

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.8571 of 2017

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed seeking the following relief:

“declaring the action of the respondent no.2 in continuing the proceedings in Proc. No: 13/H&S/UMS/GHMC/2016, dt: 13-03-2016, even after executing fresh contract agreement dt: 08-09-2016 by the respondent no.5 on behalf of the respondent no.2 through the Superintending Engineer with the petitioner for " Engaging Entomology Outsourcing Units working for Antilarval and Special/Fogging Operations for Mosquito control activities in Urban Malaria Scheme in EA-81, Serilingampally Division- 11, West Zone, GHMC, to the extent of asking the approval of the Dy. Commissioner, Zonal Commissioner with the permission of the Commissioner of GHMC for replacement of any worker by the petitioner and refusal of the respondent no.6 in permitting the petitioner to appoint workers/labors as arbitrary, illegal and high handed on the part of the respondent no. 6.”

2. In the affidavit filed in support of the petition, it is stated that the respondents with an intention to eradicate the Mosquitoes and Flies, which are main causes for spreading different diseases in twin cities, have called for tenders from different agencies to execute Anti Larval Operations/Fogging/Special works on outsourcing contract basis. The petitioner has participated in the tender and selected for execution of work. The agreement was originally executed for a period one year i.e., from 01.09.2014 to 31.08.2015 and from time to time it was renewed and last renewal is from 8th September, 2016 upto 10 months. As per the agreement, the petitioner was allotted work No.EA-81 and he was permitted to appoint 18 Entomology

skilled & unskilled field workers to execute the Anti Larval operations. There will be a periodical check up by the officials for the work executed by the contractors. The petitioner has submitted the particulars of the 18 Entomology field workers to the respondent No.6, who gave permission as per the terms of the original service level agreement, dated 25.09.2014. Without any blemish, the petitioner is continuing the contract. While so, due to ill health, two Entomology Field workers are not attending the work. As per the agreement, dated 08.09.2016, two new persons were selected as Entomology field workers to perform the duties and the same was informed through letter, dated 04.03.2017, to respondent No.6 and requested him to permit the petitioner to take services of the said two persons in his unit. The said letter is not received by the 6th respondent and he informed that as there are proceedings, dated 14.03.2016, of the 2nd respondent and at clause No.4 of the agreement that if any, contractor wants to replace a worker, it should be done only after approval of Dy.Commissioner, Zonal Commissioner, with the permission of the Commissioner, GHMC.

3. The said letter dated 14.03.2016, of the 2nd respondent is contrary to the Original Service Level Agreement, dated 25.09.2014 and much prior to the present agreement, dated 08.09.2016, between the 4th respondent on behalf of respondent No.2, and the petitioner, wherein the petitioner was permitted to appoint workers with the permission of respondent No.6 for working in his unit. The proceedings of respondent No.2, dated 14.03.2016, are *non est* after execution of fresh agreement of

contract, dated 08.09.2016, due to which the petitioner is suffering a lot and it will lose its right to appoint workers and works will be delayed and will not be effectively executed. If the petitioner is allowed to appoint deficit workers/labours as per the original agreement, the work will be executed effectively. When the respondent tried to put hurdles in respect of appointment of Field workers/labour for works to be executed by the petitioner in Work No.79, Circle No.11, Serilingampally, under respondent Nos.3 to 6, the petitioner filed W.P.No.27250 of 2016 before this Court and this Court while admitting the writ petition passed interim order, which reads as follows:

“As per the terms of the tender noted by the GHMC, since the contractor should ensure that field functionaries engaged should be physically present at the worksite in uniform and since it is also clear that the contractor shall submit daily report to the Senior Entomologist in a prescribed format after completion of the day's work, the request of the petitioner to appoint Entomologist Field Workers and Supervisors as per the Original Service Level Agreement for UMS work cannot be opposed by the respondents and the respondents cannot insist that for replacement of any workers, prior approval of the respondents has to be obtained.

Clause (4) in the impugned proceedings, dated 14.03.2016 is not traceable to any statutory power and the respondents cannot impose their will on the workers, who should be employed or not employed by the petitioner.

So, there shall be interim direction as prayed for.”

4. Though the petitioner informed about the order passed by this Court, respondent No.6, he refused to permit him to do so. Hence, the writ petition.

5. The Circular, dated 14.03.2016 is challenging before this Court. In relation to Clause-4, the petitioner was required to take approval from the concerned Deputy Commissioner, Zonal Commissioner with the permission of the Commissioner, GHMC for replacement of workers. It is submission of learned counsel for the petitioner that the petitioner has been given sub contract for carrying out the work of Fogging of Entomology Outsourcing units working for Anti Larval and Special/Fogging operations for mosquito control activities in Urban Malaria Scheme in EA-81 Serilingampally Division-11, West Zone, GHMA (Item no.3) after taking prior permission. It is submitted by learned counsel for the petitioner that taking prior approval from the Commissioner is impractical and at any rate what is required to be delivered by the petitioner is work as entrusted to it in the contract agreement, dated 14.03.2016.

6. On the other hand, learned Standing Counsel submits that more often it is found by respondent officials that number of persons required to be deployed for carrying out the work are not being deployed, as a result the work entrusted is not being carried out in the manner, in which it is required to be carried out. He would also stress on the need of strict adherence to the contract considering the nature of work i.e., the purpose for which the work is entrusted i.e., eradication of Mosquitoes under Malaria Eradication Scheme.

7. Having considered the respective submissions, as can be seen from the contract agreement entered into between the petitioner and the respondent Corporation, Corporation

entrusted the work under which the petitioner is required to employ certain number of persons for execution of work, more particularly described in Schedule-A to the agreement. There are three categories of persons, who are required to be employed by the petitioner, they are:

Sl.No.	Description	Qty.	Rate	Per	Amount
1.	Entomology Field Assistant (EFA) (Skilled) 1 No. x 10 months	10.00	13000	Months	130000
2.	Superior Field Worker (SFW) – (Semi skilled) 6 Nos. x 10 months	60.00	12500	Months	750000
3.	Filed Workers (FW) – (Un-skilled) 12 Nos x 10 months	120.00	12500	Months	1500000
			Total		2,380,000.00

Deduct tender premium (-) 0% Equal to Rs. .00

Contract agreement amount Rs.2,380,000.00

8. The schedule also discloses that the payment is linked to the number of persons employed. In other words, the payment is required to be made by the Corporation only as and when the petitioner engages such persons and it is to the satisfaction of respondent Corporation. Insistence of the Corporation to furnish the names and particulars of the persons, along with the qualifications, to be engaged cannot be found fault, as otherwise

there would be no accountability of the petitioner in relation to the work entrusted. Such accountability in all the more is essential on account of the fact that the payment that is to be made to the petitioner is linked with the persons employed by him. In that context the respondents may seek the details of the persons along with the qualifications and the specific areas in which they were deployed so as to have a check on the work that is being executed and to verify whether as a matter of fact, the petitioner has deployed such persons for carrying out the work entrusted. However, this cannot be extended to the level where the petitioner is required to seek prior permission for engaging the persons. In that context, the circular would have to be understood casting a responsibility and duty upon the petitioner to put on notice the individuals who are being deployed and it cannot be extended requiring the prior permission for engaging a particular workers. It is impractical to intimate the Commissioner about the persons engaged, whenever there is a requirement being made, the petitioner shall intimate respondents 3 and 5 to fulfil the requirements.

9. With the above direction, the writ petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Date: 15.03.2017
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HONOURABLE SRI JUSTICE CHALLA KODANDA RAM



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