

HON'BLE SRI JUSTICE BATTU DEVANAND**Writ Petition No.2511 OF 2022****ORDER:**

This writ petition has been filed to declare the action of the Respondents in not releasing the bill amount of Rs.15,92,859/- for the work executed by the petitioner namely "Completion of incomplete BC Boys Hotel Building at Venkatagiri (V&M) in Nellore District" as illegal, arbitrary, malafide, unjust, irresponsible, contrary to the principles of natural justice and consequential direction to the respondents to release the said bill amount with interest forthwith.

2) Heard Sri Kambhampati Ramesh Babu, learned counsel for the petitioner, learned Government Pleader for Education appearing for the Respondent No.1, learned Government Pleader for Finance appearing for the Respondent Nos.2 and 6, Sri G.V.S. Kishore Kumar, learned Standing Counsel for APEWIDC appearing for Respondent Nos.3 to 5. Perused the material available on record.

3) The Respondent Nos.3 to 5 filed their counter-affidavit.

4) The case of the petitioner is that the petitioner participated in the tender notified by 3rd Respondent and become successful bidder for the work (i.e.) "Completion of

incomplete BC Boys Hotel Building at Venkatagiri (V&M) in Nellore District". Accordingly, the 3rd Respondent executed the agreement, dated 09.11.2017 for contract value of Rs.23,19,566/- and the 3rd Respondent issued work order. The petitioner completed the work and 4th Respondent passed second and final bill for Rs.15,92,859/- on 08.02.2019.

5) Learned counsel for the petitioner submits that since the petitioner completed the work long back and bill was prepared and approved on 08.02.2019, till date the bill amount was not released and the Respondents are dragging on the issue. Aggrieved by the same, the present writ petition has been filed.

6) In the counter-affidavit, the Respondent Nos.3 to 5 submit that the work was completed by the petitioner and handed over to the user Department and gross amount of Rs.17,11,967/- with recoveries Rs.1,19,108/-. A net amount of Rs.15,92,859/- payable to the petitioner for the subject work. The bill was not paid saying that due to non-availability of funds.

7) The Respondent Nos.3 to 5 further submit that their Corporation is only an executing agency to look after the civil construction and to monitor the quality of the work with the approved structural designed and drawings and submit

the bill for payment to the value of the work done to the contract through CFMS online portal. But, the funds have to be released by the Director of B.C. Welfare, A.P., Vijayawada, who has given the Administrative sanction to take up the work. Due to paucity of funds, this executing agency is unable to send the bill to the scrutiny authority (PAO) and held at executing agency only. Unless the amounts were released by the Director of B.C. Welfare, A.P., Vijayawada, the CFMS is not allowing the bill to send to the scrutiny authority for making payment.

8) The Respondent Nos.3 to 5 contend that the bill is already raised several times through CFMS portal and waiting for release of funds. When the funds availability is ensured by the Director of B.C. Welfare, the bill will be uploaded in CFMS for processing the payment in favour of the petitioner. Due to the non-availability of funds, the CFMS are not allowing uploading of bill in the portal.

9) The Respondent Nos.3 to 5 contend that the petitioner executed the agreement for the works with a condition precedent that all the subject issues shall be raised before an Arbitrator or before the competent civil court as an alternative mode of dispute settlement. But, the petitioner suppressed material facts and without full and frank disclosure of facts, by not filing the full particulars of the

agreement as the same discloses various terms and conditions, including waiver of interest as per clause 43 of the agreement by the petitioner, besides settlement of claims in case of a contractual rift between the petitioner and the respondents. However, invoked the jurisdiction under Article 226 of the Constitution of India for an equitable remedy and the same ground alone is sufficient to dismiss the writ petition. The Respondent Nos.3 to 5 contend that the Writ Petition cannot be entertained in contractual matters.

10) On the other hand, the learned counsel for the petitioner contends that the writ petition is maintainable on the issue of privity of contract. He further submits that in the absence of any dispute with regard to the execution of work within stipulated period as per the agreement, it is the legal duty of the respondents to clear the bill and make payment. Once the respondents failed to pay the amount to the petitioner after execution of work to the satisfaction of the respondents, this Court can entertain the Writ and direct the respondents to make payment.

11) Having considered the contentions of the respective counsel on the issue of maintainability of this Writ Petition, it is to be noted that admittedly there is no any dispute with regard to the execution of the work pursuant to the agreement dated 09.11.2017. After completion of the work,

the petitioner submitted the bill and it is approved on 08.02.2019. In the Counter Affidavit filed by Respondent Nos. 3 to 5, it is stated that due to paucity of funds, the Executing Agency is unable to send the bill to the P.A.O., Unless the amounts released by the Director of B.C. Welfare, Andhra Pradesh, Vijayawada, the CFMS is not allowing the bill to send to the scrutiny authority for making payment. Due to non-availability of funds, though the bill is raised several times through CFMS Portal, the CFMS is not allowing for uploading the bill in the portal. Considering this factual position, in the considered opinion of this Court, due to paucity of funds with the respondents, the bill of the petitioner is not cleared and payment is not made for which she is legitimately entitled.

12) This Court is unable to accept the contention of the Respondents that the Petitioner has to avail alternative remedy as per the terms and conditions of the Agreement to approach the arbitrator and the petitioner is not entitled for interest in view of the condition of waiver of interest in the Agreement in view of the admitted facts of this Case that the respondents themselves violated the terms and conditions of the Agreement by not clearing the bill of the petitioner for abnormal period from the date of submission of the bill.

13) This Court opine that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, we hold that the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable.

14) The view of this Court is fortified by the rulings of the Hon'ble Apex Court and various High Courts as extracted hereinunder:

15) The Hon'ble Apex Court in ***ABL International Limited v. Export Credit Guarantee Corpn. of India Ltd¹*** has observed thus:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769], this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual

¹ (2004)3 SCC 553

obligation and/or involves some disputed questions of fact”.

While summing up the conclusions in the aforesaid case, the Apex Court concluded thus:

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

16) A Division Bench of the High Court of Telangana at Hyderabad, by following the law declared by the Apex Court in ***ABL International Limited and Popatrao Vyankatrao Patil***², rejected the contention of the respondents that the Writ Petition was not maintainable in contractual matters.

² 2020 SCC Online SC 291

17) The High Court of Andhra Pradesh at Amaravati in ***Mutyala Veera Venkata Satyanarayana v. State of Andhra Pradesh***³ while dealing with the batch of writ petitions filed for claiming payments for supplying materials to the Panchayat under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, this Court held as under:

“Therefore, in view of the settled law and keeping in mind the purpose for which the legislation is enacted, this Court has to hold that there is a public element involved in this and that it is not a pure case of the State entering into a commercial contract.

This Court further held that part from this when State or State instrumentalities act in an arbitrary manner or failed to act within time the Writ Court does have jurisdiction to entertain the matter.”

18) This Court in ***Rayapureddy Srinivasa Rao and Others v. Government of Andhra Pradesh, rep. by its Principal Secretary to Government and Others***⁴ held as under:

‘In view of the facts and circumstances of the case and there is a public law element involved in these matters, this Court is unable to accept the contention of the learned Government Pleader on the ground of maintainability of these writ petitions and accordingly, we are rejecting the same, in the light of the law declared by the Hon’ble Apex Court and others Courts extracted as herein above.’

³ 2021 SCC Online AP 1410

⁴ (2022) 1 ALD 83

19) In the considered opinion of this Court, not releasing the amount for which the petitioner is legitimately entitled is nothing but depriving the rights of the petitioner. Due to illegal action of non-payment of the amount promptly by clearing the bill submitted by the petitioner after execution of works, the petitioner could not feed and look after the welfare of her family properly, she could not make payment to employees/workers and she could not make payments to the material procured and she has to pay interest for the debts incurred by the petitioner for execution of works. Due to this situation, petitioner's respect and dignity in the society will be deteriorated. As such, the petitioner's right to life with respect and dignity will be defeated which is violative of Article 21 of the Constitution of India.

20) As such, this Court holds that withholding the amount, for which the petitioner is legally entitled, is illegal, arbitrary, and unjust and violative of Article 21 of the Constitution of India.

21) Admittedly, the petitioner executed the work. She submitted the bill. There is no fault on the part of the petitioner. But, the petitioner did not receive payment. The petitioner is no way concerned with the contention of the respondents that due to paucity of funds and technical reasons, the bill of the petitioner is not uploading in CFMS. As

and when the respondents contending that due to the reason that they could not receive the funds from the Director of BC Welfare, Andhra Pradesh, Vijayawada, and due to this reason, the respondent Nos. 3 to 5 are unable to make payment, this Court has to consider to compensate the petitioner for the delay caused in clearing the bill by awarding interest. As such, the respondents are responsible for the said delay in making payments to the petitioner for which she is legally entitled. Therefore, in our view, it is appropriate and reasonable to compensate the petitioner for the loss caused by the Respondents.

22) The view of this Court is fortified by the expression of a larger bench of the Hon'ble Apex Court in ***Secretary, Irrigation Department, Government of Orissa and others v G.C.Roy***⁵ as extracted hereunder:

"A person deprived of the use of money to which he is legitimately entitled has right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages".

23) The High Court of Andhra Pradesh in ***J. Devendra Reddy v Kakatiya University and another***⁶ held that withholding of the amount payable to the petitioner for the contract works, constitutes patent arbitrariness on the part of the respondents and directed the respondents to pay

⁵ AIR 1992 SC 732

⁶ 2015 (3) ALD 97

the amount due to the petitioner along with interest @ 12% per annum.

24) The High Court of Andhra Pradesh in ***S. Srinivas vs. State of Andhra Pradesh and others***⁷, held that the petitioner is entitled for the interest @ 12% p.a., from the date of expiry of one month from the date of submission of bill to till the date of payment.

25) In view of the ratio laid down in the above rulings, this Writ Petition is allowed with the following direction:

- i) The respondents are directed to clear the bill submitted by the petitioner and release payment forthwith with interest at 12% p.a., from the date of submission of Bill.

26) There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

Date: 22.03.2022

Note: Issue CC by tomorrow.

B/o
PGR/eha

⁷ (2021) 5 ALT 267

HON'BLE SRI JUSTICE BATTU DEVANAND

WP No.2511 of 2022

Dt: 22.03.2022

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