

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.11818 of 2012

ORDER:

This writ petition is filed to declare the action of the respondents in not paying the bill amount for the drugs supplied by the petitioner to the tune of Rs.12,83,620/- since 2009 as illegal, arbitrary and violation of the Articles 14 and 21 of the Constitution of India and a consequential direction was sought to direct the respondents to pay the bill amount with interest at the rate of 24%per annum from 23.07.2009 till the date of realization.

2. The brief facts of the case, according to the petitioner, are that the 3rd respondent herein has placed an order for supply of family planning medicine and drugs, consumables for the use of the District Health and Medical Office, Khammam vide proceedings dated 23.07.2009. On 25.07.2009 petitioner supplied the said drugs worth of Rs.12,83,620/- and submitted credit bills in triplicate with advanced stamped receipt for arranging the payment as directed by the 3rd respondent. It is further stated that the respondents have been making the petitioner run from pillar to post and postponing the payment on one pretext or the other without any valid reasons. The petitioner also submitted a representation dated 11.02.2011 to the 3rd respondent requesting to clear the bill amount, but the 3rd respondent did not take any action so far. After a lapse of two years, upon continuous persuasion, the 3rd respondent vide proceedings dated 01.07.2011 requested the 1st respondent to give instructions for clearing the bills payable to the petitioner. But the said amount was not paid. Hence, the writ petition.

3. A counter-affidavit has been filed by the 3rd respondent on behalf of all the respondents, contending *inter-alia* that the petitioner has not approached and not submitted any representation till February 2011, for payment of the said amount. The District Medical & Health officer, Khammam was transferred and the office staff also changed and the present staff are not aware of the pending bills. The petitioner submitted his application for payment of bills on 11.02.2011 and after receipt of the application, the 3rd respondent addressed a letter dated 01.07.2011 to the 1st respondent for payment of the pending bills, as the bills were pertaining to the financial year 2009-10. The 1st respondent has ordered to submit certain information regarding delay in payment of the bills and the said information was submitted to the 1st respondent on 19.11.2011 and on 16.03.2012. The 1st respondent vide letter dated 12.07.2012 issued orders for payment of the bills and the payments were made to the petitioner on 17.08.2012.

4. The writ petition was admitted on 04.06.2012 and interim direction was issued in WPMP No.14862 of 2012, directing the respondents to pay the undisputed amounts to the petitioner within four weeks.

5. Heard Sri P. Shashi Kiran, learned counsel for the petitioner and the learned Government Pleader for Medical and Family Welfare.

6. Learned counsel for the petitioner submitted that as per the requisition, the petitioner has supplied the drugs to the respondents and in spite of repeated requests, the respondents failed to pay the amount to the petitioner.

7. On the other hand, the learned Government Pleader appearing for the respondents contended that pursuant to the interim order dated 04.06.2012 passed by this Court in W.P.M.P.No.14862 of 2012, the respondents paid the amount due to the petitioner on 17.08.2012. He further submitted that there is no contract between the petitioner and the respondents with regard to payment of interest on the delayed payments and that the delay is neither intentional nor willful. He further submitted that petitioner has not claimed any interest for the delayed payment in his representation dated 11.02.2011 and prays for dismissal of the writ petition.

8. As the actual amount due has been paid, the point for consideration is, whether the petitioner is entitled for payment of interest or not?

9. The petitioner contended that he procured the drugs from the concerned companies by investing huge amounts by taking hand loans and other means and that because of inordinate delay in payment of the amount by the respondents, he sustained huge loss, as he paid high interest to his creditors and prays for interest.

10. As seen from the documents filed along with the writ petition, the 3rd respondent placed order on 23.07.2009 for supply of family planning medicines and drugs and requested to submit the credit bills in triplicate with advance stamped receipt for arranging payment. The said letter contains the description of the items, quantity required and also total amounts payable. The invoice, which is filed along with the writ petition shows that the drugs were supplied on 25.07.2009, which fact is not disputed by the respondents in the counter-affidavit. After the supply of drugs, the petitioner went around the office of the

respondents and expected the respondents to pay for the same. After waiting for 18 months, the petitioner submitted a written representation dated 11.02.2011 to the 3rd respondent, requesting payment for the drugs that were supplied about 18 months back. However, no interest whatsoever was asked for in the said letter dated 11.02.2011. Pursuant to the said letter dated 11.02.2011, the 3rd respondent addressed a letter dated 01.07.2011 to the 1st respondent stating that the office has placed an order to the concerned firms who were approved by the District purchase committee on 23.07.2009. He further stated as follows:

“Meanwhile after receiving the ordered drugs and medicines, certain changes were took place in the O/ o DM & HO, Khammam like the then DM & HO, Khammam Dr. M. Swamy who was i/ o to the Post of DM & HO, Khammam was changed, as regular.

Sri Ramesh Gadgil who was i/ c to the post of A.O. was changed and Sri R.I. Kantha Rao occupied the seat as i/ c A.O.

Sri G. Vishvanadham was the then Superintendent to the accounts section went on leave on medical grounds later on taken voluntary retirement.

Sri M. Ravikishore the then section clerk was also transferred and Sri V.Sreenivasa Rao was allotted to that section.

During this time vigilance and enrollment officers has visited this office and taken over the entire files pertaining to the Drugs purchase.

Due to the above reasons the formal officials who left over the section was unable to hand over the bunch of drugs files to this office and present working officials are also not verified even after receiving the bunch of drugs files from the Vigilance and enforcement department, till the receipt of requisitions from the concerned firms. In the light of the above facts, it is to submit that the entire bills are genuine, entered in the stock registers and utilized. Presently the bills, which are mentioned below, are pending.”

11. As seen from the record, for 18 months, after the supply of drugs, absolutely there was no action taken by the respondents in spite of oral representations. File started moving only after the written representation of the petitioner dated 11.02.2011. Even without any representation from the petitioner, the respondents, who have received the drugs in good condition and entered in the stock register, should have made payment immediately. It took about five months for respondent No.3 to address a letter to the 1st respondent seeking instructions in the matter after the petitioner made his representation. Irrespective of the persons, who are holding the office, the department has to make payments to the persons, who supplied the drugs. When the drugs were received according to the order placed, bill amount should have been paid immediately.

12. Representation has been made by the petitioner after 18 months from the date of supply of drugs. Five months thereafter, respondent No.3 addressed a letter dated 01.07.2011 to the respondents for getting instructions. Ultimately payment was made on 17.08.2012 pursuant to the interim directions of this court dated 04.06.2012. In the said letter dated 01.07.2011, the 3rd Respondent explained the administrative delays on the ground that concerned persons were on leave, transferred etc., which cannot be accepted.

13. As the respondents delayed the payment of the amount, which is admittedly due to the petitioner, without any reason, whatsoever, the respondents are liable to pay the interest on the amount due by them. In the facts and circumstances explained above, the question framed is answered in favour of the petitioner and the respondents are directed to pay interest on the said amount which has

been withheld by them at 6%p.a. from the date of writ petition, to the date of actual payment. However, the 1st respondent is directed to enquire into the aspect of delay in payment of amounts to the petitioners and take remedial actions, so that in future such things do not happen.

14. The writ petition is, accordingly, allowed to the extent stated above. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 02.02.2018

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