

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.1119 of 2007

ORDER:

This writ petition is filed for issuance of writ of Mandamus by declaring G.O.Ms.No.77, I&CAD (PW, Reforms), dated 15.4.2006 issued by the Irrigation and CAD (PW) Department, to the extent of imposing condition that “This will be applicable for future agreements and with prospective effect only” as illegal and redundant, consequently apply the modification issued under G.O.Ms.NO.77, I&CAD (PW, Reforms), dated 15.4.2006 with effect from the date of issue of G.O.Ms.No.94, I&CAD (PW-COD) Department, dated 1.7.2003 and direct the respondents to refund the excess amount recovered towards seigniorage charges over and above the agreement rates by incorporating the difference in rates in seigniorage charges to the work estimate in respect of the work relating to strengthening of V.B.R. Earth Dam i) Sections from K.M. 3.30 to 4.30 under agreement No.4/2004-05, dated 4.8.2004 ii) sections from K.M. 5.400 to 6.400 under agreement No. 2/2004-05, dated 9.7.2004 iii) sections from K.M. 6.470 to 7.2000 under agreement No.3/2004-05, dated 9.7.2004.

It is the case of the petitioner company that it has secured three contracts from the respondents relating to the Velugodu Balancing Reservoir for strengthening of V.B.R. Earth dam, namely, i) Sections from K.M. 3.30 to 4.30 under agreement No.4/2004-05, dated 4.8.2004 ii) Sections from K.M. 5.400 to 6.400 under agreement No.2/2004-05, dated 9.7.2004, and (iii) Sections from K.M. 6.470 to 7.200 under agreement No.3/2004-05, dated 9.7.2004.

Further, the petitioner has quoted the rates based on the estimates made by the respondents and on the instructions furnished in the Tender document read with G.O.Ms.No.94 Irrigation and CAD (PW-COD) Department, dated 1.7.2003. As per the Schedule 'D' of the agreement, the rates of seigniorage charges are as follows:

Sl.No.	Material	Seigniorage Charges
1	Sand	Rs.33.00/Cum
2	Metal	Rs.33.00/Cum
3	R.R.Stone for Masonary	Rs.33.00/Cum
4	Revetment Stone	Rs.33.00/Cum
5	C.R.S. Stone	Rs.33.00/Cum
6	Morram/Gravel and Ordinary earth	Rs.33.00/Cum

The petitioner quoted the rates where the materials required, based on the information furnished by the respondents in the tender documents read with para-19 of G.O.Ms.No.94, dated 1.7.2003. It is stated in the agreement that the rates are subject to revision and amendment by Government. Additional condition 26.16 stipulates that the seigniorage charges will be recovered from the work bills of the contractor at the rates specified in schedule 'D'. But the Government issued G.O.Ms.No.217 (Industries & Commerce (MI) Department, dated 29.9.2004 amending the seigniorage charges as follows:

S.No.	Name of the material	Rate of seigniorage fee (in Rupees)
1	Sand	Cum Rs.36.00
2	Metal	Cum Rs.45.30
3	R.R.Stone for masonry	Cum Rs.45.30
4	Morram/Gravel and Ordinary earth	Cum Rs.20.12

The seigniorage fee recovered from the contractors' bills will be remitted to the Mines and Mineral Department. The clause in the contract i.e., 26.16 read with Schedule-D, makes it clear that the recovery would be as per the rates specified in the table. As per agreement No.3/2004-05, dated 9.7.2004, as per clause 2.13, the rates are liable to be revised and amended from time to

time by the State Government, by notification in the 'Andhra Pradesh Gazette'. If the revised seigniorage fee is more than the charges mentioned in this clause, the recovery from the contractor's bill is as per revised rates. But as per G.O.Ms.No.77 I&CAD (PW.Reforms) Department, dated 15.04.2006 wherein G.O.Ms.No.94, I&CAD (PW.COD) Department, dated 1.7.2003 in respect of recovery of seigniorage charges was amended to the effect that the seigniorage charges are to be recovered as provided in the agreement. Any escalation in these charges beyond the provisions of the agreement are to be borne by the department debiting such escalated amount to the works estimate concerned. This will be applicable for future agreements and with prospective effect only.

The petitioner filed letter No.GVR/HO/F 45/1046, dated 12.12.2006 to the Superintending Engineer, TGP Circle-respondent No.2 requesting for refund of excess recovery of seigniorage charges along with the other excess amounts recovered. Another representation vide letter No.GVR/HO/F45/954, dated 30.10.2006 was submitted for refund of the excess amount recovered towards seigniorage charges recovered and refund of the

same. But the said representations are not considered. For non refund of the excess seigniorage charges over and above the rates mentioned in the agreement, the petitioner filed the present petition.

The learned counsel for the petitioner along with additional material papers, filed a copy of the Judgment, dated 8.9.2015 passed by this Court in Writ Petition No.24233 of 2006.

Heard both sides.

The respondents have not filed any counter in spite of granting several adjournments. Today, the request made by the learned Assistant Government Pleader seeking time to file counter affidavit, is rejected.

The W.P.No.24233 of 2006 is filed aggrieved by G.O.Ms.No.77, I&CAD (PW.Reforms) Department, dated 15.04.2006, to the extent that it would be applicable only for future agreements and with prospective effect only and sought a consequential direction to apply the modifications under the said G.O., with effect from 1.7.2003 being the date of issue of G.O.Ms.No. 94 I&CAD (PW.COD) Department, and to direct the

respondent authorities to refund the excess amount recovered from him towards seigniorage charges.

This Court, while disposing of the above W.P., on 8.9.2015, observed that the Government deemed it appropriate to extend the benefit of G.O.Ms.No.77 dated 15.4.2006 to the contractors, though the said G.O., specifically stated that it would have only prospective effect, and that there is no reason as to why others who are identically situated to those covered by G.O.Ms.No.100 dated 21.8.2010 should be discriminated against. If, as a policy measure, the Government decided to give retrospective effect to the benefits conferred under G.O.Ms.No.77 dated 15.4.2006, it must necessarily do so with an even hand and cannot pick and choose on the basis of its own whims and fancies arbitrarily and extend the benefits of G.O.Ms.No.100 dated 11.8.2009 to the petitioners therein.

In view of the above orders dated 8.9.2015, this writ petition is also disposed of directing the respondents to consider the representations of the petitioner dated 12.12.2006 and 30.10.2006 submitted to the respondent

Nos. 2 and 3 for refund of the excess amount recovered towards seigniorage charges from the contractors.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE M.GANGA RAO

Date: 22.2.2018

slk

