991) 1 SCC 212