

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.3130 OF 2022

Between:

M/s.Metalika Industries,
B-18, Industrial Estate, Sanathnagar,
Hyderabad – 500 018 rep. by its
Authorized Signatory Sri Rajesh C Jain
S/o Late Champalal P Jain, Aged 52 years

.....Petitioner

Vs.

The State of Telangana rep. by its
Principal Secretary, Women, Children, Disabled
And Senior Citizens Department,
Telangana Secretariat, Hyderabad & 2 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **17.03.2023**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether his Lordship wish to see the fair copy of the judgment? Yes/No

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION No.3130 OF 2022

% DATED 17TH March, 2023

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... Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri K. Ram Reddy, Advocate

^Counsel for Respondents : Government Pleader for Women
Development and Child Welfare

? CASES REFERRED:

1. 2000(2) ALD 560
2. AIR 1990 (SC) 1984

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.3130 of 2022****ORDER:**

This writ petition is filed seeking the following relief:

“...to declare the impugned notices being issued from time to time and lastly vide letter No.10621/Vig/2010 dt 31/12/2021 for remittance of alleged excess amounts claimed as illegal, arbitrary, unjustifiable and unconstitutional, set aside the same as such and consequently direct the respondents to permit the petitioner's firm in all those tenders being invited/floated by the respondent department and to grant such other relief or reliefs as this Honble Court deem fit and proper in the circumstances of the case....”

2. Heard Sri K. Ram Reddy, learned counsel for the petitioner, learned Government Pleader Women and Child Welfare Department appearing on behalf of respondents.

3. Brief Facts of the case:

3.1 The petitioner submits that respondent department invited tenders for purchase of basic utensils for the use of Anganwadi Centres (Aluminium and Steel) to prepare and distribute the supplementary nutritious food to the children of age group between 0-3 years and to the lactating mothers living in rural areas. The petitioner participated in the said tenders

and became a successful bidder and the respondent awarded the contract in favour of the petitioner. He further submits that the petitioner and respondent No.2 have entered an agreement dated 13.03.2004 for supply of 59,259 Aluminium utensils at a cost of Rs.3,08,04,007/- (Rupees Three Crores Eight Lakhs Four thousand and seven only) and stainless steel utensils worth Rs. 1,08,97,536/- (Rupees One Crore Eight Lakhs Ninety Seven Thousand five hundred and thirty Six only) at the rate of Rs.141 and Rs.160 per Kg within 60 days from the date of agreement. He further submits that the petitioner firm supplied and delivered the contracted goods within the extended time granted and that there were no complaints and the entire transaction of supply of goods to the respondent department was concluded in the year 2004.

3.2 He further submits that after lapse of 15 years respondent No.2 issued letter dated 03.05.2019 basing on the memo dated 10.02.2016 of respondent No.1 directing the petitioner's firm to remit excess amount of Rs.28,83,279/-. Petitioner's firm submitted reply to the respondent No.2 on 01.07.2021 specifically denying the allegations of excess claim for the supplies. He further submits that respondent authorities without passing any order on the explanation

submitted by the petitioner surprisingly issued impugned notice on 31.12.2021 directing the petitioner to pay an amount of Rs.28,83,279/- and the impugned notice issued by respondent No.2 is hopelessly time barred.

4. Respondent No.3 filed counter denying the allegations made by the petitioner specifically contending that General Administration (Vigilance and Administration) department identified their case in finalization of tenders for supply of aluminium/Stainless Steel Utensils to Hyderabad District and conducted detailed enquiry and submitted appraisal report No.37(1747/V & E/D2/04) dated 22.08.2008.

4.1 Respondent No.3 issued letter vide No.10621/Vig./2010 dated 23.12.2019 directing the petitioner to remit the excess amount of Rs.28,83,279. After receipt of the said letter petitioner submitted explanation on 01.07.2021. Respondent No.3 rightly issued the impugned notice dated 31.12.2021 specifically stating that the Vigilance Department conducted enquiry and issued Appraisal Report No.37 of V & E pointing out that, M/s. Metallica Industries supplied the Aluminium Utensils with recycled scrap procured from other firms at the rate Rs.102 and Rs.105 per Kg which was not

selected in DLPC due to inferior quality and also pointed out that the petitioner has claimed excess amount of Rs.28,83,279 towards supply of Aluminium/Stainless Steel Utensils and directed to remit the excess amount claimed towards supply of Utensils.

4.2 In spite of several correspondences made by respondent No.3 the petitioner has not remitted the amount. In view of the same, respondent No.3 has rightly issued the impugned notice directing the petitioner to remit the amount at the earliest.

5. Sri K. Ram Reddy, Learned counsel for the petitioner vehemently contended that respondent No.3 issued letter No.10621/VIG/2010 dated 23.12.2019 directing the petitioner to remit the excess amount of Rs.28,83,279/-. After receipt of the said letter the petitioner submitted detailed explanation on 01.07.2021, because respondent No.3 without conducting enquiry and without passing any orders, straight away issued impugned letter impugned letter vide Lr.No.10621/Vig/2010 dated 31.12.2021, directing the petitioner to pay Rs.28,83,279/- excess amount and the same is clear violation of principles of natural justice. He further submits that the entire

contract pursuant to the agreement entered by the petitioner and respondent No.2 dated 13.03.2004 concluded in the year 2004 and the impugned proceedings dated 31.12.2021 is time barred.

5.1 He further submits that the quality of the material which was supplied by the petitioner was not examined by any independent authority. The respondents have passed impugned order basing on the Appraisal Report dated 22.08.2008 of General Administration (Vigilance and Enforcement) Department without conducting any independent enquiry and the same is not permissible under law. In support of his contention he relied upon the judgment in ***N.A. Radha and Others vs State Of Andhra Pradesh And Others***¹ on the ground that the impugned notice issued by respondent No.3 is barred by limitation.

6. Per contra, Learned Government Pleader contended that the Vigilance and Enforcement Department is having powers to conduct enquiry and rightly conducted enquiry and have pointed out irregularities committed by the petitioner and Vigilance Department has submitted the report. Pursuant to

¹ 2000(2) ALD 560

the same respondent No.3 has rightly issued the impugned order dated 31.12.2021 and there is no irregularity. He further submit that the excess amount of Rs.28,83,279/- claimed and received by the petitioner is public money and the petitioner is liable to remit the said amount to the respondents.

6.1 He further contended that the petitioner without questioning the Appraisal Report dated 22.08.2008, filed the present writ petition challenging the impugned notice/order issued by respondent No.3, which is not permissible under law and the writ petition is liable to be dismissed on that ground.

7. Having considered the rival submissions made by respective parties and after going through the material available on record, it clearly reveals that pursuant to the tender notice dated 02.01.2004, the respondent awarded the contract infavour of the petitioner firm for supply of aluminium utensils and stainless steel utensils to Anganwadi centres in Hyderabad city. Thereafter respondent No.2 and petitioner firm have entered into agreement on 13.03.2004 and pursuant to the same the petitioner supplied the material and the contract concluded in the year 2004. It further appears that basing on an anonymous complaint, the Vigilance and Enforcement

Department conducted enquiry and submitted appraisal report No.37(1747/V&E/D2/04) dated 22.08.2008 containing the following recommendations:

- i. Initiate disciplinary action against Sri M.V.S Rami Reddy, the then Director of WD & CW Department, Smt P. Anasuya Devi, Deputy Director, Smt K. Rajyalakshmi, Assistant Director Nutrition Wing of WD & CW Department, for allowing excess claim made by M/s Metallica Industries, Hyderabad to a tune of Rs.28,83,279/- in the supply of Utensils to WD & CW department and also for not taking due care and follow up action in ensuring supply of Utensils as per standards, specifications within the time frame laid down by the department;
- ii. Initiate action to recover excess amount of Rs.28,83,279/- from M/s Metallica Industries, Sanathnagar, Hyderabad without delay;
- iii. Evolve a fool proof mechanism to curtail such irregularities in the light of findings of Vigilance & Enforcement Department enquiry;

8. Pursuant to the said Vigilance Enquiry report respondent No.3 issued letter on 23.12.2019 directing the petitioner to remit amount of Rs.28,83,279. Thereafter, the petitioner submitted explanation on 01.07.2021 to the letter dated 23.12.2019. The respondent authorities without considering the explanation and without passing any order, issued impugned letter dated 31.12.2021 directing the

petitioner to remit the amount at the earliest and the same is clear violation of the principles of natural justice. The other ground raised by the petitioner is that the respondent issued the impugned letter dated 31.12.2021 solely basing on the Appraisal Report of Vigilance and Enforcement Department dated 22.08.2008 and the same is time barred.

9. The specific contention of learned Government Pleader is that the respondents have initiated the proceedings against the petitioner immediately after receiving Appraisal report dated 22.08.2008 from the Government and in spite of several reminders, the petitioner has not remitted the excess amount received from respondents and the impugned notice dated 31.12.2021 was issued directing the petitioner to remit the excess amount within the stipulated period of limitation. The dispute between the petitioner and respondent is a contractual dispute arising out of contract entered into by the parties through agreement dated 13.03.2004. Whether the petitioner has committed any breach of contract, whether he has claimed and received excess amount or whether the petitioner has supplied inferior quality material are disputed questions of facts which have to be adjudicated before competent Civil Court and the same cannot be decided in the writ petition.

10. Admittedly, pursuant to the letter dated 23.12.2019 the petitioner submitted detailed explanation on 01.07.2021 and respondents without considering the explanation submitted by the petitioner and without passing any order, straight away issued the impugned letter/order dated 31.12.2021 and the same is clear violation of the principles of the natural justice.

11. The Hon'ble Supreme Court in ***S.N. Mukherjee vs Union Of India***² held that administrative action must be supported by reasons. In this instant case also respondent No.3 passed the impugned order without considering the explanation submitted by the petitioner and without giving any reasons. The impugned order passed by respondent No.3 is clear violation of principles of natural justice.

12. In view of the foregoing reasons, without going into the other aspects of the case, the impugned letter passed by respondent No.3 dated 31.12.2021 is clear violation of principles of natural justice and the same is liable to be set aside. Accordingly, set aside. Respondent No.3 is directed to consider the explanation submitted by the petitioner dated 01.07.2021 and pass appropriate orders, in accordance with

² AIR 1990 (SC) 1984

law, by giving opportunity of hearing and liberty is given to the petitioner to raise all the grounds which are available under law.

13. Accordingly, the writ petition is disposed of. No costs.

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

JUSTICE J. SREENIVAS RAO

17th March, 2023
PSW

Note:

L.R. copy to be marked: 'Yes'

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PSW

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.3130 of 2022

17th March, 2023

PSW

Note:

L.R. copy to be marked: 'Yes'

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