

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.6561 OF 2012

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings of the respondent bearing No.PDS2/Movt/FG 5(845)/Stage-II/2007-08 dated 02.03.2012 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondent to drop all further proceedings against the petitioner in this regard and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. Case of the petitioner is that the respondent Corporation has invited tenders for Stage-II transportation of essential commodities from Rajahmundry MLS point to various fair price shops attached to the mandals of Rajahmundry Rural and Rajanagaram for the year 2007-2008. The petitioner participated in the said tender and became the lowest bidder and his bid was approved. The period of contract was for one year i.e., from 01.04.2007 to 31.03.2008. Subsequently, the petitioner entered into an agreement with the Corporation and paid the security deposit of Rs.1,50,000/- and also furnished bank guarantee of Rs.2,50,000/- from the Indian Overseas Bank, Balajipet Branch, Rajahmundry on 01.08.2007, which was valid up to 31.10.2008 with grace period of three months. The petitioner has also furnished the security deposit amount through demand drafts. The contract period originally expired on 30.06.2008. However, as per Clause 3(1) of the

agreement, dated 03.10.2007, the period of contract was extended by three more months by the respondent Corporation and as such, the said contract was in force till 30.9.2008. While so, on 24.07.2008, at 5:30 P.M., when the petitioner loaded 37.24 quintals of rice at MLS point, Rajahmundry in his vehicle bearing No.AP 5 AD 8082 for transportation to FP Shop No.22 of Mukkinada Village of Rajanagaram Mandal, the vehicle with stock was caught hold by police in Anaparthi Village and the stock was seized on the charge that the stock was being diverted. A case in Crime No.101 of 2008 was registered on the file of Anaparthi Police Station and the same was numbered as C.C.No.526 of 2009 on the file of the Judicial First Class Magistrate, Anaparthi. The petitioner was issued show cause notice, dated 26.07.2008, by the respondent as to why the contract work assigned to him should not be terminated besides forfeiting the security deposit of Rs.1,50,000/- and bank guarantee of Rs.2,50,000/- and directed him to submit his explanation within three days. As no reply was received even by 05.08.2008, it was construed that the petitioner resorted to diversion of rice and thereby, violated Clause 3(III) of the agreement and also violated the provisions of the Essential Commodities Act, 1955 and accordingly, orders were passed terminating his contract and also ordered for forfeiture of the security deposit of Rs.1,50,000/- and bank guarantee of Rs.2,50,000/-. Then, the petitioner filed W.P.No.20958 of 2008 before this Court and the same was disposed on 27.10.2011 directing the respondent to consider the matter afresh and pass appropriate orders and till then, the bank guarantee and security deposit of the petitioner shall not be encashed. Pursuant to the

said order, a show cause notice, dated 24.01.2012, was issued calling upon the explanation of the petitioner on the alleged diversion of stock and to forfeit the security deposit of Rs.1,50,000/- and bank guarantee of Rs.2,50,000/-. The petitioner has submitted his explanation on 25.01.2012. Thereafter, the respondent issued the proceedings No.PDS 2/Movt/FG 5(845)/Stage-II/2007-08, dated 02.03.2012, and the order reads as under:

“The security deposit of Rs.1,50,000/- (Rupees one lakh fifty thousand only) and bank guarantee of Rs.2,50,000/- issued by IOB Balaji Peta Rajahmundry are forfeited.”

Challenging the same, the petitioner filed the present writ petition.

3. Learned counsel for the petitioner submitted that the case instituted against the owner of the crime vehicle and others ended in acquittal and the said vehicle was also returned to its owner; that as far as the petitioner is concerned, he used to organise vehicles for transporting the goods of the respondent and the contract period also ended in the year 2008 itself.

4. Considering all the facts and circumstances of the case and also taking into consideration of the fact that the aforesaid criminal case ended in acquittal and the crime vehicle was returned to its owner, this Court is of the view that the writ petition can be disposed of with the following direction:

The respondent herein is directed to return the security deposit to the petitioner and also to revoke the bank guarantee given by the petitioner herein.

5. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

6. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE RAJA ELANGO

23.2.2017
AMD



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Date: 23.2.2017

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