

HONB'E JUSTICE CHALLA KODANDARAM

WRIT PETITION No.26349 OF 2011

ORDER:

The writ petition is filed questioning the action of the respondents in not releasing the payments to the petitioner for the works already done as per the agreements 128/09-2010 and 129/09-2010, dated 03.08.2009 between the petitioner and the 5th respondent.

In normal circumstances, the relief of the nature which is sought in the writ petition is liable to be rejected on the ground what the petitioner seeks to enforce is essentially a contractual right except for the facts of the cases expose a dark side of the society in relation to contract and contractors vis-a-vis their relationship with the departments and particularly a peril an individual contractor faces if the demands of the officers are not met.

The facts which are not in dispute are that the petitioner is an agriculturist was also the President of Village Water Users Association of Kandugula Village, Huzurabad Mandal, Karimnagar District. In 1989 two contracts of a jungle clearance and removal of earth of Kakatiya Canal were entrusted to the petitioner vide proceedings of the Executive Engineer-5th respondent herein dated 3.8.2009 and agreements were entered into and the value of the works was Rs.4,65,038/- and Rs.3,79,026/-. The time for completion of the said works was 60 days from the date of agreements. In terms of the agreements, the date of completion of the work was 3.10.2009. Petitioner asserts that he completed the work by 3.10.2009 and immediately thereafter he approached the Junior Engineer Mr.E.Madhu-7th respondent seeking to record the details of the work done in measurement book and process the bill for payment. It is alleged that the 7th respondent refused to record the work done in the 'M' Book, unless the petitioner paid 10% of

the value of the work as illegal gratification. Immediately petitioner submitted a letter dated 1.10.2009 to the Deputy Executive Engineer-6th respondent who is the immediate superior officer of the 7th respondent. The 6th respondent in turn appeared to have demanded 5% of the total work towards illegal gratification. The petitioner expressed his inability and approached the next higher authority the 5th respondent by representation dated 26.3.2010 with a request to record measurements of the work done and release the payments. As there was no response from the 5th respondent, petitioner addressed a letter to the Chief Engineer on 18.06.2010 categorically stating that the petitioner had executed the works by borrowing money and the payments even if made would only be sufficient for interest. Once again on 9.6.2011, yet another letter was addressed to the Commissioner, Chief Engineer Office, CAD, Irrigation Department-3rd respondent wherein he had categorically mentioned that 7th respondent Jr. Engineer Madhu and 6th respondent Vijayalakshmi had categorically informed that they would not record in M-Book unless the amount of 10% + 5% is paid as demanded. Then he prayed for suitable action to be **taken**. For the first time the Special Commissioner by letter dated 29.06.2011 had directed the 3rd respondent-Chief Engineer to enquire into the allegations leveled against the 6th and 7th respondents. The 2nd respondent directed the 3rd respondent to submit a report by 15.7.2011. Once again a reminder was sent to the 2nd respondent on 18.7.2011. In spite of all the efforts and so many complaints from the petitioner neither there was any action nor any response from any of the official respondents. In response to the application made under the Right to Information Act to the Executive Engineer, I & CAD Division, Construction Circle, Sriram Sagar Project Division, Hanumkonda, then Executive Engineer has furnished information in relation to the status of work executed by the petitioner

under the two agreements, which disclose work value of Rs.2,49,594.10 ps under agreement No.128/09-10 and Rs.1,99,405.80 under agreement No.129/09-10 dated 3.8.2009, having been executed.

The writ petition was admitted on 16.03.2016 and notices were ordered to be served to the respondents.

Counter affidavit dated 28.10.2011 was filed by one D. Sushil Kumar, S/o. Sashikanth Rao, Executive Engineer on behalf of the 5th respondent. On even date, the 7th respondent also filed a counter-affidavit. A reply affidavit to the 5th respondent's counter was also filed on 27.03.2012. The matter was listed before my learned brother SVB,J on 16.3.2016 and the Court directed an additional counter-affidavit to be filed on the outcome of the enquiry alleged to have been initiated into the execution/quality of subject work. Once again time was granted on 15.6.2016. An additional counter-affidavit dated 13.7.2016 was filed by the present incumbent Executive Engineer one N. Pochaiah, S/o. N. Yellaiah. To this, petitioner had also filed an additional reply affidavit dated 18.9.2016. Thereafter, the matter was being listed before me from 21.7.2016 onwards from time to time. Though hearing commenced, on going through the material on record, finding inconsistencies, this Court gave an opportunity to the respondents to make their stand clear and thereafter the present Executive Engineer filed additional counter affidavit on 13.12.2016.

In the counter-affidavit filed by the Executive Engineer-5th respondent at the earliest point of time on 28.10.2011, the fact of petitioner having been entrusted with the work of jungle clearance and removal of accumulated earth under two contracts and the petitioner having started the work was admitted. While denying the petitioner had completed the work, it was stated that the petitioner sought extension of time for completing the work and in view of the instructions of the

Administrative Chief Engineer to stop all the works, extension was not granted. Further, on instructions dated 30.09.2009 of the 3rd respondent-C.E to stop all the works, petitioner was informed to stop further carrying out the work. Petitioner also admits that by letter dated 4.11.2009, he was asked to stop the work. It was further stated that the concerned Assistant Executive Engineer was informed to record the measurements and accordingly the concerned Assistant Engineer taken the closing measurements of two works and the same was informed to the Administrator-cum-Chief Engineer. It was stated therein that the Deputy Executive Engineer has informed that the measurements would be taken after the water regulation is completed and thereafter the A.E.E had taken measurements and submitted to the Division Office on 30.07.2011. A reference is made to by letter dated 9.5.2011 to the 3rd respondent directing him to verify all the works executed in S.R.S.P Phase-I to finalize the payments to be made to the concerned Water Users Association. Pursuant to which verification is in progress and as soon as the same is completed the work bills will be processed. It was further asserted that no single bill was made to any of the works relating to Farmers' Organisations. It is further stated that the petitioner had used filthy language on 14.2.2011 and a police complaint was also lodged. Other allegations in relation to petitioner cutting away certain trees were also made.

In the reply affidavit filed by the petitioner he had asserted that he had completed the work by 30.09.2009 and in spite of the instructions from Administrator-cum-Chief Engineer dated 2.9.2010, no measurements were recorded and further as per the information furnished under R.T.I Act by the Deputy Executive Engineer between 3.10.2009 to 5.10.2010, no water was released, yet the measurements were not recorded during that period.

As per the counter, the measurements taken by the Assistant Engineer were submitted to the Divisional Office on 30.7.2011 whereas in the letter of the Deputy Executive Engineer dated 20.3.2011, it was stated that “the closing measurements of two works done by M. Raji Reddy in the first week of May, 2011 as the water works regulations were going on and it is not possible to take the measurements in the filed as the cropping is going on”. So, there is a total inconsistent stand. In the counter-affidavit it was stated that the measurements were taken and report was submitted on 30.07.2011 that is after two years after completion of the work. It is not possible to take measurements of the nature of work which was carried out by the petitioner between August, 2009 and October, 2009 on account of subsequent water flow. The allegations with regard to cutting of trees un-authorisedly were denied by the petitioner and it was asserted that the same was done with the necessary permission from the concerned authorities and in fact the petitioner has incurred a sum of Rs.5,000/- on that account.

In the counter-affidavit of the 7th respondent, filed on 20.10.2011, while denying the allegation of demanding of bribe it was asserted that he had recorded the measurements and a report has also been submitted to the Executive Engineer on 19.10.2010 and the Executive Engineer in turn had forwarded the same to the Superintendent Engineer and the Chief Engineer. A further rejoinder is also filed by the 7th respondent wherein he has stated that he had sent his report/MB directly to the 5th respondent-Deputy Executive Engineer, who in turn, would forward the same to the Executive Engineer and his duty is only to inspect the sight and record the measurement. He had discharged his duty. Along with the reply affidavit, he had enclosed the communication addressed by the Deputy Executive Engineer dated 30.07.2011 addressed to the Chief

Engineer. He had also enclosed the details of his visits between 1.4.2010 to 15.4.2010 to various sites.

In the additional counter-affidavit filed by the Executive Engineer, N. Pochayaiah, it had mentioned about the team leader's report dated 16.6.2011 and the para wise observations of the same. Further, it was stated that the measurements have been recorded by Assistant Executive Engineer to the extent of work done on administration grounds. It was further stated therein based on measurements taken on 29.4.2011 a sum of Rs.2,73,768/- would be paid to the petitioner subject to the permission from the Higher officials. Yet in another counter-affidavit filed on 13.12.2016, the earlier contentions in the earlier counters have been reiterated. With reference to the information furnished to the petitioner under R.T.I Act, it was stated that the same was based on the inspection report of the Team Leader in accordance with the guidelines issued by the Government vide Memo dated 16.6.2011.

Learned counsel for the petitioner Sri Vishnu Vardhana Reddy by making a reference to the various documents filed by the petitioner and the respondents and the respective stands taken in their pleadings points out various anomalies and submits that the stand of the respondents is shifting from time to time and it is only for the purpose of covering up of their acts all the officers are in concert with each other to justify their stand and to deny the legitimate dues of the petitioner. He asserts this is particularly on account of the petitioner's refusal to accede to the demand of the respondents 6 and 7 to pay the illegal gratification and he prays for drawing adverse inference as it is not possible directly to prove the allegations of demanding the illegal gratification by direct evidence.

Learned Government Pleader and the learned counsel appearing for the 7th respondent have reiterated their respective stands as stated in their counters.

A close scrutiny of the facts mentioned disclose that that the petitioner was entrusted with the work of jungle clearance and removal of earth in Kakatiya Canal under the S.R.S.P maintenance works. The total value of the work is Rs.8,79,000/-. It is the allegation of the petitioner that the 7th respondent refused to record in 'M' Book which is required for the purpose of processing the bill for payment as the petitioner had not acceded to pay the illegal gratification demanded. It is a specific case of the petitioner that he had completed the work within the stipulated time of 60 days i.e., by 3.10.2009, the agreement date being 3.8.2009. As stated in the very first paragraph, the various letters addressed by the petitioner from 1.10.2009, receipt of which was not denied by any of the respondents. On the other hand, record discloses that the same was taken note of by the Special Commissioner who called for report through his letter dated 29.6.2011 addressed to the 3rd respondent-Administrator-cum-Chief Engineer. In the material documents filed by the Executive Engineer on 13.7.2016 and also on 13.12.2016 a copy of the proceedings dated 11.4.2013 addressed by the Superintendent Engineer to the Chief Engineer is filed. In the said document, as per the 'M'-Book the amount payable for the work executed was shown as Rs.3,90,259/-. In response to the R.T.I application made by the petitioner, as per the quantum of work executed by the petitioner, the amount payable under agreement No.128 was shown as Rs.2,49,594.10 ps., and for the agreement No.129 as Rs.1,99,405.80 ps., i.e., Rs.4,48,998.90 ps. This information was made available to the petitioner vide letter dated 18.6.2011. It is the specific contention of the 7th respondent that as he is the authorized officer to record the

measurements, he had recorded the same pursuant to the communication received from the Chief Engineer's office on 2.9.2009 and submitted his report by 19.7.2010 to the Executive Engineer. In other words the earliest report available with the department is with respect to the work executed by the petitioner as submitted by the Assistant Engineer on 19.7.2010. Obviously his visit to the site and taking measurement has to be prior to 19.07.2010. Even as per the F.N.P.R. of E.Madhu-7th respondent, as filed along with his rejoinder on 14.11.2016 he visited the respective site and taken measurements on 28.06.2010 and 29.06.2010 and again on 05.07.2010 and 06.07.2010.

Even assuming that petitioner has not completed the work, the earliest available record with respect to the work done is Assistant Engineer's report submitted in on 19.07.2010. It may be noted that in reply to the R.T.I. application, Public Information Officer, Superintendent Engineer has furnished measurements of work done and amounts payable as Rs.4,48,999/-. Along with the covering letter a statement of details as furnished by 7th respondent on 19.07.2010 and attested by 6th respondent is enclosed. It may be noted that the work that is entrusted to the petitioner was simple jungle clearance and earth moving in Kakatiya canal to facilitate the free flow of the water in the ensuing season. The Executive Engineer, who was present on two occasions before this Court to explain the anomalies, was fair in submitting the works entrusted to the petitioner were of simple nature and only clearance of shrubs and removal of earth mounds to ensure free flow of water. As admitted by the respondents, a part of the work was completed by 4.11.2009 the date on which the petitioner was directed to stop carrying on further work. Even according to the respondents once again measurements were taken only on 3.4.2011 as is evident from the verification statement submitted by the Superintendent Engineer to the

Administrator-cum-Chief Engineer vide letter dated 1.4.2013 (document filed by the EE). The same is also evident from the Team Leader's report dated 16.6.2011. Between 4.11.2009 and 3.4.2011 there is almost a gap of about 17 months. It is not in dispute that thereafter canal water was released and there is also possibility of fresh growth and accumulation of silt once again. In other words, by no stretch of imagination the measurements dated 3.4.2011 can be the basis for the work executed by the petitioner before 4.11.2009, atleast to the extent admitted.

The great pain and effort taken by the respondents to justify their stand to deny the payment to the petitioner is evident, however, a simple analysis of the facts on record as projected by the respondents themselves expose the shallowness in the stand taken by the respondents. It may also be mentioned that even as on date, respondents have neither disclosed nor brought out on record the measurements and quantities recorded by the 7th respondent which were asserted to have been submitted to the Executive Engineer on 19.7.2010. However, by providence they are on record through the information provided under R.T.I. Act. This Court is not oblivious to the fact that wide spread corruption in engineering and other departments and the weapon of not processing the bills is more often being used for collection of what is known as "mamolu" on a percentage basis, often times going up to 10 to 15% of the estimated work. This court also can take notice of the inflated estimates which are coming before this Court on administrative side, in connection with various constructions that are being proposed and taken up for judicial department, sometimes construction cost going up to Rs.4,500/- to Rs.6,000/- per sq. feet. In those circumstances, while there being no concrete material before this Court about the alleged illegal gratification demands by the respondents 6 and 7, the deafening silence maintained by the Chief Engineer, Superintendent Engineer and

Executive Engineer without even there being a response is appalling and deplorable lend credence to the allegations of the petitioner. While all along higher officials are only justifying as to why payment has been withheld to the petitioner, there is no effort made in the given set of facts, petitioner is required to be paid atleast on receiving a specific complaint of illegal gratification demand by the two officials concerned. It may not be out of place to mention that even interim order of this Court dated 14.10.2011 to pay admitted amounts have not been complied with. This Court only hopes and trusts that the higher officials and the departments who are required to be vigilant would bestow the necessary attention to ensure the public monies are used in prudent manner.

In the facts of the case, as the respondents themselves had admitted in response to the R.T.I Act to the extent of work executed by the petitioner, as on the date of 7th respondent's report i.e., 19.07.2010 the petitioner would be entitled to received payment of Rs.4,48,999.90 ps, Accordingly, the petitioner shall be paid the said amount within a period of eight weeks from today with a simple interest at the rate of 6% p.a with effect from 19.7.2010 till the date of payment.

Accordingly, the writ petition is allowed directing the respondents to pay a sum of Rs.4,48,999.90 ps., (Rupees four lakhs forty eight thousand nine hundred ninety nine and ninety paise only) to the petitioner within a period of eight weeks from the date of receipt of the order with a simple interest at the rate of 6% p.a with effect from 19.7.2010 till the date of payment. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall stand also closed.

CHALLA KODANDA RAM,J

Date:06.01.2017
Gk.

HONB'E JUSTICE CHALLA KODANDARAM



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Date: 06.01.2017

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