

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.24 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the ad-interim order passed by the Learned Single Judge in W.P.M.P.No.46068 of 2017 in W.P.No.37103 of 2017 dated 20.11.2017. The 1st respondent herein filed the Writ Petition seeking a mandamus to declare the action of the respondents therein, in recovering the seigniorage charges from their bills for the earth work excavation of the trenches and back filling/refilling the same after laying pipelines and proposing to recover the balance from the final bill payable as a consequence of the impugned letter dated 03.08.2017, as arbitrary and illegal. The 1st respondent-writ petitioner also sought a consequential direction to the respondents in the Writ Petition to refund Rs.15,32,475/- already recovered from their bills towards seigniorage charges.

As against the total amount due towards seigniorage fees of Rs.33,47,861.58/-, the appellants had already recovered a sum of Rs.15,32,475/-, leaving a balance of Rs.18,15,386.58/- yet to be recovered from the 1st respondent-writ petitioner. By the order under appeal the Learned Single Judge, while holding that a writ petition would lie even for violation of the agreement conditions, followed the earlier order of another Learned Single Judge in **Larsen & Toubro Limited vs. The Executive Engineer, Public Health Engineering Department**¹ and directed the respondents in the Writ Petition not to act upon the letter dated 03.08.2017. The Learned Single Judge, however, made it clear that the issue regarding refund shall await final

¹ 2013(3) ALT 602

adjudication, and no interim order need be made at that stage. As a result of the aforesaid interim order, while the appellants are not entitled to recover the balance sum of Rs.18,15,386.58/-, they are also not required, pending disposal of the writ petition, to refund the amount already recovered i.e Rs.15,32,475/-.

Sri S.Lakshminarayana Reddy, learned Standing Counsel for the appellant-GVMC, would draw our attention to the estimates prepared even before the contract was entered into with the 1st respondent-writ petitioner which in Clause (23), relating to earth work excavation in loamy and clayey soils where the depth is less than 1½ times the width 0 to 2 mts. (for pipe line) by matching, provides for seigniorage charges at Rs.20/- per cubic meter. He has also drawn our attention to the agreement entered into between the parties, clause 95.1 of which provides for recovery of seigniorage charges as per rules from the work bills of the contract or based on the theoretical requirement materials at the rates mentioned therein. The Table in clause 95.1 of the agreement provides for seigniorage fee at Rs.20/- per cubic meter of gravel.

According to the Learned Standing Counsel, both the estimates, which provide for deduction of seigniorage fee, and the agreement which requires the appellants to recover seigniorage fee, obligate the appellants to recover the seigniorage fee and remit it to the Government; and unlike in **Larsen & Toubro Limited**¹, where the Learned Single Judge had specifically observed that the petitioners in the batch were carrying out works under different contracts and the relevant agreements did not provide for any payment or deduction of seigniorage fee on the earth that comes out of the foundations of trenches, in the present case, the agreement does so provide.

According to the learned Standing Counsel, while disposing of W.P.No.12552 of 2011 filed by the 1st respondent-writ petitioner by

order dated 20.01.2017, the Learned Single Judge had not examined this issue; the very fact that he had directed the appellants to consider grant of refund of seigniorage fee already collected in terms of the agreement, after examining each one of the respective agreements entered into with the petitioners therein, showed that the Learned Single Judge had only directed the appellants to consider the representation in the light of the agreements; the scope of the subject agreements were not examined by the Learned Single Judge nor was the question whether the appellants were entitled to recover the seigniorage fee, for the earth work removed on digging of trenches and not being refilled after the pipes are laid, considered in the said judgment.

On the other hand Sri S.Sriram, learned counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that, since the order passed by the Learned Single Judge is merely an ad-interim order, the appellants ought to have filed a petition to vacate the interim order before invoking the jurisdiction of this Court under Clause 15 of the Letters Patent; the order passed in W.P.No.12552 of 2011 dated 20.01.2017 is an order *inter-parties* which has attained finality; it is not open to the appellants to put forth any submissions contrary to what has been laid down in the said judgment; the subject agreement provides for recovery of seigniorage fee for the sand and gravel purchased by the 1st respondent- writ petitioner for the purposes of the earth work; it does not relate to excavation of earth on trenches being dug; and the judgment of the Learned Single Judge in **Larsen & Toubro Limited**¹ squarely applies to the facts of the present case.

Both Sri S.Lakshminarayana Reddy, learned Standing Counsel for the GVMC appearing on behalf of the appellants, and Sri S. Sriram, learned counsel appearing on behalf of the 1st respondent-writ petitioner, would agree that the appeals, preferred against the order

passed by the Learned Single Judge in **Larsen & Toubro Limited¹**, are still pending on the file of this Court; and, since no interim order was passed in the said appeals, the order of the Learned Single Judge continues to remain in force.

The questions whether the law declared in **Larsen & Toubro Limited¹** would apply to the facts and circumstances of the present case, whether the estimates and the agreement specifically provide for recovery of seigniorage fee, and whether the Clauses relating to seigniorage fee apply only to sand and gravel purchased by the 1st respondent-writ petitioner or whether they also apply to the earth excavated on digging of trenches etc are all matters which can only be examined in the Writ Petition after the appellants file their counter-affidavit.

While the interim order passed by the Learned Single Judge disables the appellants from recovering the balance amount of Rs.18,15,386.58/-, we are informed by Sri S.Lakshminarayana Reddy, learned Standing Counsel for the GVMC, that the final bills of the 1st respondent-writ petitioner, for the works executed by them, have not yet been paid. As the amounts, due and payable to the respondents-Writ Petitioners, are still lying with the appellants, we see no reason to take upon ourselves the task of adjudicating the factual aspects, urged before us by Learned Counsel on either side, more so as the appellants herein have not filed their counter-affidavit.

Suffice it, therefore, to leave it open to the appellants to avail their remedy of filing a petition to vacate the interim order passed in the Writ Petition. We have no reason to doubt that, on such a petition being filed, the rival contentions urged by Learned Counsel on either side would be examined on its merits without being influenced by any

observations made in the order now passed by us or in the order under appeal.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

18th January, 2018
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**



Writ Appeal No.24 of 2018

Date: 18.01.2018

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