

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 27902 of 2021

Between:

M/s Patel Engineering Limited

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 27902 of 2021**

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... Respondents

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> Head Note:

! Counsel for the Petitioner : Mr K.Rathanga Pani Reddy

^ Counsel for the Respondent: Addl. Advocate General

? Cases Referred:

1. 2010 (10) SCC 677

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 27902 of 2021****ORDER:**

Heard learned counsel for the petitioner and learned Additional Advocate General.

2. This writ petition is filed to issue a order or direction, more particularly one in the nature of Writ of Mandamus declaring the impugned recovery letters of the 3rd and 4th respondents vide proceedings respectively Lr.No.SE/JNLIS/TS/TO/V&E/2074, DATED 29.08.2018 and EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020, in pursuance to the 1st respondent Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018, basing on Vigilance Report of 2nd respondent bearing No.38/C.651/V&E/E1/2013, dated 19.05.2018, as ex-facie illegal, misconceived, arbitrary, violative of Article 14 and 19(1)(g) of the Constitution of India, and consequently set aside aforesaid impugned orders of the 1st, 3rd and 4th respondents.

3) The case of the petitioner, in brief, is as follows:

- a) The petitioner is one of the leading infrastructures and consortium services companies in India.
- b) The 3rd respondent vide NIT No.32/NKLI/2004-05, dated 12.01.2005 invited bids for the work of Stage I, Pumping Station near Guddam Doddi Village, Dharur Mandal, of Nettampadu Lift Irrigation Project, Mahaboobnagar District. The 3rd respondent in its bid made known the scope of work as also terms and conditions for executing the works through the Instructions to bidders. Instructions to the tenderers required an offer to be made quoting the lump sum price for the works. The petitioner quoted the price as per instructions to bidders in the bid invited by the 3rd respondent.
- c) The 2nd respondent (V&E) submitted the report No.38/C.651/V&E/E1/2013, dated 09.05.2018 to the 1st respondent that on comparison of the estimates of the contract which includes provisions with regard to Excise duty, insurance, price adjustment and TOT (Turnover Tax), the estimate has provisions of Central Excise Duty of Rs.31,98,00,000/-, insurance of Rs.7,63,00,000/-, price adjustment of Rs.52,81,026/- and amount towards TOT

6,64,00,000/- whereas, the petitioner has not paid/incurred said amounts, hence, the same has to be recovered.

d) The 1st respondent vide Memo No.4916/Vigilance II/2018-7, dated 02.06.2020, while referring the Vigilance report No.38(C.No.651/V&E/E1/2013, dated 08.05.2013, have directed the Engineer-in-Chief (Irrigation) I & CAD Department to recover an amount of Rs.46,77,81,023/- from the petitioner. Basing on the said memo of the 1st respondent, the 3rd respondent issued letter No.SE/JNLIS/TS/TO/ V&E/2074, dated 29.08.2018 for recovery of Rs.46,77,81,026/-, primarily on the ground that the amounts paid/incurred by the petitioner under certain heads of the work contract were allegedly in less of the internal estimates made by the Irrigation & CAD Department, Telangana in a departmental document titled the Internal Benchmark Estimate. The IBM Estimate is a document prepared by the I&CAD purely for internal purposes and contains the internally estimated costs for each component of the project such as the cost of raw material, insurance etc.

e) The petitioner quoted contract price keeping in view of all the duties and taxes in consequence of his obligations

under the contract. While quoting contract price, the petitioner did not consider Central Excise duty on E&M equipment, as the same was exempted by the Government of India since 06.09.2002. Hence, this writ petition.

4. The counter affidavit of the 2nd respondent, in brief, is as follows:

- a) The Regional Vigilance & Enforcement Officer, Hyderabad City II Unit conducted enquiry and found deficiency/irregularities in 1st work Kolisagar Project State II, with an agreement value of Rs.175.32 crores and 2nd work Nettampadu-Jawahar Lift Irrigation Scheme with an agreement value of Rs.338.53 crore.
- b) During the course of enquiry, the Vigilance & Enforcement authorities along with Technical Engineers of the 4th respondent i.e Officials of Irrigation and CAD Department have verified, collected the records related to the said works and recommended the recovery for an amount of Rs.11,93,00,000/- for work No.1 towards CED (Central Excise Duty) and an amount of Rs.46,77,81,026/- for work No.2 towards excess insurance, price escalation on Cement &

Arwwl, XWS NS rot FROM THE Agencies. Therefore, the writ petition is liable to be dismissed.

5. The counter affidavit of the 4th respondent, in particular, paras 6, 8, 11, 12, 13, 14, 15 and 16 reads as under:

"6. In reply to para no.2 of the affidavit, it is respectfully submitted that the petitioner was entrusted the work Design & Engineering of Civil, Hydro Mechanical, Electro Mechanical and Instrumentation works of Installation of 4pumps of 17MW pumps of Stage-I under Jawahar Nettempadu Lift Irrigation Scheme near Gudemdoddi (V), Dharur (M), Mahabubnagar (District) vide EPC agreement no 2/EPC/MG&JLIP/2005- 06 Dated 08-08-2005. The agency has completed the work and commissioned the 1st Pump in September 2012 and last pump in December 2013 and total pumping station came into operation by December 2013.

The Vigilance & Enforcement Department inspected the work on 17-04-2014 and based on subsequent verification of records, inspection of work and analysis of test results submitted appraisal report to the Government. As per the Vigilance & Enforcement report No.38 (C.No.651/V&E/2013) dated 19-05-2018, Government have issued Memo no.4916/Vigilance

/A2/2018-1 dated 13-07-2018 to take immediate necessary action on findings made by the Director General GA (V&E) Department and to furnish action taken report to the Government.

8. In reply to para 3 of the affidavit, it is respectfully submitted that in EPC system tenders were called duly mentioning scope of the work. Based on scope of the work bidder will submit the bid amount based on the scope of the work given. Successful bidder is responsible to investigate, design, procure, construct as per the norms of the department. After completion of the operation & Maintenance period same will be handed over to the department. **Before calling tenders department has prepared estimates as Internal Bench Mark which will not be disclosed to the participating bidders.**

11. In reply to para no.6 of the affidavit, it is respectfully submitted that Internal Bench Mark (IBM) is only internal document that was not shared with agencies/bidders and it is a tentative estimate prepared for obtaining administrative sanctions in EPC works.

12. In reply to para nos. 7&8 of the affidavit, it is respectfully submitted that bidder must quote contract price keeping in view all duties and taxes. Bid price quoted by the contractor shall be deemed to be inclusion of all the taxes on material that the contractor

will have to purchase for performance of the contract. Agency has taken exemption certificate from the payment of central excise duty on E&M equipment purchased for performance of this contract. In view of this V&E authorities recommended for recovery of Rs.31,98,00,000/- as per the estimate provisions. Petitioner is stating that while submitting offer prevailing exemptions for taxes considered in their offer, Provision made towards excise duty in the Internal Bench Mark is not revealed at any stage of the tender process and recommended for exemption.

13. In reply to para 9 of the affidavit, it is respectfully submitted that V&E authorities proposed recovery of Rs.7,63,00,000/- towards excess insurance charges paid considering provision made in the Internal Bench Mark estimate of Rs 8.11cr. and details of actual payment made produced during the inspection i.e., Rs 47,89,289/-.

As per the agreement clause 4.10, the contractor shall obtain and maintain in force during three years of the operation and maintenance of industrial all risk insurance for the project providing full coverage on replacement value basis.

Agency has satisfied the agreement condition by taking insurance policy for 3 years O&M Period. **In fact, agency has paid Rs2.07cr. towards the insurance**

premium and not claimed reimbursement of the paid amount.

As per the agreement condition if agency do not take insurance policy it is the contractor's responsibility to bear any expenditure on any loss due to theft or calamity. In the present case agency has not claimed any amount towards the insurance and quoted price by the agency is inclusive of all and agreement concluded on quoted price, no excess payment made towards the insurance premium. Government vide G.O.Ms.No.61 Dated 25-06-2013 issued orders dispensing with insurance cover for the works of I&CAD department. From the date of handing over site any damage loss occurs till the completion of the work and Operation & Maintenance period, agency has to bear the expenditure irrespective the insurance done or not.

14. In reply to Para 10 of the affidavit, it is respectfully submitted that price escalation for cement and steel paid as per the clause 1.26.3 of the agreement. **There is no reference in the agreement about 5% escalation has to be borne by the agency.** V&E authorities have referred the G.O.Ms.No.94 dated 16-04-2008 which orders price adjustment to be paid if increase is more than 5%, increase above 5% only to be paid. But petitioner stated that above G.O. issued much later than agreement concluded cannot be imposed beyond agreement conditions.

15. In reply to Para 11 of the affidavit, it is respectfully submitted that, V&E authorities proposed recovery of Rs.6,64,00,000/- duly comparing with the provision made in the IBM estimate. Provision made in the Internal Bench Mark estimate @4% towards sales tax and 2.8% towards Turn Over Tax (TOT) and in no case both the taxes imposed on same dealer as such V&E authorities proposed recovery of 2.8% work out to Rs 6,64,00,000/-. **As per the records produced by the agency total VAT deducted from the bills Rs.15,77,33,308/- and provision made in the Internal Bench Mark towards sales tax@4% was Rs.911.85 lakhs and 2.8% Turn Over Tax (TOT) Rs 663.87 lakhs and recovery made towards the VAT is more than the provision made in the Internal Bench Mark.** No excess payment made to the agency. However petitioner claims that Internal Bench Mark is internal document and cannot be compared with their offer.

16. In reply to Para 12 of the affidavit, it is respectfully submitted that recoveries proposed by the V&E authorities based on comparing Internal Bench Mark estimate and assessing difference of expenditure incurred/paid by the petitioner, over all amount proposed to recover is Rs.46,77,81,026/-. In EPC contract system contrary to the LS contract system only scope of the work will be given to the bidder, and bidder after assessing the scope of the work with the expertise,

experience they have to work out the cost duly including all the taxes overheads and have to submit the bid.

PERUSED THE RECORD.

6. Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018 of the 1st respondent reads as under:

A copy of the reference cited together with its enclosures are sent herewith to the Engineer-in-Chief (Irrigation)/ the Engineer-In-Chief (A.W), I&CAD Dept., Hyderabad.

2. The Engineer-in-Chief (Irrigation), I&CAD Dept, Hyderabad is requested to take immediate necessary action on the findings and recommendations made by the Director General, GA (V&E) Dept and furnish his ATR to the Government at the earliest.

3. The Engineer-in-Chief (A.W), I&CAD Dept, Hyderabad is also requested to furnish the incumbency particulars of the following officers to the Government for taking further action in the matter immediately.

7. Proceedings vide letter No.SE/JNLIS/TS/TO/V&E/2074, dated 29.08.2018 of the 3rd respondent reads as under:

"While enclosing a copy of vigilance report No.38/C.651//&E/E1/2013, Date:19.05.2018. It is proposed to recover the following as per vigilance report from the agency.

1.	Excess Insurance charges	Rs.7,63,00,000/- (A-24)
2.	Price Escalation on cement & steel	Rs.52,81,026/- (A-28)
3.	Excise duty	Rs.31,98,00,000/- (A-30)
4.	Excess added T.O.T	Rs.6,64,00,000/-
	Total	Rs.46,77,81,026/-

8. Proceedings vide order dated FE/PIP/ED-2/GDL /TS/ATO/St.I&II/2020-21/927, dated 14.09.2020 of the 4th respondent reads as under:

"With reference to the above subject cited as per instructions Government of Tigane vide reference 3 cited, communicated vide Superintending Engineer, PJP Tode 1, Gadwal memo No. TS/TS/V&E/2027, Dt.10.09.2020 the following recoveries to be made from your future bills, as recommended by the Vigilance and Enforcement Department.

Towards excess insurance price escalation on cement, steel CED and TOT for Ps 46 77 81,026/. Recovery to be proposed difference calculation quantity between M-20 Gr., and M-15 G for R/S cistern wall."

9. The recommendations as per the Vigilance report of the 2nd respondent No.38 (C.No.651/VBE/E1/2013, dated 19.05.2018 reads as under:

“RECOMMENDATIONS:

The Special Chief Secretary to Government, Irrigation & Command Area Development Department, Hyderabad, Telangana is requested to issue necessary instructions to;

1. Take action on the Officers vide table supra.
2. Instruct CE/ Mehabubnagar (Projects) to:
 - a. Recover an amount of Rs. 11,93,00,000/- for Work No.1 towards CED and an amount of Rs. 46,77,81,026/- for work no.2 towards Excess Insurance, Price escalation on Cement & Steel, CED & TOT, from tng agencies.
 - b. Arrive the price escalation amount paid for the item of Aluminum & Steel to Agency used in E & M equipment, without provision in the Agreement condition and recover the same from the Agency.
 - c. Recover the difference of amount of cement quantity between M20 and M15 grade from the Agency, duly checking the design adequacy of M15 grade concrete as against specified M20 grade for the R/S Cistern wall.
3. Caution the CE and SLSC to examine carefully the proposals of the additional items, duly taking the site conditions and agreement conditions into consideration,

while recommending to the Government in future.
Action taken report may be furnished to this office.

10. The interim orders of this Court dated 09.11.2021

read as under:

"Office of the learned Advocate General take notice for respondents 1 to 4 and seeks time to file counter.
List on 07.12.2021.

Pending further orders and pending filing of counter by the respondents, respondents shall not take any precipitative action in pursuance of the impugned letters addressed by 3rd and 4th respondents vide proceedings in Lr.No.SE/JNLIS/TS/TO/V&E/2074, dt.29.08.2018 Lr.No.EE/PJP/ED- and 2/GDL/TS/ATO/St.1&11/2020-21/927 dt.14.09.2020, respectively."

The above said interim orders are in force as on date.

11. The reply affidavit filed by the petitioner, in particular pars 2 and 3 reads as under:

"2. I submit that I have gone through the counter affidavit filed by the 4th respondent and I deny all the contents made except which specifically admitted hereunder. Infact the 4th respondent has not denied nor rebutted the contentions of the petitioner in the writ petition. The specific case of the Petitioner that proposed recoveries by the respondents in pursuance to

the V&E report are against agreement conditions and the Petitioner quoted its own workable rates keeping in view of the taxes applicable and keeping in view of the agreement conditions and further it is a specific contention of the petitioner that petitioner was not known the Internal Bench Mark Estimate (IBM) as it is the secret document prepared by the respondents and as such petitioner was not having knowledge of the provisions made therein.

3. I submit that in para No.11 of the counter affidavit 4th respondent admitted the fact that the IBM is only internal document and that was not shared with agencies/bidders and it is a tentative estimate prepared for obtaining administrative sanctions in EPC works. Further the 4th respondent at para No.16 stated that the system of EPC is contrary to LS contract system and only scope of the work would be given to the bidder and bidder after assessing the scope of the work with the expertise, experience workout the cost duly including all the taxes overheads and have to submit the bid. Further the fact is petitioner paid Rs.15,77,33,308 towards VAT and TOT which is admitted by the 4th respondent in the counter affidavit at para No.15 and said amount is not there in the estimates at all which clinching proves that internal bench mark of the respondents is not known or relevant to the

petitioner as his estimates of under all heads of the contract which includes tax is based on his own estimates as per the rule and law applicable as on the day. Further the fact that there is no clause that 5 % escalation has to be borne by the agency is admitted by the 4th respondent at para 14 of counter affidavit. Further the fact of petitioner paid Rs.2.07 cores towards insurance premium is stated by the 4th respondent at para No.13. As such the findings of V&E to the extent of above are grossly incorrect and without application of mind.

DISCUSSION AND CONCLUSION

12. A bare perusal of the contents of the Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018 of the 1st respondent, letter No.SE/JNLIS/TS/TO/ V&E/2074, dated 29.08.2018 of the 3rd respondent and order dated FE/PIP/ED-2/GDL /TS/ATO/St.I&II/2020-21/927, dated 14.09.2020 of the 4th respondent clearly indicate that the decision to make recoveries from the petitioner's future bills was solely on the basis of the recommendations of the Vigilance and Enforcement Department and as per the instructions dated 13.07.2018 vide Memo No. 4916/Vigilance/A2/2018-1 of the

1st respondent the Engineer in Chief, (Irrigation) I&CAD Department, Hyderabad who had requested to take immediate necessary action on the findings and recommendations made by the Director General, GA (V&E) Department and furnish his ATR to the Government at the earliest. It is borne on record that the petitioner filed his detailed representation on 26.02.2021 and furnished the clarification in respect of the proposed recoveries against the petitioner as per the Vigilance and Enforcement Department and pleaded that the findings of the V&E are only post facto situation and imaginary and against agreement conditions. Since the petitioner availed exemption of excise duty as per agreement out bid and agreement conditions and the recovery proposal of Rs.31,98,00,000/- comparing with department in IBM is violation of agreement conditions and not acceptable, further the petitioner in the said representation dated 26.02.2021 pleaded that the petitioner's are eligible and O & M payments are held up for the O & M work done beyond original agreement period for want of decision on V & E findings. The petitioner further clarified that the petitioners offered to construct the project on EPC basis

for Rs.338,53,01,885/- (Rupees three hundred and thirty eight crores fifty three lakhs one thousand hundred eighty five only). And the petitioners received the payment to that extent only as per agreement and the petitioner had not been paid any extra payment beyond the agreement conditions.

13. On perusal of the record it is evident that the clarification submitted by the petitioner dated 26.02.2021 for the proposed recovery as per Vigilance and Enforcement Report dated 19.05.2018 had not been considered at all as on date.

14. A bare perusal of the contents of the letter dated 29.08.2018 clearly indicates that a copy of the Vigilance report dated 19.05.2018 is enclosed and the petitioner is informed that it is proposed to recover Rs.46,77,81,026/- as per the Vigilance Report from the agency. A bare perusal of the contents of letter No.EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020 also indicates the same. The said decision and the figures arrived at is as per the recommendations of the Vigilance and Enforcement

Department dated 19.12.2018. A bare perusal of memo No.38/C.651/V&E/E1/2013, dated 13.07.2018 also indicates initiation of necessary action against the petitioner on the findings and recommendations made by the Director General, General Administration (V&E), the 2nd respondent. A bare perusal of the copy of the Vigilance Report dated 19.05.2018 however, strangely does not indicate any notice or opportunity being given to the petitioner prior to conduct of the said enquiry pertaining to certain EPC works executed under Talayagnam programme in Mahaboobnagar District-I, Koilsagar Project, Stage II and Nettampadu Jawahar Lift Irrigation Scheme and admittedly as borne on record it is an exparte enquiry conducted behind the back of the petitioner without any notice or reasonable opportunity having been provided to the petitioner, this Court opines that the impugned letters i.e. Lr.No.SE/JNLIS/TS/TO/V&E/2074, dated 29.08.2018, and EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020, and Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018 and

also Vigilance Report dated 19.05.2018 are the decision taken exparte and recovery was sought to be made without even indicating how the express payment was arrived at. This Court opines that the pleas of the petitioner as explained in petitioner's representation dated 26.02.2021 addressed to the 1st respondent vide reference No. HYD/181/0563, that the findings of the V&E are only past factor situation and against the agreement conditions has to be necessarily examined by the 1st respondent herein by giving notice to the petitioner explaining the possible reason for recovery since admittedly as borne on record, the petitioner was given no notice of the possible reason for recovery nor the basis for quantification of the amounts sought to be recovered and the impugned proceedings are exfacie arbitrary, it is but necessary to the respondents herein to assign suitable reasons for arriving at the conclusion of proceedings against the petitioner for recovery of amount, in view of the fact that no show cause notice had been issued to the petitioner prior to passing impugned letters i.e. Lr.No.SE/JNLIS/TS/TO/V&E

/2074, dated 29.08.2018, and EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020, and Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018, this Court opines that there is clear failure of principles of natural justice resulting in passing of impugned letters i.e. Lr.No.SE/JNLIS/TS/TO/V&E/2074, dated 29.08.2018, and EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020, and Memo No. 4916/Vigilance/A2/2018-1, dated 13.07.2018 and Vigilance report of the 2nd respondent bearing No. 38/C.651/V&E/E1/2013, dated 19.05.2018 which on the face of it are not sustainable.

15. The Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad reported in (2013) 3 ALD 494 (DB) in D.Nageswaraiah v Government of Andhra Pradesh and others, in particular, paras 5 to 8 reads as under:

"5. The aforesaid letter indicates that a decision was taken ex parte and recovery was sought to be made without indicating how the excess payment was arrived at.

6. Feeling aggrieved, the appellant preferred a writ petition which came to be dismissed by the learned Single Judge on the ground that since a dispute arose under a contract, the matter ought to be taken up by the appellant before the competent civil Court.

7. We are not in agreement with the view expressed by the learned Single Judge inasmuch as the dispute did not relate to the terms of the contract but related to the ex parte recovery sought to be made by the respondents from the appellant it appears to us that the learned Single Judge misdirected himself on the issue raised. The appellant was given no notice of the possible reason for recovery nor the basis for the quantification of the amount sought to be recovered. The order of recovery passed on 18.7.2011 was ex facie arbitrary and without any basis. It is this that gave rise to the grievance of the appellant and not any particular term of the contract.

8. We have heard the learned Counsel for the respondents in the appeal filed by the appellant challenging the order of the learned Single Judge. Unfortunately there is still no reason forthcoming for arriving at the conclusion that excess payment was made to the appellant nor is mere any basis forthcoming to

indicate how the excess payment of Rs. 2,58,820/- was quantified. Admittedly no show-cause notice of any kind was given to the appellant before the order dated 18.7.2011 was passed. There is therefore a clear failure of principles of natural justice resulting in passing of an order which is on the face of it not sustainable. In our opinion, the order dated 18.7.2011 is completely arbitrary and the arbitrariness is a writ large on the face of the order. Under the circumstances, we set aside the decision of the learned Single Judge and allow the writ petition and quash the order dated 18.7.2011 passed by the respondents."

16. The judgment of the Apex Court reported in (2010) 10 SCC 677 in Ritesh Tewari and another v State of Uttar Pradesh and others, in particular, paras 24 and 26, it was observed as follows:

"It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In Bharat Singh & Ors. Vs. State of Haryana & Ors., AIR 1988 SC 2181, this Court has observed as under: -

"24. In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove

such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it"

26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing **interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration**

of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide Champalal Binani Vs. The Commissioner of Income Tax, West Bengal & Ors., AIR 1970 SC 645; Chimajirao Kanhojirao Shrike & Anr. v. Oriental Fire and General Insurance Co. Ltd., AIR 2000 SC 2532; LIC of India v. Smt. Asha Goel & Anr., AIR 2001 SC 549; The State Financial Corporation & Anr. v. M/s. Jagdamba Oil Mills & Anr., AIR 2002 SC 834; Chandra Singh v. State of Rajasthan & Anr., AIR 2003 SC 2889; and Punjab Roadways, Moga through its General Manager v. Punja Sahib Bus and Transport Co. & Ors, (2010) 5 SCC 235).

17. This Court also takes note of the fact that the specific pleas raised by the petitioner are even admitted by the 4th respondent in the counter affidavit at para 15 that the petitioner paid Rs.15,77,33,308/- towards VAT and TOT Rs.663.87 lakhs and the said amount is not there in the estimates at all and it is clearly admitted in para 14 of the counter affidavit filed by the 4th respondent that there is no clause that 5% escalation has to be borne by the agency. It is also admitted at para 13 of the counter affidavit filed by the

4th respondent that the petitioner paid Rs.2.07 crores towards insurance premium and therefore, this Court opines that the findings of V&E to the extent as indicated above are grossly incorrect and without application of mind. A bare perusal of the Counter Affidavit of the 4th respondent, paras 8 and 11 clearly (referred to and extracted above) substantiates the case of the petitioner that IBM is purely confidential and internal one of the department and will not be known to bidders and bidders have to quote the bid price as per their own estimated costs of contract work by keeping the payment of taxes/exemptions prevailing as on the date. In view of the same the Court opines that an unilateral conclusion arrived on the basis of a vigilance enquiry conducted behind the back of the petitioner leading to the passing of letters of the 3rd and 4th respondents vide proceedings respectively Lr.No.SE/JNLIS /TS/TO/V&E/2074, DATED 29.08.2018 and EE /PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020 is totally unwarranted and uncalled for.

18. Taking into consideration the specific averments made in paras 3,4 and 5 of the affidavit filed by the petitioner in

support of the present writ petition and also the contents of the petitioner's representation dated 26.02.2021 vide reference No.HYD/181/0563, which is a detailed clarification in itself against the proposed recovery which had not been considered as on date by the respondents and also the law laid down in the judgments referred to and discussed above, the writ petition is allowed as prayed for and the impugned recovery letters of the 3rd and 4th respondents vide impugned Lr.No.SE/JNLIS/TS/TO/V&E/2074, DATED 29.08.2018 and EE/PJP/ED-2/GDL/TS/ATO/St.I&II/2020-21/927, dated 14.09.2020, respectively in pursuance to the 1st respondent Memo No.4916/Vigilance/A2/2018-1, dated 13.07.2018, basing on Vigilance Report of 2nd respondent bearing No.38/C.651/V&E/E1/2013, dated 19.05.2018 are set aside. It is however, observed that it is open to the respondents to proceed against the petitioner if the respondents intend to do so and the same shall be in accordance to law, in clear conformity with the principles of natural justice and by providing reasonable opportunity to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked

b/o

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