

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 28092 of 2017

Between

M/s Jaiprakash-Gayatri Joint Venture,
Rep. by its Authorised Signatory
G. Venkateswara Rao and others

...Petitioners

And

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Irrigation and Command Area Development Department,
Amaravati, Guntur district and others

.. Respondents.

JUDGMENT PRONOUNCED ON

: 10.10.2017



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : YES

* THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

+ Writ Petition No. 28092 of 2017

% 10.10.2017

M/s Jaiprakash-Gayatri Joint Venture,
Rep. by its Authorised Signatory
G. Venkateswara Rao and others

.... Petitioners

Vs.

\$ State of Andhra Pradesh,
Rep. by its Principal Secretary,
Irrigation and Command Area Development Department,
Amaravati, Guntur district and others

... Respondents

! Counsel for the Petitioners : Sri S. Ravi, learned Senior
Counsel appearing for Sri
V.R.N. Prashanth

^ Counsel for the Respondents : GP for Irrigation

< Gist :

> Head Note :

? Cases referred:

1. 2017(5) ALD 556
2. (2011) 6 SCC 508
3. (2011) 9 SCC 354
4. (2014) 9 SCC 1

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.28092 of 2017

Order:

Heard learned Senior Counsel, Sri S. Ravi for the petitioners and learned Government Pleader for the respondents.

This Writ Petition was filed challenging the action of the respondents in calling upon the first petitioner to pay an amount of Rs.5,59,80,000/- with interest at 8% p.a., from the date of payment of the amounts and in issuing letter dated 26.07.2017 by the fourth respondent as illegal, arbitrary and also sought stay of further proceedings of invocation of bank guarantees.

When the Writ Petition came up for admission on 22.08.2017, time was granted and posted the matter to 29.08.2017, but the respondents did not give proper instructions to the learned Government Pleader, and hence this Court was constrained to grant stay of further action in the instant case. Seeking vacation of the said stay, the respondents filed W.V.M.P.No.3839 of 2017 on 13.09.2017 and while extending the interim order up to 10.10.2017, this Writ Petition was taken up for hearing on merits as the matter relates to invocation of bank guarantee.

The undisputed facts in this case are that the third respondent entered into an Agreement No.8 SE/2007-2008 dated 25.06.2007 for the work of "Package No.04/2006 pertaining to investigation, design and earth work excavation of GNSS Main Canal from KM 119.000 to KM 141.350 including construction of CM & CD works including formation of Uddimadugu Reservoir and distributory system including field channels to feed an Ayacut of 10000 acres in Kadapa District". The work has to be completed in forty eight (48) months. The petitioners became the lowest

tenderers pursuant to quoting of an amount of Rs.111,96,00,000/- being minus 23.3885% of less than the tender value. As per Clause 49 of the general conditions of contract, which forms part of the agreement, the contractor is entitled to avail the mobilization advance in two installments equivalent to 10% of the contract amount (5% for labour mobilization and 5% for machinery and equipment) named in the letter of acceptance. The 5% of the amount shall be paid in two installments i.e., 1% of the said amount shall be paid after concluding the agreement and the balance of 4% under two installments shall be released after commencement of the work i.e., after completion of investigation, survey and designs. The 1% of the amount was paid in a sum of Rs.58,98,000/- on 05.09.2007 and Rs.55,98,000/- on 24.09.2007. The balance of 4% of mobilization advance was also paid in two installments of Rs.1,34,40,000/- on 05.07.2008 and Rs.3,13,44,000/- on 24.07.2008. Since the petitioners were required to submit bank guarantees, the first petitioner submitted bank guarantee for Rs.6,71,76,000/- instead of an amount of Rs.5,59,80,000/- released by the respondents. Though the petitioners were not asked to submit the bank guarantees towards interest, the petitioners submitted excess bank guarantees as above. The bank guarantees are valid up to 08.01.2018. The commission on bank guarantee should be borne by the first petitioner only. It appears that the site could not be handed over to the petitioners as no forest clearance was obtained. In those circumstances, extension of time was granted from 25.06.2011 to 24.06.2014, from 25.06.2014 to 31.03.2015, from 01.04.2015 to 31.07.2015, from 01.08.2015 to 30.09.2015 and lastly from 01.10.2015 to 31.03.2016. Since the first petitioner opted to close the contract, no further extension was granted by the Government and the issue with regard to pre-closure of the contract is pending with the

Government pursuant to letter No.CE(P) & DWRO/WRD/KDP/TS-3/Pack-IV/2016, dated 05.06.2016 of the Chief Engineer. The fourth respondent addressed a letter on 26.07.2017 to the first petitioner asking to pay back the mobilization advance of Rs.5,59,80,000/- with interest at 8% p.a., up to date from the date of payment within 14 days, and further stating that failing the same the bank guarantee available with the department would be encashed. It is stated that the said letter was issued pursuant to failure of the petitioners to pay back the amount in spite of the letter of the Superintending Engineer dated 22.06.2016. Challenging the said letter, the present Writ Petition is filed.

The respondents defended their action stating that there is no element of public law involved in the contract and in view of the decision of this Court in *M/s.Lanco Infratech Limited v. Power Finance Corporation, New Delhi*¹ this Writ Petition is liable to be dismissed. The first petitioner entered into an agreement with the Superintending Engineer, GNSS Circle, Kadapa, but not with the third respondent and the concerned Superintending Engineer was not made a party to the present Writ Petition, hence, it is liable to be dismissed. The forest clearance could not be obtained and possession of the site could not be given to the petitioners due to non-availability of the land for compensatory afforestation. No claim for compensation on account of delays or hindrances from whatsoever cause shall lie, but reasonable extension of time will be allowed by the Executive Engineer and accordingly extension of time was granted. Since the first petitioner opted to close the contract, no further extension of contract was granted after 31.03.2016. No fundamental breach was committed by the respondents and the contract is no longer existing. The permission from the Forest Department was

¹ 2017 (5) ALD 556

obtained for conducting investigation and though the same was intimated to the petitioner, the petitioner vide its reply dated 14.04.2016 stated that it is not in a position to take up balance survey and investigation work. Since the proposal submitted by the petitioner with regard to hydraulic particulars was not in accordance with the norms, the competent authority observed certain deficiencies in the proposal and communicated for rectification way back in 2008. Due to incomplete survey, investigation and design operations by the first petitioner, the revocation of mobilization advance has become mandatory. The proposal submitted by the Chief Engineer (Project), Kadapa on 05.06.2016 to the Government is pending with the Government. Even after approval of hydraulic particulars submitted by the first petitioner, the first petitioner has not submitted the designs and drawings of structures, ayacut registers, block command maps, land plan schedules etc., which do not require any forest clearance. It is possible to conduct investigation for which forest clearance was not a hindrance and in spite of the same the first petitioner has not made any attempt to complete the investigation. Though the requisite permission was obtained from the District Forest Officer, Kadapa to conduct survey work, the first petitioner could not complete the balance survey work. Thus, the purpose for release of mobilization advance was not fulfilled. In fact, the second installment amount of 4% should not have been released as the investigation itself was not completed, but the second installment was released with the fond hope that the first petitioner may complete the investigation. Even after lapse of 10 years, the first petitioner could not complete the investigation works.

In the light of the above facts, the following points require to be decided.

- 1) Whether the Writ Petition is maintainable challenging the letter dated 26.07.2017 issued by the 4th respondent?
- 2) Whether the action of the respondents is fair in the facts and circumstances of the case?

The details of the bank guarantees furnished by the first petitioner towards the mobilization advance are as follows:

Sl.No.	Bank Guarantee No.	Date	Amount Rs.	Name of the Bank	Purpose
1.	09541GPER004407	25.04.2007	2,80,00,000	Bank of Baroda	EMD
2.	G84GOPG071900001	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
3.	G84GOPG071900002	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
4.	G84GOPG071900005	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
5.	G84GOPG071900006	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
6.	G84GOPG071900007	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
7.	G84GOPG071900008	09.07.2007	1,00,00,000	Canara Bank	Mobilization Advance
8.	G84GOPG071900009	09.07.2007	71,76,000	Canara Bank	Mobilization Advance

The case of the first petitioner is that it is incurring an amount of Rs.1,07,79,703/- towards commission charges for keeping the mobilization advance bank guarantees alive and till date an amount of Rs.81,16,170/- was paid towards commission charges. The first petitioner also paid an amount of Rs.26,63,533/- towards commission charges for performance bank guarantee. The further case of the petitioners is that as per Clause 20 of the terms and conditions of the agreement, the department shall give possession of the site to the Contractor and if possession of a part of the site is given, the department shall ensure that the site so handed over was amenable to carry out the work at the site by the Contractor. The respondents failed to handover the possession of the site and it disabled the first petitioner to execute the work. The land in 98% of the reach of Package No.4 is passing through the reserved forest area and though they

completed the investigation, survey and submitted hydraulic particulars along with the proposed alignment, the site was not handed over. They requested for waiving/reimbursement of interest charges on mobilization advance and bank guarantee commission, but there was no response from the respondents. They requested for closure of the contract way back in the year 2010 and settle their accounts. After five extensions which expired on 31.03.2016, though the first petitioner sought extension of time from 01.04.2016 to 31.03.2017, no orders have been passed. As per Clause 49.3 of the terms and conditions of the agreement, mobilization advance can be recovered, if there is any misappropriation of the said amount, but there is no allegation to the said effect. The respondents are not empowered to recover the said amount in one lump sum and recovery can be affected only under Clauses 49.5 and 49.6 and the obligation to pay back the amount would arise only on closure of the contract, but the respondents have not taken any action. In fact, the respondents are liable to pay huge amount of Rs.32.00 Crores to the first petitioner. Though, no interest can be levied under Clause 49.4 of the agreement, the interest is sought to be recovered from the mobilization advance. In those circumstances, they challenged the impugned letter.

The relevant Clauses of the agreement dated 25.06.2007 read as follows:

“20 Possession of the Site:

20.3 The Department shall give possession of the site to the Contractor. If possession of a part site is given, the Department will ensure that the part site so handed over is amenable to carry out the work at site by the Contractor.

23 Settlement of disputes:

23.3 If any dispute of difference of any kind whatsoever arises between the department and the Contractor in connection with, or arising out of the Contract, whether during the progress of the works or after their

completion and whether before or after the termination, abandonment or breach of the Contract, it shall in the first place, be referred to and settled by the Engineer-in-charge who shall, within a period of thirty days after being requested by the Contractor to do so, give written notice of his decision to the Contractor. Upon receipt of the written notice of the decision of the Engineer-in-Charge the Contractor shall promptly proceed without delay to comply with such notice of decision.

- 23.4 If the Engineer-in-Charge fails to give notice of his decision in writing within a period of thirty days after being requested or if the Contractor is dissatisfied with the notice of the decision of the Engineer-in-Charge, the Contractor may within thirty days after receiving the notice of decision appeal to the Department who shall offer an opportunity to the Contractor to be heard and to offer evidence in support of his appeal, the Department shall give notice of his decision within a period of thirty days after the Contractor has given the said evidence in support of his appeal, subject to arbitration, as hereinafter provided. Such decision of the Department in respect of every matter so referred shall be final and binding upon the Contractor and shall forthwith be given effect to by the Contractor, who shall proceed with the execution of the works with all due diligence whether he requires arbitration as hereinafter provided, or not. If the Department has given written notice of his decision to the Contractor and no claim to arbitration, has been communicated to him by the Contractor within a period of thirty days from receipt of such notice the said decision shall remain final and binding upon the Contractor. If the Department fail to give notice of his decision, as aforesaid within a period of thirty days after being requested as aforesaid, or if the Contractor be dissatisfied with any such decision, then and in any such case the Contractor within thirty days after the expiration of the first named period of thirty days as the case may be, require that the matter or matters in dispute be referred to arbitration as detailed below:-

SETTLEMENT OF CLAIMS:

Settlement of claims for Rs.50,000/- and below by Arbitration.

All disputes or difference arising of or relating to the Contract shall be referred to the adjudication as follows:

- a) Claims up to a value of Rs.10,000/- – Superintending Engineer, T.G.P. Circle, Kadapa.
- b) Claims above Rs.10,000/- and up to Rs.50,000/- - Chief Engineer, T.G.P., Srikalahasti.

The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

The arbitrator shall state his reasons in passing the award.

Claims above Rs.50,000/-.

All claims of above Rs.50,000/- are to be settled by a Civil Court of competent jurisdiction by way of Civil Suit and not by arbitration.

A reference for adjudication under this clauses shall be made by the Contractor within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment which ever is earlier.

24.9 Save in so far as the contract may prescribe, the extent of portions of the site of which the contractor is to be given possession from time to time and the order in which such portions shall be made available to him and, subject to any requirement in the contract as to the order in which the works shall be executed, the Superintending Engineer will, with the Executive Engineer's written order to commence the works, give to the contractor possession of so much of the site as may be required to enable the contractor to commence and proceed with the execution of the works in accordance with the programme if any, and otherwise in accordance with such reasonable proposals of the contractor as he shall by written notice to the Superintending Engineer, make and will from time to time as the works proceed, give to the contractor possession of such further portions of the site as may be required to enable the contractor to proceed with the execution of the works with due dispatch in accordance with the said programme or proposals as the case may be; if the contractor suffers delay or incurs cost from failure on the part of the Superintending Engineer to give possession in accordance with the terms of this clause, the Superintending Engineer shall grant an extension of time for the completion of works and the contractor is not entitled for any compensation what so ever in this regard.

24.12 Delays and extension of time:

No claim for compensation on account of delays or hindrances to the work from any cause whatever shall lie, except as hereafter defined. Reasonable extension of time will be allowed by the Executive Engineer or by the Officer competent to sanction the extension, for unavoidable delays, such as may result from causes, which in the opinion of the Executive Engineer, are undoubtedly beyond the control of the contractor. The Executive Engineer shall assess the period of delay or hindrance caused by any written instructions issued by him, at twenty five per cent in excess of the actual working period so lost.

In the event of the Executive Engineer failing to issue necessary instructions and thereby causing delay and hindrance to the contractor, the latter shall have the right

to claim an assessment of such delay by the Superintending Engineer of the Circle whose decision will be final and binding. The contractor shall lodge in writing with the Executive Engineer a statement of claim for any delay or hindrance referred to above, within fourteen days from its occurrence, otherwise no extension of time will be allowed.

Whenever authorized alterations or additions made during the progress of the work are of such a nature in the opinion of the Executive Engineer as to justify an extension of time in consequence thereof, such extension will be granted in writing by the Executive Engineer or other competent authority when ordering such alterations or additions.

49. Mobilization Advance:

49.1 The contractors for works exceeding more than Rs.1.00 Crore of estimated contract value are permitted to avail the facility of mobilization advance in two installments equivalent to 10% of the contract amount (5% for labour mobilization and 5% for machinery and equipment) named in the letter of acceptance payable as per above. Advance shall be paid in 2 installments i.e., at 1% after concluding the agreement and the 2nd installment of balance 4% of mobilization advance shall be released after commencement of the work i.e., after completion of investigation, survey and designs. Payment of the loan will be done under separate certification by the Executive Engineer after (i) Execution of the form of agreement by the parties thereto (ii) Provisions by the contractor of the further security in accordance with relevant condition and (iii) provision by the contractor of a Bank Guarantee from scheduled Bank acceptable to the Executive Engineer for an amount equal to 10% of a contract amount as indicated in the letter of acceptance valid up to the Agreement period towards the installment of the advance mobilization loan. The advance mobilization loan will be paid in 30 days after fulfilling the above – I, ii and iii items. Advance mobilization loan will be paid only in case of contracts with estimated contract value exceeding Rs.100 lakhs.

49.3 Should the contractor misappropriate any portion of the advance loan, it shall become due to the Executive Engineer and payable immediately in one lump by the contractor and no further loan will be considered thereafter.

49.4 The above advance shall bear an interest of 8% per annum. The interest on the amounts paid as advance is chargeable from the date the amount is paid. However, if completion is delayed by circumstances beyond control of the contractor for which an extension has been granted by the Executive Engineer/Superintending Engineer the interest charges on such advances shall be waived for the period of extension.

49.5 The value of Bank Guarantee for the advance payment given to the contractor can be progressively reduced by the amount repaid by the contractor as certified by the Executive Engineer.

49.6 Recovery of advances:

49.6.1 The advance loan together with interest at the rate of 8% as specified in the above shall be repaid within percentages deductions from the intermediate payments under the contract. Deduction shall commence in the next interim payment following that in which the total of all such payments to the contractor have reached 10 percent of the contract amount and shall be made at the rate of 20 percent of amount of all interim payments in which the loan was made together with interest payable up to that date, until such time as the loan together with interest at the rate specified in para above shall be completely repaid prior to the expiry of the contract period including authorized extensions for completion."

The correspondence in the case indicates that way back on 07.03.2008 permission was issued by the Divisional Forest Officer, Kadapa for surveying and investigation work in Palakonda Reserve Forest, Vongimalla Reserve Forest and Vontimitta Reserve Forest areas for a period of one month. In fact, a letter was addressed to Canara Bank on 09.06.2011 by the Executive Engineer to liquidate the bank guarantees and send a Demand Draft for a total amount of Rs.6,71,76,000/-. It appears that the first petitioner addressed a letter on 24.02.2014 to close the agreement and settle their account as per G.O.Ms.No.1, Finance (W&P) Department, dated 25.02.2012 and as per Clause 58 of APSS, but it is informed to the first petitioner by the Executive Engineer on 29.04.2014 that in the said letter there was no mention with regard to repayment of mobilization advance already taken towards labour component of Rs.5,59,80,000/- with interest. Another permission was obtained on 11.09.2015 for survey work from the Forest Department. The Chief Engineer in his report dated 05.06.2016 addressed to the Secretary to Government (Major Irrigation) sought instructions with regard to payment of bill to the Contractor for an amount of

Rs.33,86,790/- towards investigation work, recovery of principal amount and interest on mobilization advance from the first petitioner of an amount of Rs.6,98,68,882/- consisting a principal of Rs.5,59,80,000/- and Rs.1,38,88,882/- and seeking orders for closure of contract and settlement of accounts. The Secretary to Government had not communicated any decision so far. But, a clarification was issued on 12.11.2016 stating that the interest shall be levied till the entire mobilization advance is recovered even beyond agreement period. Thereafter, the Executive Engineer had issued the impugned letter to the first petitioner. The first petitioner submitted a reply on 08.08.2017 to the fourth respondent and the fourth respondent addressed a letter to the third respondent seeking instructions for recovery of the amount furnished by bank guarantees.

The above facts would disclose that the amount sought to be recovered is of the amount belonging to the respondents which was given towards mobilization advance. It is not the money of the petitioners. As on 05.06.2016, an amount of Rs.33,86,790/- only is outstanding towards work bill for investigation and labour component submitted by the first petitioner. This could be seen from the report of the Chief Engineer on that date. The letter dated 11.08.2017 addressed to the Superintending Engineer by the present Executive Engineer shows that the payment of second installment on mobilization advance of an amount of Rs.4,47,84,000/- was not as per the agreement conditions. The letter of the Executive Engineer addressed to the Superintending Engineer ultimately states as follows:

“i. The agency have not completed the investigation work in full shape so far for which forest clearance is not a hurdle even though necessary permission from the forest authorities is obtained for conducting survey work in the forest zone and communicated to the agency.

ii. The orders of the Government on the issue of closure of contract and settlement of accounts is not a criteria for repayment of the mobilization advance with up to date interest of 8% by the agency as this amount is repayable in any case and

iii. The forest clearance is getting delayed and keeping huge amount of advance with the agency is leading to audit objections.

Necessary action may please be taken by the competent authority to encash the mobilization advance B.G's.

Also I submit that necessary instructions may please be communicated to recover the up to date interest on the mobilization advance amount, by encashment of EMD B.G's.

I am herewith enclosing 7 Nos. of mobilization advance B.G's in original for this purpose.

This is submitted for favour of further necessary action.”

This Court had an occasion to consider the issue relating to the maintainability of Writ Petition, more particularly with regard to invocation of bank guarantees in M/ s. Lanco Infratech Limited's case (supra) and after surveying the entire case law on this point held as follows:

“What emerges from the above discussion is that though the respondent is a State within the meaning of Article 12 of the Constitution of India, in the absence of any element of public law, the Writ Petition in a contractual matter is not maintainable. In respect of bank guarantees, the satisfaction of the beneficiary is final with regard to breach of the covenants between the beneficiary and the person on whose behalf the bank guarantee was issued and the bank has no other alternative except to honour the payment under the guarantee.

In the case before me, though the respondents satisfy the requirement of State, no relief can be granted in the present Writ Petition in the absence of any element of public law. The contract between the petitioners and the respondents are purely private contracts. The first point is answered accordingly.”

Hence, I am of the opinion that the present Writ Petition challenging the letter dated 26.07.2017 is not maintainable and the Writ Petition is liable to be dismissed.

Coming to the fairness of action on which the entire Writ Petition is based, even assuming that the Writ Petition can be entertained, the action of the fourth respondent cannot be held to be arbitrary. As stated above,

at the cost of repetition, it has to be borne in mind that the amount covered by the bank guarantees was given to the first petitioner towards mobilization advance by the respondents and it is the respondents' money. This Court is purposely refraining from expressing any opinion on the merits of the case, as it may eventually prejudice the rights of the parties in a future litigation, if any. Who committed the breach of contract and whether the party who suffered such breach is entitled to compensation, is a matter to be decided in appropriate proceedings. As rightly opined by the Executive Engineer in his communication addressed to the Superintending Engineer on 11.08.2017, the second installment of Rs.4,47,84,000/- should not have been released to the first petitioner without completion of the survey work. Whatever may be the reason, the work could not go ahead for the last 10 years. The first petitioner sought closure of the agreement and the Chief Engineer sought instructions from the Government way back on 05.06.2016. The Secretary to Government (Major Irrigation) sat over the file for the reasons best known to him. Learned counsel for the petitioners submits that the bank guarantees cannot be invoked without closure of the agreement and without settling its account. But, the closure of the agreement and settlement of accounts has nothing to do with the invocation of the bank guarantee by the party in whose favour it was given, as the satisfaction of the beneficiary is primary and this Court cannot go into that aspect of the matter. It is not a case where fraud is alleged or the amount cannot be recovered at a later date by the affected party. In the facts and circumstances of the case, it cannot be held that the impugned letter of the fourth respondent is arbitrary and the first petitioner cannot challenge the communication of the fourth respondent.

Before parting with the case, when the facts are so glaring, it is necessary for this Court to make comments on the functioning of the officers who are entrusted with public money. The second installment of the mobilization advance to the tune of Rs.4,47,84,000/- was released way back in July 2008. The respondents allowed the first petitioner to use the said amount for all these years. No timely decision was taken, but routine extensions of agreement were granted. The first respondent has not filed any counter affidavit in the present case indicating the reasons for sitting over the file for the last more than one year. There is clear dereliction of duty from the then Executive Engineer to the present Secretary to Government (Major Irrigation). The 'doctrine of public trust' has taken firm roots in our judicial system. In *Noida Entrepreneurs Association v. Noida and others*², the Supreme Court ordered CBI enquiry when the authorities passed order in colourable exercise of power favouring himself and certain contractors. The observations of the Supreme Court in that context are as follows:

"41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. (Vide *Commr. Of Police v. Gordhandas Bhanji*, AIR 1952 SC 16, *Sirsi Municipality v. Cecelia Kom Francis Tellis*, (1973) 1 SCC 409, *State of Punjab v. Gurdial Singh* (1980) 2 SCC 471, *Collector (District Magistrate) v. Raja Ram Jaiswal*, (1985) 3 SCC 1, *Delhi Admn. v. Manohar Lal* (2002) 7 SCC 222, and *N.D. Jayal v. Union of India* (2004) 9 SCC 362)."

² (2011) 6 SCC 508

In a later decision, one of the Judges in Delhi Airtech Services Private Limited v. State of Uttar Pradesh³, in a case arising out of Land Acquisition proceedings has to say this regarding the duty of officers:

“213. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the government department, if not with a greater rigour. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In State of Bihar v. Subhash Singh [(1997) 4 SCC 430], this Court, in exercise of the powers of judicial review, stated that the doctrine of ‘full faith and credit’ applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In Centre for Public Interest Litigation v. Union of India [(2005) 8 SCC 202], this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of ‘full faith and credit’ applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision making process in Government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule.

³ (2011) 9 SCC 354

217. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In *State of A.P. v. Food Corporation of India* [(2004) 13 SCC 53], this Court observed that it is a known fact that in transactions of Government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being 'public officer' or 'public servant', is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance."

In recent days we are coming across cases of Crores of rupees of ill-gotten money unearthed from the Engineers, Town Planners and other officers and though the said cases are few, it is shocking the conscious of enlightened citizens. What is conscience of the court is beautifully expressed by one of the Judges in the Constitution Bench decision of *Manoj Narula v. Union of India*⁴, as follows:

"143. Court is the conscience of the Constitution of India. Conscience is the moral sense of right and wrong of a person. (*Ref. Oxford English Dictionary.*) Right or wrong, for court, not in the ethical sense of morality but in the constitutional sense. Conscience does not speak to endorse one's good conduct; but when things go wrong, it always speaks; whether you listen or not. It is a gentle and sweet reminder for rectitude. That is the function of conscience. When things go wrong constitutionally, unless the conscience speaks, it is not good conscience; it will be accused of as numb conscience."

In this atmosphere it is necessary to have more transparency and probity in discharge of duties by officers. It is the duty of this Court to order probe, when there are clear cases of misuse of public money and this is one such instance. The facts available before this court are not sufficient to point out finger on any one. It requires enquiry. Hence, it is

⁴ (2014) 9 SCC 1

hoped that the Chief Secretary to Government would go through the files in the instant case and take necessary action against the officers who were negligent in their duties.

For all the above reasons, the Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 10th October 2017

Note:

Office to mark a copy of this order to the Chief Secretary to Government, Government of Andhra Pradesh, Amaravati, Guntur District.

(B/O)

Nsr

