HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR

WRIT APPEAL NOs.906 AND 246 OF 2025

DATE: 09.07.2026

BETWEEN:

W.A.NO.906 OF 2025

M/s. Gammon Engineers and Contractors Private Limited

... Appellant

AND

The Government for State of Telangana and Two Others.

...Respondents

W.A.NO.246 OF 2025

The Government for State of Telangana and Two Others.

... Appellants

AND

M/s. Gammon Engineers and Contractors Private Limited.

...Respondent

Sri V. Ravinder Rao, learned Senior Counsel representing Sri Ashok Reddy Kanathala, learned counsel appearing for the appellant in W.A.No.906 of 2025 and the respondent in W.A.No.246 of 2025.

Sri S. Rahul Reddy, the learned Special Government Pleader appearing for the respondents in W.A.No.906 of 2025 and appellants in W.A.No.246 of 2025.

COMMON JUDGMENT: (Per Hon'ble Justice Moushumi Bhattacharya)

1. In W.A. No.246 of 2025, the Government for the State of Telangana has challenged an order passed by a learned Single Judge of this Court on 20.01.2025 allowing Writ Petition No.4849 of 2024 filed by the Contractor/writ petitioner and directed the appellants/State to release the security deposit of Rs.10,00,00,000/- (Rupees ten crores only) to the Contractor/writ petitioner within a period of three (3) weeks from the date of receipt of a copy of the impugned order.

2. The Contractor/writ petitioner has challenged the same impugned order by way of W.A. No.906 of 2025 to the extent of the learned Single Judge granting liberty to the Government to proceed with an enquiry pursuant to a Notice dated 26.04.2024 issued by the Executive Engineer, Irrigation Division No.3, Nagarkurnool.

3. Since both the Writ Appeals consist of the same parties who are assailing the same order dated 20.01.2025 passed by the learned Single Judge of this Court, both the Writ Appeals are being disposed of by this Common Judgment.

4. The Contractor/writ petitioner is a Company engaged in the infrastructure business and participated in a tender floated by the appellants/State for the execution of the Stage III pumping station (5X30 MW) of the Kalwakurthy Lift Irrigation Scheme, Gudipalli Gattu Balancing Reservoir. The Contractor/writ petitioner emerged as the successful bidder and deposited Rs.10 crores towards the security deposit in the form of a bank guarantee in terms of Clause 1.44 of the General Terms and Conditions. The contract was an Engineering, Procurement and Construction ('EPC') contract whereby the drawings prepared by the Contractor/writ petitioner would be approved by the appellants/State for ensuring that the drawings and proposed equipment satisfy the broad specifications in the contract. The Contractor/writ petitioner requested the appellants/State to retain a sum of Rs.10 crores from out of its bills towards the security deposit which was acceded by the appellants/State.

5. The disputes between the parties with regard to retention of the security deposit culminated in the Contractor/writ petitioner approaching the Writ Court where it had prayed for a direction on the appellants/State to release the security deposit of Rs.10 crores.

Hence, the present controversy relates to refund of the said security deposit.

6. The Contractor/writ petitioner claims that it successfully completed the work/Contract awarded by the appellants/State. On the other hand, the appellants/State states that the security deposit was withheld by it since the audit para/objection alleged that the Contractor/writ petitioner received an unintended benefit of the Central Excise Duty exemption from for the electro-mechanical equipment.

7. We have heard the learned Special Government Pleader appearing for the appellants/State and learned Senior Counsel appearing for the Contractor/writ petitioner.

8. The learned Special GP submits that the Contractor/writ petitioner took the benefit of the Central Excise Duty, which was repeatedly pointed out by the office of the Accountant General (Audit). It is submitted that the Contractor/writ petitioner failed to rectify the objections taken by the Office of the Accountant General (Audit) and hence was disentitled to the refund of the security deposit.

9. Learned Senior Counsel appearing for the Contractor/writ petitioner submits that all the Audit objections were made by the Accountant General (Audit) and relied upon by the appellants/State during the pendency of the Writ Petition and are hence after-thoughts. Senior Counsel submits that mere objections were raised at a belated stage only to retain the security deposit. Senior Counsel however submits that the learned Single Judge erred in allowing the appellants/State to proceed with the enquiry in relation to the findings of the Department on 26.04.2024.

10. The dates relevant to the issue before us i.e., whether the appellants/State should be entitled to withhold the security deposit of Rs.10 crores, are as follows.

08.01.2004	The Ministry of Finance, Government of India, issued Notifications exempting Central Excise Tax (No.3/2004 C.E) and Customs Duty (No.14/2004 Customs) on the imported electro-mechanical equipment used for water supply project w.e.f. 09.01.2004.
12.01.2005	The State Government issued the subject tender notification. The tender document indicated the lump sum estimated value of the work.
28.09.2005	The tender acceptance document (No.10/EPC/MGJLIP/2005) indicated the lump sum estimated value and accepted bid value.

19.08.2018	Execution of the Contract/work was completed.
21.08.2021	Operation and Maintenance period (O & M Period) of the Contract/work was completed.
29.07.2022	Work completion Certificate was issued by the Engineer (Lr.No.EE/Irrg/Dn.No.3/Ngkl/lift.3/DB).
26.08.2023	Contractor/writ petitioner requested for release of Bank Guarantee amount since the one-year period inclusive of the O & M Period has expired by 21.08.2021.
24.11.2023	The Superintending Engineer replied to the said request stating that the Bank Guarantee amount cannot be released till the pending audit objections are cleared as per Clause 3.5.9 of the GTC.
19.04.2024	Audit officer informed the Project Authority that the outstanding objections/audit paras are dropped.
Feb, 2024	Writ Petition No.4849 of 2024 is filed questioning the communication dated 24.11.2023.

11. The above undisputed dates, read with the material papers placed before us, would show the following.

12. First, the exemption of Central Excise Tax and Customs Duty was notified by the Ministry of Finance, Government of India, on 08.01.2004 (Notification No.14/2004-Customs). This exemption was granted in relation to imported electro-mechanical equipment used for water supply projects and came into effect from 09.01.2004. The tender floated by the appellants/State admittedly was related to procurement of the same category of equipment. It

is undisputed that the EPC contract awarded to the Contractor/writ petitioner falls under the exempted category.

13. Second, the appellants/State Government issued the tender notification on 12.01.2005 which is almost one year after the said exemption Notification was issued. The tender document only indicated the lump sum estimated value of the work without specifying the item-wise rates and the tax component related to the item wise rates. Therefore, the tender acceptance document dated 28.09.2005 also indicated only the lump sum estimated value and accepted bid value without any indication as to the relevant rates or the tax component of the Project.

14. The following events took place after filing of the Writ Petition in February, 2024.

15. On 26.04.2024 *vide* a letter (Lr.No.EE/Irr.Div-3/AB/NGKL/ MGKLI – III/291), the appellants/State stated that the internal benchmarking (the initial bid estimate) prepared by the appellants/State was inclusive of the Central Excise Duty and so, the Contractor/writ petitioner had obtained the alleged unintended benefit of Rs.23,93,25,000/-. The Contractor/writ petitioner was

directed to remit the alleged excess amount in Running Account Bills for Rs.23,93,25,000/- in favour of the Executive Engineer, Irrigation Division No.3, Nagarkurnool. The letter dated 26.04.2024 alleged that the bidder (Contractor/writ petitioner), while preparing the price bid, was to take the taxes duties and expenses including excise duty, sales tax, customs duty, customs clearance, etc. into account for calculating their bid price. The letter further alleged that the Contractor/writ petitioner had quoted a price which was inclusive of all taxes and duties and that no break-up had been furnished on such taxes.

16. On 18.07.2024, the Office of the Accountant General (Audit) in its letter to the Executive Engineer, Irrigation Division No.3, Nagarkurnool, stated that there are no paras/objections pending against such work with the Public Accounts Committee.

17. On 31.07.2024, the Accountant General (Audit) addressed a letter to the Project Engineer about the unintended benefit accruing to the Contractor/writ petitioner by reason of the inclusion of Central Excise Duty in the estimate of the bid price. The amount of the unintended benefit was quantified at

Rs.4,428.59 lakhs. The Contractor/writ petitioner duly submitted an explanation to the said letter on 14.08.2024.

18. On 18.12.2024, the Executive Engineer, once again, issued a demand to the Contractor/writ petitioner to remit the sum of Rs.23,93,25,000/-.

19. The relevant dates indicate that the allegation of the Contractor/writ petitioner having taken the unintended benefit with regard to Central Excise Duty on equipment amounting to Rs.23,93,25,000/- is misplaced and without any basis. The exemption Notification issued by the Government of India exempting imported electro-mechanical equipment used in water supply projects from payment of Central Excise Tax and Customs Duty was in effect from 09.01.2004, which was almost one year prior to the tender notification issued by the appellants/State on 12.01.2005. Therefore, the appellants/State/Irrigation Department should have taken the effect of the exemption Notification into account while preparing the tender estimate in the tender document and also in the tender acceptance document dated 28.09.2005. There is no material on record to show that either of these documents issued by the appellants/State or any other

document issued to the Contractor/writ petitioner considered the said exemption while preparing the tender estimates.

20. The abstract placed by the appellants/State and included as part of Writ Appeal No. 246 of 2025, factoring in the Excise Duty exemption, was admittedly not part of the tender document. The said document was included later in the writ proceedings as part of the counter-affidavit. Hence, having entered into an agreement for the lump sum value of the contract, the appellants/State cannot seek to modify the contract value after the execution of the contract. The Contractor/writ petitioner participated in the bid in accordance with the tender document prepared by the appellants/State and accepted the tender on the conditions stated therein. None of the conditions took into account the exemption Notification issued by the Central Government. We are hence of the considered view that having failed to consider the exemption Notification and having indicated the lump sum estimated value of the work without specifying the item-wise rates and the tax component (pursuant to the exemption), the appellants/State cannot foist the liability on the Contractor/writ petitioner, that too at a belated stage, after the filing of the Writ Petition.

21. In this connection, it is relevant to refer to Clause 1.25 of the tender document which instructed the bidders' to include the total price with all customs duties, excise duties, sales tax, and other levies payable by the bidders in respect of the transaction as per the relevant policies while quoting their bid price. In fact, Clause 1.25 which clearly mentions excise duties etc., should not have been part of the bid document at all since the bid document was floated on 12.01.2005, after almost one year from the exemption Notification issued by the Central Government on 08.01.2004.

22. The relevant figures in the tender document and in the tender acceptance document do not show any break-up in relation to the exemption Notification. It is pertinent to mention that the appellants/State accepted the Contractor/writ petitioner's bid from between two bidders as it was the more competitive of the two. Moreover, Annexure-K of the tender document ('Details of Equipment to be covered in the Scope of Supply') required the Contractor/writ petitioner to furnish specifications of all the materials and equipment to be used for the work/Contract. Significantly, Annexure-K does not require the value of each item to be mentioned.

23. It is thus evident that the appellants/State is seeking to question and dispute the contractual value by disputing the lump sum value indicated by it and to rectify its own mistake in calculating the estimated value (internal benchmarking) of the work/Contract.

24. The documents on record also show that the appellants/State obtained an 'Essentiality Certificate' from the District Collector, as required by the Government of India Notification, showing that the equipment mentioned falls under the exemption granted by the exemption Notification on 08.01.2004 and is being used for a water supply project. This document is clearly contrary to the stand taken by the appellants/State that they were unaware or unmindful of the exemption Notification or that the responsibility for quoting the rates in accordance with the exemption Notification lay with the Contractor/writ petitioner. Notably, Certification from the District Collector was still mandatory even if the tender estimate did not include the Central Excise Tax and Customs Duty on the equipment. Consequently, the Essentiality Certificate does not assist the appellants/State and, in fact, contradicts its stand.

25. We also accept the submission made by Senior Counsel appearing for the Contractor/writ petitioner that the allegation of the unintended benefit is an after-thought and was entirely made up during pendency of the writ petition. This would be evident from the following.

26. On 24.11.2023, the Superintending Engineer, Irrigation, Circle No.1, Nagarkurnool, asked the Contractor/writ petitioner to comply with the Audit paras/objections as a pre-condition for issuing the Discharge Certificate. This letter does not mention any of the particulars of the alleged Audit paras/objections.

27. On 19.01.2024, The Accountant General (Audit) in its letter to the Executive Engineer stated that the three Audit paras/objections mentioned therein were dropped.

28. Writ Petition No.4849 of 2024 was filed by the Contractor/writ petitioner on 22.02.2024 for refund of the security deposit of Rs.10 crores.

29. On 18.07.2024, pending the Writ Petition, the Accountant General (Audit) state that there were no Audit paras/objections pending with the Public Accounts Committee. Hence, the

Accountant General (Audit) could not have had any further issues with either with issuance of Discharge Certificate or refund of the security deposit.

30. On 31.07.2024, during the pendency of the Writ Petition, the Accountant General (Audit) addressed a letter to the Executive Engineer stating, *inter alia*, that the Contractor/writ petitioner had availed of an unintended benefit due to the inclusion of Central Excise Duty on electro-mechanical equipment.

31. On 18.12.2024, the Executive Engineer issued a letter to the Contractor/writ petitioner for remitting the sum of Rs.23,93,25,000/-consequent to the letter of the Accountant General of 31.07.2024. The letter issued by the appellants/State on 18.12.2024 forms the basis of the challenge in Writ Petition.

32. The above sequence makes it evident that, not only is the allegation of unintended benefit a belated attempt to invent a charge post the Writ Petition but, it is also an attempt on the part of the appellants/State to shift the consequence of its own error onto the Contractor/writ petitioner. The turnaround on the part of the Accountant General (Audit) in reviving the charge of unintended benefit after giving a clean chit to the Contractor/writ

petitioner on 18.07.2024 smacks of arbitrary and unreasonable conduct.

33. The sequence of events shows that the appellants/State sought to invent new charges and resurrect closed ones solely for the purpose of avoiding the refund of the security deposit to the Contractor/writ petitioner.

34. The learned Single Judge rightly allowed the Writ Petition by holding that the appellants/State had failed to explain as to why the charge of unintended benefit was not taken by them within two years from the completion of the Project and that they had not rebutted the observations made by the Accountant General (Audit) on 18.07.2024, stating that there were no paras/objections pending against the Contractor/writ petitioner in relation to the works performed by it. The learned Single Judge also thought it fit, and correctly so, to reject the appellants/State's contention that the unintended benefit issue was taken in the Audit Report for the year 2009-2010. The learned Judge found that the State had not given any explanation as to why no action had been taken on the Audit Report for 15 years, till 2024.

35. We hence agree with the reasons given by the learned Single Judge in allowing the Writ Petition and directing the appellants/State to release the security deposit of Rs.10 crores within a period of three weeks from the date of the receipt of the copy of the impugned order.

36. We, however, do not agree with the liberty given by the learned Single Judge to the appellants/State to proceed with the enquiry pursuant to the Notice issued by the Executive Engineer to the Contractor/writ petitioner which directs it to remit the excess payment in Running Account Bills for Rs.23,93,25,000/-.

37. It is significant that the Contractor/writ petitioner duly gave its explanation/reply to this Notice on 14.08.2024 which is referred to in the subject reference in the appellants/State's letter dated 18.12.2024. The appellants/State's letter of 26.04.2024 and the Contractor/writ petitioner's reply of 14.08.2024 culminated in the appellants/State's letter dated 18.12.2024 which was assailed in the Writ Petition. The letter dated 18.12.2024 in fact reiterates the demand for remitting the amount of Rs.23,93,25,000/- as was made in the appellants/State's letter dated 26.04.2024. Since the learned Single Judge deemed it fit to allow the Writ Petition by

rejecting the effect of the letter dated 18.12.2024 and directing refund of the security deposit in favour of the Contractor/writ petitioner, there could not be any basis to revert to the letter dated 26.04.2024 again and permit the appellants/State to proceed with the enquiry in relation thereto.

38. In other words, allowing the Writ Petition and directing refund of security deposit and permitting the appellants/State to go ahead with an enquiry in relation to the alleged unintended benefits would be inconsistent and contradictory. The appellants/State cannot proceed with an enquiry which culminated in a letter which was negated by the learned Single Judge. Once the appellants/State were directed to refund the security deposit in its entirety i.e., Rs.10 crores, nothing further would remain for the enquiry to look into the unintended benefits of the Contractor/writ petitioner.

39. Thus, we agree with the contentions raised on behalf of the Contractor/writ petitioner (in W.A.No.906 of 2025) for deleting the observations/directions made in the impugned order passed by the learned Single Judge on 20.01.2025 with regard to the

appellants/State to proceed with the enquiry pursuant to the Notice dated 26.04.2024.

40. W.A.No.246 of 2025 is accordingly dismissed and W.A.No.906 of 2025 is accordingly allowed for the above reasons. All connected applications are closed. Interim orders, if any, shall stand vacated.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

Date: 09.07.2026
NDS