

**HONOURABLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.3507 of 2020**

**ORDER:**

This writ petition is filed to issue a writ, order or direction more particularly in the nature of Writ of Mandamus or any other appropriate writ, declaring the action of the respondents in not paying the final bills to the petitioner in respect of the Agreement No.2/2018-2019 dated 24.10.2018 in Neeru Chettu Programme, for essential repairs to Canal, strengthening of banks on Inumella Major from K.M. 7.470 to K.M 10.60 in Block No.11 A of Nagarjuna Sagar Jawahar Canal near Chittapurama Village, Ipur Mandal, Guntur District, even after approval of the First and Final Bill payable to the petitioner by the respondents 1 to 3 is arbitrary and illegal.

2. The case of the petitioner is that he was entrusted with the work of essential repairs to Canal, strengthening of banks on Inumella Major from K.M. 7.470 to K.M 10.60 in Block No.11 A of Nagarjuna Sagar Jawahar Canal near Chittapurama Village, Ipur Mandal, Guntur District and agreement No.2/2018-2019 dated 24.10.2018 was entered with the 2<sup>nd</sup> respondent - Executive Engineer, NSJC O&M and SIFT Division, Vinukonda, Guntur District for contract value of Rs.9,99,000/- with the stipulated completion period of work as 90 days. As per the terms and conditions of the agreement, the petitioner started the work immediately and completed the work in all respects as per the agreement conditions and period. After measurement of the work and quality and vigilance check, the bills submitted on 13.3.2019 were approved by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent and sent for payment to the Treasury and Accounts Department, whereas the 1<sup>st</sup> respondent is not releasing the amount

of bills payable to the petitioner on the ground that the Government initiated enquiry on all the works carried under Neeru Chettu programme in the State and directed the Director General, Vigilance and Enforcement authority to submit a report vide Memo dated 29.8.2019. Non-payment of the final bills pending enquiry by the authority is against the terms of the agreement and the enquiry is initiated only to defer the payments, which is illegal and arbitrary. Being aggrieved by the inaction of the respondents in not paying the bill amount to the petitioner, the present writ petition is filed.

3. The 1<sup>st</sup> respondent filed counter stating that the Government entrusted the work to the petitioner vide agreement dated 24.10.2018. Clause No.3 of the agreement deals with "Adjudication of disputes". The writ petition is not maintainable before this court for adjudication. The petitioner claimed that the bills forwarded to Pay and Accounts Office are undisputed but the bills were returned stating that they are disputed amounts. The Principal Secretary to Panchayat Raj and Rural Development Department vide Letter dated 1.8.2019 instructed the Director General, Vigilance and Enforcement, Vijayawada to conduct discreet enquiry on all the works carried out under "Neeru Chettu" programme in the State and to furnish the report to take further necessary action. The enquiry is not yet completed, however, there are several irregularities committed in execution of Neeru Chettu programme. Hence, the payment of bills to the petitioner could not be said to be undisputed bills.

4. Sri Prabhunath Vasireddy, learned counsel for the petitioner vehemently submits that the petitioner was entrusted with the work under agreement and the same was completed as per the terms and conditions of the agreement. Part and final bill submitted by the

petitioner were verified and check measured and certified by the quality control and Vigilance Department and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents submitted the bills for payments. At that stage, the Government initiated enquiry in all the works executed under Neeru-Chettu programme. Accordingly, the Director General, Vigilance and Enforcement Department has initiated enquiry but nothing against the petitioner is submitted so far. Even as per the report submitted by the Vigilance and Enforcement, there are no adverse reports against the petitioner and withholding the payment of the petitioner is arbitrary and illegal. For payment of the undisputed bills by the respondent authorities and for withholding the same, the petitioner can approach this Court under Article 226 of the Constitution of India as held by the Apex Court in **Surya Constructions Vs. State of Utter Pradesh and others<sup>1</sup>**, following the judgment in **ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.<sup>2</sup>**. Following the same, several writ petitions were disposed of on similar lines by this Court. The Government preferred writ appeals and the Division Bench has not stayed the order passed in similar set of cases.

4. Sri C. Suman, learned Special Government Pleader appearing for Advocate General appearing for the respondents while reiterating the averments of the counter states that the bills submitted by the petitioner are disputed as the Finance Department returned the same. On the ground that the Vigilance and Enforcement enquiry is pending in all the works of Neeru Chettu programme, the bills are not released and when once the dispute arises, the writ petition is not maintainable and he placed reliance on the decision of the Apex Court

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<sup>1</sup> (2019) 16 SCC 794

<sup>2</sup> (2004) 3 SCC 553

in **Joshi Technologies vs Union Of India & Ors**<sup>3</sup>, wherein at Para 69.2 and 69.4 it is held as follows:

“Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.”

5. Having considered the facts and circumstances of the case, submissions of the learned counsel and on perusal of the material record, this Court found that the work for essential repairs to Canal, strengthening of banks on Inumella Major from K.M. 7.470 to K.M 10.60 in Block No.11 A of Nagarjuna Sagar Jawahar Canal near Chittapurama Village, Ipur Mandal, Guntur District was entrusted to the petitioner vide agreement dated 24.10.2018 and he completed the work as per the terms and conditions of the agreement. The respondents 2 and 3 who are agreement holders with the petitioner approved the bills submitted by the petitioner on 13.3.2019 after satisfying that the work was completed, measured and quality control and vigilance reports were also taken and bills were forwarded for payment to the Treasury and Accounts Department. The Finance Department returned the bills on the ground that the Government has taken a decision to enquire into all the works in Neeru Chettu programme as several works are not properly completed and there are several irregularities. The Director General of Vigilance and Enforcement has proceeded with the enquiry but nothing adverse is stated against the works executed by the petitioner. In those

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<sup>3</sup> (2015) 7 SCC 728

circumstances, mere return of the bills by the Finance Department, pending enquiry cannot be countenanced and concluded that the dispute is with regard to rising of the bills. The Apex Court and this Court in catena of decisions held that when there is non-payment of the undisputed bills, the same is violative of Articles 14 and 16 of the Constitution of India. The counsel for the petitioner rightly placed reliance on the decision of the Apex Court in **Surya Constructions Vs. State of Utter Pradesh and others**, following the judgment in **ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd** cited supra. In view of the Apex Court judgment, the contention of the learned Government Pleader that the writ petition is not maintainable before this Court could not be countenanced. The bills of the petitioner dated 13.3.2019 are admitted by the respondents and forwarded for payment after due measurements and obtaining quality control and the Vigilance report. Hence, the authorities are estopped from stating that the bills are submitted without executing the works. On the mere ground of pendency of Vigilance report, payment cannot be stopped. Accordingly, there shall be a direction to the respondents to pay the bill amount of Rs.8,14,402/- to the petitioner within a period of six weeks from the date of receipt of copy of this order.

6. Accordingly, the Writ Petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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**M. GANGA RAO, J**

Date: .04.2022

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**HON'BLE SRI JUSTICE M. GANGA RAO**

**W.P.No.3507 OF 2020**

**DT: .4.2022**

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