

O R D E R

The case of the petitioner, as per the averments made in the affidavit filed in support of the writ petition, is that he is the Chairman of Users Group Committee comprising of local farmers. Vide proceedings dated 17.01.2014, the 2nd respondent – Chief Engineer, has given administrative approval to the 3rd respondent – Superintendent Engineer, for the estimates, for execution of six different works. Out of the said works, the 4th respondent – Executive Engineer entrusted the petitioner the following two works with regard to operation and maintenance relating to Cumbum tank, on nomination basis, to be completed within two months:

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- (i) Improvements to Narava Banda Dhari ayacut road on Sekrial Katwa channel under Cumbum Tank system of Ravipadu (V) Kumbum (M) Prakasam District.
 - (ii) Improvement to Modalla Dhari road of Sekrial Katwa channel under Cumbum Tank system of Ravipadu (V), Cumbum (M), Prakasam District.

The petitioner entered into agreement with the respondents on 30.01.2014 with regard to subject works. Pursuant thereto, the petitioner has procured material like metal, cement, sand etc., by raising loans, including gold loan for Rs.1,90,000/- and cleared bushes and other tree growth. In the month of February / March, 2014, the local officers asked the petitioner to stop the works that were being executed, on the ground

of imminent bifurcation of the State. However, vide proceedings dated 14.10.2014, the 4th respondent – Executive Engineer, extended the time for completion of subject works, up to 31.12.2014. The further case of the petitioner is that when he commenced the work, the 5th respondent – Deputy Executive Engineer, advised him to stop the work as LOC was not given and funds were not granted. Vide proceedings dated 13.03.2015, the 2nd respondent, sought the 1st respondent – Government, to release the amount of Rs.37,51,000/-, enabling him to make payment of bills, including the works allotted to the petitioner. The petitioner made representation dated 8.4.2015 to permit him to take up the works. The 5th respondent - Deputy Executive Engineer, in turn, addressed letter dated 8.4.2015 to the 4th respondent and he, in turn addressed letter dated 15.4.2015 to the 3rd respondent – Superintendent Engineer, to obtain revised administrative sanction by the competent authority. It appears that the 3rd respondent vide Lr.DB/ATO-3/2/22/318/CE dated 26.5.2015 addressed letter to the 2nd respondent, to accord necessary permission for continuing the work, as the petitioner made representation stating that he is willing to continue the work with the same rates. The further case of the petitioner is that, the 3rd respondent – Superintendent Engineer vide memo dated 14.7.2015 instructed the 4th respondent – Executive Engineer, to look into the matter and as the subject works were completed around

25 per cent physically, directed to act as per Government orders and existing rules.

2. The grievance of the petitioner is that the authorities did not act on his representations and did not issue any proceedings for completion of works, or released the money for the works he has undertaken. Therefore, he filed the present writ petition seeking for a direction to the authorities to permit him to complete the balance works entrusted to him.

3. The 4th respondent – Executive Engineer filed counter affidavit and while raising objection with regard to maintainability of writ petition for payment of money for the works alleged to have been executed by the petitioner and for a direction to the respondents to permit him to complete the subject works; stated *inter alia* that agreements were concluded for two works, to complete within two months i.e., 28.2.2015 and that this respondent never directed the petitioner to stop the works and that bifurcation of State is in no way connected in completion of works and that the petitioner himself failed to complete the works. After bifurcation of State, Government issued U.O. note stating that the works not grounded are cancelled, and whose progress is more than 25 per cent, can be reviewed. Except dumping gravel on the work site, the petitioner has not executed any work. For clearing of bushes, no payment would be made by the respondent – Department. As the petitioner dumped material, the 5th respondent stated that around 25% of work was

executed by the petitioner. Based on the recommendation of the 5th respondent, this respondent granted extension of time up to 31.12.2014 to give opportunity to the petitioner, but he failed to complete the works. On 8.4.2015, petitioner gave representation, requesting to give permission to continue the works after lapse of one year. The same was recommended by both Deputy Executive Engineer (respondent No.5) and this respondent (4th respondent), to the higher officials for review by the Government. With these averments, the writ petition is sought to be dismissed.

4. Heard learned counsel for the petitioner and the learned Government Pleader, for Irrigation, appearing for the respondents. But the learned counsel reiterated the averments made in the respective affidavits, which are noted above.

5. With regard to preliminary objection of maintainability, there cannot be any dispute that where there are disputed questions of fact with regard to contractual obligations, this court, in normal circumstances, would not entertain a writ petition under Article 226 of the Constitution of India, seeking for enforcement of contract, and the aggrieved party has to avail the private law remedy. The domain of public law remedy would be available, where there are admitted facts and the authorities fail to discharge their legal obligation, infringing the fundamental rights guaranteed under the Constitution.

6. As per the facts noted above, there is no dispute that there was administrative sanction dated 17.01.2014 of the 2nd respondent - Chief Engineer, for execution of the subject works and the 4th respondent entrusted the said works to the petitioner on nomination basis. The case of the petitioner is that he has cleared bushes and other tree growth, procured construction material and commenced the work. While so, the officials of the respondents' orally asked him to stop the works on the ground of imminent bifurcation of State. Accordingly he stopped the works. However, vide proceedings of the 4th respondent – Executive Engineer dated 14.10.2014, time was extended up to 31.12.2014 for completion of works. The 4th respondent – Executive Engineer, vide letter No.EE/DB/ATO/148 SE dated 15.4.2015, sought the 3rd respondent – Superintending Engineer, to obtain revised administrative sanction of the competent authority, to give permission to continue the operation and maintenance works of Cumban tank. The 3rd respondent – Superintendent vide letter No.DB/ATO-3/2/22/318CE dated 26.05.2015, requested the 2nd respondent – Chief Engineer, for necessary permission for continuing the works. Further in the said letter it was also noted that 25 per cent work has been carried out by the petitioner. The petitioner has filed copy of the letter dated 26.05.2015 in the material papers. The relevant portion of the said letter is extracted as under for better appreciation:

“ I submit that the Chief Engineer (Projects) Ongole has administratively sanctioned 6 Nos. of O & M works to Cumbum Tank vide Memo No. C (P) Ongole DD/ATO/Correspondence on estimates/2015 of 1701.2014. Initially the contractor started the work 25% of work (physically) was completed. On 2.6.2014 the A.P. State was bifurcated. A.P. and Telangana Government have issued G.O. note stating that to stop the works which were not grounded.

As per Executive Engineer's report for the estimates technical sanction was accorded. The work was commenced and executed to a lane by 25% work was carried out but no expenditure is incurred so far. Meanwhile, the farmers/ayacutdars of Ravipadu villagers approached through representation stating that the repairs are to be carried out immediately.

The agency has submitted a report to give permission to continue the O & M works, the same is herewith submitted for necessary action.

It is further submitted that agency is also willing to continue the O & M works with the same rates. The representation submitted by the contractor is herewith enclosed and necessary permission may kindly be accorded for continuing the works at an early date.”

7. From the above letter addressed by the 3rd respondent – Superintending Engineer, to the 2nd respondent – Chief Engineer, it is clear that the petitioner has completed 25 per cent of work and the petitioner made a representation to continue the operation and maintenance work at the same rates. Further, pursuant to bifurcation of States on 2.6.2014 Government issued orders to stop works, which were not grounded. In the present case, as per the above said letter it is clear that the subject works were grounded and petitioner has completed 25 per cent. The above said letter dated 26.05.2015, is not specifically denied by the 4th respondent in the counter affidavit.

8. In the counter affidavit it is stated that 4th respondent – Executive Engineer vide letter dated 28.10.2017, based on the recommendations of the 5th respondent – Deputy Executive Engineer dated 28.10.2017, sought the permission of the 3rd respondent – Superintending Engineer, to continue the works. Copy of the said letter is filed along with the counter affidavit. The relevant portion is as under:

“The Deputy Executive Engineer, Special Sub-Division (Irrigation), Cumbum has reported that the works are to be required for effective water regulation in Cumbum Tank. If the Superintending Engineer is permitted to continue, the works will be taken up.”

9. In the counter affidavit it is further stated that based on the above letter, the 3rd respondent - Superintending Engineer addressed letter in Lr.No.DB/D3/F W/302 368 CE dated 24.11.2017 to the 2nd respondent – Chief Engineer (Projects), for taking further action.

10. From the above communications and the averments made in the counter affidavit, it is clear that the proposals for permission to continue and complete the works entrusted to the petitioners vide agreement dated 30.1.2014, were forwarded to the Government for necessary permission, but no action is stated to have been taken till date.

11. At the cost of repetition, though there is dispute with regard to completion of works within the time stipulated initially, the fact remains that the 4th respondent extended the time for completion of works up to

31.12.2014. The case of the petitioner is that he was not allowed to commence the work on the ground of imminent bifurcation of State, therefore, the delay has occurred. The facts noted above, would further reveal that as per the letter addressed by the 3rd respondent to the 2nd respondent dated 26.05.2015, petitioner has already completed 25 per cent of work. The 4th respondent vide letter dated 15.04.2015, sought the 3rd respondent, to obtain revised administrative sanction by the competent authority to give permission to continue the operation and maintenance works. The subsequent developments, as per the counter affidavit would show that the 5th respondent - Deputy Executive Engineer, Special Sub- Division (Irrigation,) Cumbum, has reported to the 4th respondent – Executive Engineer vide letter dated 28.10.2017, that the subject works are required to be completed for effective water regulation in Cumbun Tank. Based on the said recommendations, the 4th respondent – Executive Engineer addressed letter to the 3rd respondent, and he, in turn the 3rd respondent addressed letter dated 24.11.2017 to the 2nd respondent – Chief Engineer for taking necessary action. Averments made in the counter affidavit would reveal that Government issued orders to the effect that the works, which were not grounded, were cancelled and where the progress is more than 25 per cent, such works can be reviewed. In the present case, as already noted above, the petitioner has

completed 25 per cent of work even by the date of bifurcation of the State, therefore, such works deserves to be reviewed.

12. In view of the above admitted position and having regard to the facts and circumstances, the writ petition is disposed of with the following direction:

“The respondents are directed to permit the petitioner to complete the subject works as expeditiously as possible, preferably within a period of two months. On petitioner failing to complete the works within the time stipulated, it is open for the respondents to take appropriate action in accordance with law.”

13. Miscellaneous petitions pending if any, shall stand closed. No order as to costs.



A. RAJA SHEKER REDDY, J

DATE: 14—12—2017

AVS