

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

WRIT PETITION No.23325 of 2013

ORDER:

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Heard Sri Avinash Desai, learned counsel for petitioner, learned Government Pleader for Municipal Administration appearing for respondent Nos.1 to 3, Sri S.Lakshminarayana Reddy, learned Standing Counsel for 3rd respondent and Sri Venkateswarlu Nimmagadda, learned Standing Counsel for respondent Nos.4 and 5.

2. The petitioner is a firm which is engaged in project works for various organizations by employing young engineers.

3. In order to develop all small and medium towns, the then Government of Andhra Pradesh has issued instructions for implementation of Urban Infrastructure Development Scheme. Pursuant to the same, the 2nd respondent issued Memo No.893/MSP/APURMSP/2005 dt.03-01-2006 and requested all the Commissioners to prepare the City Development Plan, Detailed Project report, Memorandum of Agreement etc. for implementation of the scheme.

4. In order to implement the scheme, the Commissioners of various Municipalities issued advertisements calling tenders for preparation of Detailed

Project Reports for providing comprehensive Open Drainage System under Urban Infrastructure Development Scheme for Small and Medium Towns. Respondent Nos.4 and 5 Municipalities issued advertisements inviting tenders in Eenadu news paper on 30-10-2006 and 28-10-2006 for preparation of Detailed Project Reports for providing comprehensive storm water drains under the above scheme.

5. Petitioner submitted tender quoting 0.72% of total project cost for each Municipality. Since it's quotation was the lowest, it was accepted by respondent Nos.4 and 5 and the work of preparation of Detailed Project report was entrusted to the petitioner firm.

6. An agreement dt.09-05-2008 was entered into by Commissioners of respondent Nos.4 and 5 Municipalities with petitioner wherein the consultancy services for preparation of Detailed Project Report with designs, drawings, estimates, plans including survey work and technical sanction for both the towns were to be drawn up. Petitioner took up the work with regard to development of Open Drainage of Storm Water Drains for both respondent Nos.4 and 5 Municipalities as per the instructions of the respective Commissioners. Final project report was submitted by petitioner in November, 2007 with detailed plan report with Survey Maps etc and it was sent to the 2nd respondent, who then forwarded it to the

Engineer-in-Chief (Public Health) for further technical approval, and the said Officer approved the same.

7. Petitioner contends that in spite of the petitioner's firm submitting bills for payment of amount as per the agreement entered into with respondent Nos.4 and 5, the latter did not pay any amount as per the time schedule. Petitioner firm had incurred huge expenditure towards executing the work entrusted to it and also for payment of salaries of its staff. Petitioner contends that on account of inordinate delay in non-payment of amounts by respondents, severe hardship was caused to it. Petitioner contends that it had completed all works entrusted and had submitted comprehensive Open Drainage System plans in respect of respondent Nos.4 and 5, which was also approved by the Engineer-in-Chief(Public Health) on 04-11-2009 for both Municipalities. Petitioner contends that only Rs.4.83 lakhs was released by 4th respondent Municipality, but the balance amount has not been released by it, and that 4th respondent is liable to pay Rs.58.176 lakhs and the 5th respondent is liable to pay Rs.41.76 lakhs. Petitioner alleges that although as per the original agreement, 70% of the funds should have been released after submission of draft project report for all the sectors, conditions were unilaterally changed and onerous payment conditions were imposed that 10% of the consultancy charges were to be paid after submission

of report to the Government for according sanction from State Level Sanctioning Committee and the remaining 90% would be released after sanction of additional central grant.

8. Petitioner contends that it then approached the 1st respondent for payment of its dues and due to its efforts, the

1st respondent issued G.O.Rt.No.577 Municipal Administration and Urban Development (UBS) Department dt.16-05-2011 wherein the

1st respondent directed payment towards consultancy charges for preparation of Detailed Project Reports amounting to Rs.41.76 lakhs in respect of 5th respondent Municipality and Rs.53.34 lakhs in respect of 4th respondent Municipality (in addition to Rs.4.83 lakhs, which was already paid by it) and to meet this expenditure from the interest funds of 3rd respondent. In the said G.O., petitioner contends that 3rd respondent was directed to take action accordingly and that it was issued with the concurrence of the Finance Department.

9. Petitioner contends that in spite of the same, the 3rd respondent did not do anything forcing the petitioner to file the present Writ Petition.

10. Counsel for petitioner contends that as per Article

113 of the Articles of Association of the 3rd respondent, the Government was empowered to issue directives with regard to conduct of the business and affairs of the said Corporation and such directives should be given immediate effect by the Directors of the said Corporation. Petitioner has also filed the Note File of the Finance Department dt.27-04-2011 recording that there is no fault on the part of the petitioner, which prepared Detailed Project Reports at the instance of respondent Nos.4 and 5 Municipalities and that their dues should be paid either from the general funds of the U.L.R. or if they have no funds, then from the Interest funds of the said Corporation and this was also referred to G.O.Rt.No.577 dt.16-05-2011 issued by the 1st respondent.

11. Petitioner has also pointed out that it had applied under Right To Information Act, 2005 to the 3rd respondent on 17-09-2011, to which a reply was given on 19-10-2011 by 3rd respondent stating that bank interest amounting to Rs.12,19,19,540.50 Ps was received by 3rd respondent for the period from December, 2010 to September, 2011 in respect of JnNURM.

12. Learned counsel for petitioner therefore contends that since the 1st respondent had directed the 3rd respondent to make payment to the petitioner of the dues payable by respondent Nos.4 and 5 from out of the

interest funds available with 3rd respondent, and since such funds are available with 3rd respondent, the 3rd respondent cannot avoid making the said payment by taking technical / arbitrary pleas.

13. Learned Government Pleader for Municipal Administration supported the Writ petitioner and stated that once G.O.Rt.No.577 dt.16-05-2011 has been issued by 1st respondent directing the 3rd respondent to make the payment, the 3rd respondent cannot avoid making the said payment.

14. However, Sri S.Lakshminarayana Reddy, learned Standing Counsel for 3rd respondent referred to the counter-affidavit and additional counter-affidavit filed by 3rd respondent and contended that the agreements entered into by the petitioner with respondent Nos.4 and 5 are not with 3rd respondent and so the 3rd respondent is not liable to pay any amount.

15. This stand is untenable since the 1st respondent had asked the 3rd respondent to discharge the liability of respondent Nos.4 and 5 from its funds or from its interest funds in G.O.Rt.No.577 dt.16-05-2011. In view of Article 113 of the Articles of Association of 3rd respondent making it obligatory on the 3rd respondent's Directors to follow the directives of the

Government, it is not open to the 3rd respondent to take this plea. It is bound to comply with the Government's directives and release amounts mentioned in G.O.Rt.No.577 dt.16.5.2011 to petitioner. Moreover, the main activity of the 3rd respondent Corporation is to provide financial assistance out of the funds released by the Central and State Governments under different schemes to various Urban and Local bodies. If the stand of the 3rd respondent is accepted, it would result in the defeat of the very object for which 3rd respondent is formed and created.

16. A further stand is taken by 3rd respondent that the Detailed Project Report preparation charges/Consultancy charges would be released by the Government of India for the project sanctioned by the Government of India only; that the project proposals in respect of respondent Nos.4 and 5 Municipalities were not placed before the State Level Sanctioning Committee; and therefore it was not possible to release the payments of the Detailed Project Report charges by 3rd respondent for the projects which are not sanctioned by the Government of India. It is stated by the learned Standing Counsel for 3rd respondent that letters dt.26-05-2011 and 16-06-2011 were also addressed by 3rd respondent to the 1st respondent requesting G.O.Rt.No.577 dt.16-05-2011

to be modified. It is further contended that 3rd respondent did not possess any funds sanctioned by the Government of India and therefore it would not pay the Detailed Project Report Charges to the petitioner and the petitioner cannot enforce G.O.Rt.No.577 dt.16-05-2011. It is also alleged that the Urban Infrastructure Development Scheme for small and medium towns does not exist now and it was closed.

17. These contentions are also untenable. Admittedly, petitioner's project report was not placed before the State Level Sanctioning Committee by the respondents based on a letter dt.03-03-2008 of the Government of India that no fresh projects should be included in the agenda in the State Level Sanctioning Committee meeting. Admittedly, the State Level Sanctioning Committee meeting was conducted on 22-02-2009 and even though the petitioner had submitted final project report for both the Municipalities in November, 2007 and the same has been approved by the Engineer-in-Chief (Public Health) on 08-09-2008, the petitioner's claim was not placed before the State Level Sanctioning Committee. In fact the petitioner's project was not a fresh project and was tendered in 2007 itself. So, the said letter of Government of India could not have been the basis for not placing the petitioner's final report before the State Level Sanctioning Committee.

18. Petitioner has alleged that 40 other projects were sanctioned by the State Level Sanctioning Committee in 2008-09, but the petitioner's detailed project report was not placed before it.

19. It is not in dispute that the Engineer-in-Chief (Public Health) had addressed letters dt.20-04-2012 and 27-04-2012 for payment of consultancy charges for Detailed Project Reports submitted by petitioner.

20. For the aforesaid reasons, it is not open to the 3rd respondent to refuse to comply with G.O.Rt.No.577 dt.16-05-2011 and act contrary to Article 113 of its own Articles of Association particularly when sufficient amounts are available with it in the form of interest, as has been confirmed in response under the Right to Information Act, 2005. Because of the long delay in payment of dues to petitioner in spite of the petitioner executing the work entrusted to it in November, 2007 itself, grave and irreparable loss has been caused to petitioner.

21. Therefore, the Writ Petition is allowed and the 3rd respondent is directed to forthwith pay the amounts as per agreements

dt.09-05-2008 for the work of preparation of Detailed Project Reports in regard to respondent No.s 4 and 5 municipalities as per G.O.Rt.No.577 Municipal Administration and Urban Development dt.16-05-2011 to

the petitioner with interest @ 9% p.a. from November, 2007 till date. The 3rd respondent shall also pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the petitioner.

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

JUSTICE M.S.RAMACHANDRA RAO

Date:17-08-2016

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