

HIGH COURT OF TRIPURA AGARTALA

WP(C) No.405 of 2022

M/s Jaypee Projects Limited, a Company, incorporated under the Companies Act, 1956, having its registered office at Trinity SG, 226/1, A.J.C Bose Road, Kolkata-700020, Represented by its Director, Sri Dilip Kumar Ghorai, son of Late Gobinda Prasad Ghorai, having his office at Trinity SG, 226/1, A.J.C Bose Road, Kolkata-700020.

..... Petitioner(s)

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
2. The Commissioner & Secretary, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
3. The Chief Engineer, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
4. The Superintending Engineer, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
5. The Executive Engineer, Public Works Department (Roads & Buildings), Government of Tripura, having his office at Capital Complex Division, Kunjaban, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura

..... Respondent(s)

For Petitioner(s)	:	Mr. Somik Deb, Senior Advocate. Mr. Pranabindu Chakraborty, Advocate.
For Respondent(s)	:	Mr. S.S. Dey, Advocate General. Ms. Ayantika Chakraborty, Advocate.
Date of hearing & Judgment	:	16th August, 2023.
Whether fit for reporting	:	YES

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioner. Also heard Mr. S.S. Dey, learned Advocate General appearing for the State respondents.

[2] The instant writ petition is primarily for payment of contractual dues totaling Rs.5,02,92,681.10/- along with interest @ 18% from the date it fell due i.e. 31.07.2012. Though the petitioner had prayed for quashing of a letter dated 28.07.2021 (Annexure-9) but it appears that it does not correspond to the pleading of the writ petition and in fact, there is no such letter. Therefore, learned senior counsel for the petitioner does not press that prayer.

[3] Brief facts, as are necessary for consideration of the issue at hand are that the petitioner was awarded the work under the Agreement No. T/01/CE/EE(CCD)/2007-08 for an amount of Rs.15,16,76,040.00/-. The stipulated date of completion was January, 2009. The said nature of work is reproduced hereunder:

"Construction of New capital Complex, Agartala (Project cost Rs.177.00 crores)/Composite Tripura Legislative Assembly Building and the New Secretariat of New Capital Complex, Agartala/Construction of Tripura Legislative Assembly Building/Balance Work."

[4] The original work was completed on 19.11.2011 and the additional work was also completed by 18.04.2015. The Executive Engineer, Public Works Department (Roads & Buildings), Government of Tripura, Capital Complex

Division, respondent No.5 issued completion certificates dated 19.11.2011 and 18.04.2015 (Annexure-2) for original work and additional work respectively in favour of the petitioner. Petitioner raised 14(fourteen) numbers of escalation bill on 19.05.2018. The respondent No.5 vide letter dated 07.09.2018 directed the Assistant Engineer to take on record summary of the bill appended with the letter for an amount of Rs.1,85,80,985.52/- as Annexure-A with the observation that the escalation bill has been prepared as per provision of the agreement under Clause-10 up to 19th running account bill. Thereafter, an exchange of correspondence started between the petitioner and respondent No.5 and also the petitioner and respondent No. 4, the Superintending Engineer, Public Works Department (Roads & Buildings), Government of Tripura on the subject of revision of the escalation bill submitted by the petitioner. Annexure-12 dated 22.03.2021 was issued by respondent No.5 upon petitioner asking him to withdraw his request for arbitration made through letter dated 15.02.2021 so that the matter can be placed before the Chief Engineer, PWD(Buildings). It also made an observation that the payment for the final escalation bill will be made to the petitioner on receipt of the approval of the competent authority. The security deposit as claimed by him will also be paid in due course. Petitioner replied vide Annexure-13 dated 06.04.2021 that he cannot seek to withdraw his letter dated 15.02.2021 since his claims are yet to be settled/finalized. He was again asked by respondent No.5 vide letter dated 18.10.2021 (Annexure-15) to re-submit his bills dated 10.03.2021 indicating that the escalation bills were to be processed to respondent No.3 for according approval. As desired by respondent No.3, petitioner was requested to re-submit the quarter wise escalation bill for the total period considering the first quarter from April, 2007 to June, 2007 in place of

July, 2007 to September, 2007. Petitioner was served with a reminder letter dated 20.11.2021 (Annexure-16) by respondent No.5. Thereafter, vide letter dated 24.11.2021 (Annexure-17), the respondent No.4 also directed the petitioner to attend discussion on letter of the petitioner dated 08.09.2021 on 30.11.2021. Respondent No.4 again asked the petitioner vide letter dated 27.01.2022 (Annexure-22) to attend the meeting and discuss the issue relating to the letters dated 22.12.2021 and 22.01.2022 on the claim for outstanding dues. The matter remained unresolved. Finally, by Annexure-23 dated 11.02.2022, the petitioner was informed by respondent No.5 in the following manner:

"To
The Director,
JAYPEE PROJECTS LTD
11, Clive Row (Dr. Rajendra Prasad Sarani)
Kolkata-700001
Mob-6290749647
Email:info@jaypee.co.in

Subject: "Construction of New Capital Complex at Agartala composite Tripura Legislative Assembly Buildings and the New Secretariat of Capital Complex, Agartala/Construction of Tripura Legislative Assembly Buildings/Balance Work"-regarding

Agreement No. T/01/CE/EE/CCD/07-08

Date of completion:-21/07/2012

Project Cost: Rs.177.00 Crore

Ref:- Your letter (i)No.F.C-024/DKG/061/21-22 dated 22-12-2021

(ii) No.F.C-024/DKG/21-22/057 dated 08.09.2021

Sir,

Please refer to your letter No. referred under Sl. No.(ii) wherein you have requested this office to resolve your "revised schedule of claims/disputes" under the above agreement within 15(fifteen) days and stated that if no positive action was taken from this end within the given time, you would have no other option but to take legal action as per law.

In this connection, a meeting was held in the office of the Superintending Engineer, Project Unit, PWD(Buildings) when the issue of your schedule of claims was discussed in detail in presence of your representative Smt. Somdatta Das.

In this regard, it is to inform you that the revised schedule of claims/disputes as raised by you in your above letter is not correct as up-to-date payment already made against your final bill in March 2021 and

provisional payment of Rs.1.89 crore made as per your bills received till March, 2021. Final Escalation bill as submitted by you is not based on scope & provision of the Agreement clause, hence could not be processed to Authority for approval.

Escalation bills so far submitted in different times were not based on provisions of scope of Agreement clause though out of total final projected Escalation bill submitted by you of Rs.2.46 crore, an amount of Rs.1.89 crore already paid to you provisionally, which is above 77% of total bill.

Your Final Escalation bills submitted under reference under Sl. No.1 is found not prepared in accordance with the escalation clause of the agreement and it is to be re-submitted fresh for taking further course of action from this end.

From the above break-up of payment made, it is concluded that you have no outstanding dues to claim to us.

However, you are requested to please submit the Final Escalation bills in correct shape this office for obtaining approval of the same from the competent authority at an early.

After getting approval of Escalation bill, your all outstanding payment will be made on availability of fund as soon as possible.

Hence your request to consider the appointment of arbitrator as per provision of clause 25 of the agreement for settlement of disputes/claims and taking legal action against the department as per law is not at all justified and acceded to.

Yours faithfully

Sd/

(Er. Manik Debnath)

Executive Engineer,

Capital Complex Division, PWD (R&B)

Kunjaban Extension, Agartala.

Copy to:-

- 1) The Chief Engineer, PWD(Buildings) New Secretariat Complex, Agartala for kind information please.
- 2) The Superintending Engineer, Project unit PWD(Buildings) New Secretariat Complex, Agartala for kind information please.

Executive Engineer

Capital Complex

Division, PWD(R&B)

Kunjaban Extension, Agartala."

[6] Learned senior counsel for the petitioner submits that the outstanding claim of the petitioner is contained in a tabular chart at Annexure-24 and it also corresponds to the request made by the petitioner at paragraph 3.9 of the writ petition. Petitioner's revised claim has not been finally considered and disposed of as yet.

[7] Respondents No.1 to 5 have filed a counter affidavit which in substance refers to Clause 25 of the contract containing the mechanism for settlement of disputes. Learned Advocate General submits that the claim being raised by the petitioner is amenable to the mechanism provided for settlement of disputes under Clause 25 which the petitioner should have invoked. The quantum of the claim raised by the petitioner has never been admitted. Therefore, the writ petition is not maintainable on the basis of disputed facts.

[8] Rival submissions have been made on the question of arbitrability of the claim raised by the petitioner. On the one hand, learned senior counsel for the petitioner has taken objection to the stand of the respondents for reference of the dispute for arbitration on the ground that if part of the claim such as at item (ii) and (iii) relating to escalation bills cannot be bifurcated from the whole claim the matter could not be referred for arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996 as amended. It is also submitted that the respondents have all along engaged in correspondence and discussion on the question of escalation bills raised by the petitioner at item (ii) and (iii) in particular. The claim does not stand denied by the competent authority even till date. As such, petitioner has rightfully invoked the writ

jurisdiction for appropriate directions/mandamus upon the respondents to consider and decide the claim of the petitioner in accordance with law. It is also submitted that the issuance of completion certificate both for original work and additional work is in itself a proof of due execution of the work by the petitioner. Whether the outstanding claims relating to escalation bills as per the terms and conditions of the agreement are admissible or not and whether the remaining claims relating to return of security deposit and interest are admissible or not has to be decided by the competent authority of the Department. In case, the part of the claim or whole of it is allowed or some part of it is disputed then only the question of invoking an alternative dispute resolution mechanism or the forum of the competent Civil Court for adjudication on the disputed amount can be raised.

[9] Therefore, a suitable direction may be passed upon the respondent authorities to consider and take a decision on the claim of the petitioner in accordance with law within a stipulated time period as the petitioner continues to suffer on account of non-payment of the outstanding dues being a running business concern.

[10] Learned Advocate General has at the outset taken objection to the maintainability of the writ petition in view of the availability of a dispute redressal mechanism under Clause 25 of the agreement. He also submits that none of the dues are admitted by the respondents. None of the correspondences placed on record do show a final admission of the claim of the petitioner by the competent authority. If the claims are not finally resolved, no writ of mandamus

or appropriate direction can be issued for payment thereof as the petitioner has prayed for in the writ petition.

[11] However, learned Advocate General does not dispute that after the series of correspondences between the petitioner and the respondent authorities and the discussion made on the claims raised by the petitioner, no final decision has been taken by the competent authority either rejecting the claim or admitting part or whole of it. Learned Advocate General is, therefore, not averse to the proposition that the competent authority can be directed to take a decision on the outstanding claim of the petitioner as at Annexure-24.

[12] I have considered the submissions of learned counsel for the parties and taken note of the relevant pleadings and also the documents placed from the record referred to hereinabove. The chronology of dates and correspondences referred to in the narrative hereinabove creates the impression that till date no decision on the claim of the petitioner has been taken by the competent authority under the respondents. It is also evident that his claims have not been outrightly rejected. The series of correspondences up to Annexure-23 dated 11.02.2022 indicates that the respondents have once again requested the petitioner to submit the final escalation bill in correct shape for obtaining approval from the competent authority at an early date. It also indicates that after getting approval of the escalation bill, his outstanding payment will be made on availability of fund as soon as possible. In fact, the letter dated 11.02.2022 also indicates that the request for arbitration under Clause 25 of the agreement for settlement of disputes/claims and taking legal

action against the department is not at all justified and acceded. In such circumstances, the obvious inference is that the decisions on the outstanding claims of the petitioner are yet to be taken. Whether the dues are admissible or not cannot be determined in the present writ petition since they relate to admissibility of the claims as per the terms and conditions agreed between the parties as per the measurements and the records relating to the execution of the work maintained by the respondent authorities.

[13] In the aforesaid circumstances, therefore, this Court is of the considered opinion that the competent authority under the respondents should take a decision on the claims of the petitioner, as referable in letter dated 28.02.2022 (Annexure-24 to the writ petition). Learned counsel for the petitioner and learned Advocate General both have agreed to confine the claims as are borne out from the letter dated 28.02.2022 submitted by the petitioner in response to the request of respondent No.5 vide letter dated 11.02.2022 which has been extracted hereinabove. Such exercise would necessarily require scrutiny of the records relating to execution of the work by the petitioner and also the terms and conditions of the agreement entered into between the parties. The exercise may entail considerable time. Therefore, this Court without expressing anything on the merits of the claim of the petitioner is inclined to dispose of the writ petition with a direction to the competent authority under the respondents to take a decision on the claim of the petitioner as are contained in Annexure-24 dated 28.02.2022 to the writ petition within a reasonable time preferably within a period of 12(twelve) weeks from the date of receipt of copy of this order. Needless to say, the competent authority would take a decision

and pass a reasoned order on the claim of the petitioner within the aforesaid time. In case, the claim of the petitioner or part of it is found to be admissible, the respondent authorities would ensure that the admissible dues are released in favour of the petitioner within a reasonable period preferably within 8(eight) weeks thereafter. In case the petitioner is aggrieved by the decision taken by the respondent authorities, he may have his remedy in an appropriate proceeding before the appropriate forum in accordance with law. The writ petition stands disposed of in the aforesaid manner.

Pending application(s), if any, also stands disposed of.

Aparesh Kumar Singh
(APARESH KUMAR SINGH), CJ

Rudradeep

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Date: 2023.08.21 16:27:08 +05'30'