

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C) No. 427 of 2022

Date of Decision: 05.05.2023

**Adarsh Saraswati Mahila Shiksha      Vs.      State of Meghalaya & Ors.**  
**and Gramin Vikas Samiti**

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. F. Hasan, Adv.  
Ms. M. Rahman, Adv.

For the Respondent(s) : Mr. S. Sahay, Adv. with  
Ms. A. Thungwa, GA.

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|-----|------------------------------------------------------|--------|
| i)  | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press:           | Yes/No |

**JUDGMENT AND ORDER**

1. The petitioner, a registered society engaged in the implementation of Jal Jeevan Mission activities is before this Court,

challenging the impugned termination notice dated 27.09.2022, issued by the respondent No. 2, terminating the letter of award dated 01.07.2021, issued to the petitioner as an Implementation Support Agency, under Jal Jeevan Mission, Meghalaya.

2. Mr. F. Hasan, learned counsel for the petitioner submits that, the petitioner was awarded contract for 5 (five) districts, and though the schedule of completion of the works was adhered to, with regard to Phase I of the project, the respondent No. 2, vide letter dated 02.07.2022, had communicated that the petitioner had failed to complete the works within the stipulated time period and had directed the petitioner to complete the Phase I activities within 15 (fifteen) days from the date of issuance of the said letter. He further submits that, the works of the petitioner was completed, as per the requirement of the respondents, but however, the respondents cancelled the work awarded to the petitioner, on the pretext of failure to complete the project within the stipulated timeframe.

3. Learned counsel submits that the impugned order is a non-speaking order because it does not give a complete picture, with regard to the basis of cancellation, nor does it reveal the reasons as to why the respondents have arrived at a decision to cancel the contract. It is submitted that, the impugned order being a non-speaking order is

unsustainable in law, and being arbitrary, is violative of the fundamental rights. Referring to the affidavit filed by the State respondents, the learned counsel submits that, wild allegations have been made against the petitioner regarding corrupt practices, such as, offering of bribe to the District Project Manager, which allegation however, does not find place, or mentioned in the impugned order. The learned counsel, has then taken this Court to the terms of reference contained in the document dealing with selection of Implementation Support Agencies (ISA) under Jal Jeevan Mission (JJM), and submits that, it is given therein that the empanelment is valid for 3 (three) years, which can be extended depending on the requirement of the services, and that for new schemes, each ISA would be responsible for the entire project circle of maximum 18 (eighteen) months to 40-60 villages at a time.

4. The learned counsel then submits that as per the agreement, the work is to be completed within 18 (eighteen) months subject to extension, in four phases, that is, pre planning phase, planning phase, implementation phase and O & M Phase, which includes testing and trial runs, handing over of schemes etc. He submits that, each phase was required to be completed within the time allotted for each phase, namely Phase I – (2 months), Phase II – (3 months), Phase III – (10

months) and Phase IV - (3 months). It is further submitted that, upon submission of Phase – I report, the District Authorities had conducted field verification on the Phase – I deliverables and recommended release of bills of the petitioner, but that before the said payment could be released to the petitioner, the termination order was issued. Thereafter, he submits representations were filed requesting for revocation of the termination order, and for release of the payment for the Phase – I work, and it is contended that, the petitioner had already completed 100% of the Phase – I work; and for other ISA's under Jal Jeevan Mission, time was extended for implementation of the work.

5. The learned counsel submits that, Para – 18 of the terms and conditions prescribes the penalty (Liquidated Damages) for non-completion of works within the timeframe. It is submitted that, the right to terminate the contract would arise only when there was failure to complete the whole work after 10 (ten) weeks from the actual date of completion. In the petitioner's case, he submits the actual date of completion as per the agreement dated 08.07.2021, would expire on January, 2023, and as such, the termination of the contract by the respondent No. 2, before the expiry of such time is arbitrary and illegal. It is has been contended that, hostile discrimination has been shown towards the petitioner, as different treatment has been given to other

similarly situated societies, who are also carrying on the same nature of work on the same conditions. He lastly submits that, the respondents cancelled the contract, without affording the petitioner opportunity to show cause or to be heard, and as such, for the violation of Natural Justice, the impugned cancellation order is liable to be set aside and quashed.

6. Mr. S. Sahay, learned counsel for the State respondents has submitted in reply, that the writ petition should be dismissed at the threshold itself, as the writ petitioner has come before this Court with unclean hands. The petitioner, he submits has not placed the entire correct facts before this Court, and has even indulged in corrupt practices and offered bribes to the District Project Manager, Jal Jeevan Mission, in course of the execution of the project works, which form the subject matter of the instant proceedings. He further submits, the action of the petitioner has resulted in the initiation of criminal proceedings, for which an FIR has been registered before the Superintendent of Police, South West Garo Hills on 20.10.2022. The concealment of this fact before this Court he submits, amounts to the commission of fraud on this Court, as this Court was persuaded to pass orders, whereby the respondents have been restrained from awarding

the pending contract works, if the same has not already been allotted to others.

7. Learned counsel submits that, the documents filed by the petitioner are selective, with a view to mislead this Court, to prevent it from examining the true and correct facts of the case. He submits, copies of complaints received between November and December, 2021, on account of unsatisfactory work have not been placed, nor has the default of the petitioner in attending to follow up meetings to review the progress of work been disclosed. It is submitted that, the petitioner also has failed to disclose that on 18.01.2022, a show cause had been issued for slow progress of work, and the admission of the petitioner to the delays, by letter dated 21.01.2022. The instances of further concealment, have been narrated by the learned counsel, who submits that, the concealment by the petitioner is with a view to fraudulently mislead this Court, to exercise jurisdiction in favour of the petitioner which the facts of the case, do not otherwise warrant.

8. It has been contended by the learned counsel that, the petitioner has failed to disclose the existence of any enforceable right in its favour, and there being no violation of any right, the prayer of the writ petitioner is unsustainable. It is further submitted that, the writ petition has been filed in a matter arising out of a contract, and it is a

well settled principle that, where the relationship is governed purely in terms of a contract between the parties, the same is in the realm of private law, and no writ would lie in such matters. Learned counsel submits that, as per the settled position of law, Courts shall refuse to exercise its writ jurisdiction in such matters, especially if there is no element of public law, the presence of a particular mode of settlement provided in the contract, the presence of serious disputed questions of fact and money claims, aspects which have been consistently reiterated in various judgments of the Hon'ble Supreme Court.

9. It has been further submitted that the writ petition is also unsustainable on merits, as the first relief prayed for is of specific performance after the termination has already taken place, the second relief prayed for extension of time, will amount to altering the terms of the contract, and the final relief prayed for release of payments which have not been made on account of numerous reasons, such as, incomplete bills, vouchers, etc., which are yet to be verified, is also unsustainable. In conclusion, learned counsel submits that, even otherwise, as per clause 18 of the agreement, the same was liable to be terminated, as the work of Phase I itself, was delayed beyond 10 (ten) weeks, of the 2 (two) months period allowed, and the writ petition apart from not being maintainable, has not disclosed any enforceable legal

right. As such he submits, the same should be dismissed with heavy costs for concealment of correct facts and for approaching this Court with unclean hands.

10. Having heard learned counsels for the parties, an examination of the nature of dispute raised by the writ petition, and in consideration of the objections as to maintainability of the writ petition put forward by the respondents, this Court deems it necessary to first address the matter on the point of maintainability.

11. The relationship of the parties, it is noted is governed purely by a contract and the terms contained therein (Annexure – 2 to the writ petition), which was entered into by the petitioner and the respondent No. 2 on 08.07.2021 (Annexure – 4 to the writ petition). A perusal of the terms and conditions and the agreement dated 08.07.2021, leaves no room for doubt that the writ petitioner had agreed and undertaken to perform and fulfill all the operations and obligations with the execution of the said contract, as per the terms and conditions contained in the Empanelment of Implementation Support Agencies for Support Activities under the Jal Jeevan Mission in the State of Meghalaya. The terms and conditions contained in the said document have clearly provided for the details, such as, the scope of work, its commencement, period allowed for completion of contract, jurisdiction with regard to

disputes, if any, and also for penalty (Liquidated Damage) if the progress of work is not found satisfactory.

12. As the relationship is governed purely in terms of the contract as discussed above, in such cases contractual obligations are therefore matters of private law and a writ would not lie to enforce any civil liability arising out of such contracts. The instant case is also not a case of enforcement of a statutory contract just because it is for construction of a public utility, as can be discerned from the terms and conditions of the contract. Without referring to any particular decision, but from the various judgments of the Hon'ble Supreme Court, down the years, the law is well settled that in pure contractual matters, extra ordinary jurisdiction under Article 226 is not invoked, unless exceptional circumstances are present, which might come into the realm of public law, which is clearly not the situation in the present case.

13. The writ petitioner has also raised questions of disputed facts in the form of bills that have been claimed, which are yet to be verified and subject to the extent of work completed, which disputes formed the basis of the termination of the contract. The correctness of the termination therefore, having to be adjudged against these factors, the

dispute cannot be resolved or adjudicated in a writ proceeding such as the present one.

14. On the other aspects, this Court finds force in the submission of the respondents that, the writ petition is unsustainable on merits, as relief of specific performance is being sought after the termination of the agreement, apart from the writ petitioner seeking extension of the stipulated time for execution of the contract, as this will amount to altering the terms thereof.

15. The allegation of the petitioner that the termination order is non-speaking and that, adequate opportunity was not afforded before terminating the contract deserves no consideration, as the writ petitioner has not demonstrated any enforceable right, or any violation thereof, to warrant any interference in exercise of powers under Article 226 of the Constitution.

16. Without delving into the other contentions and the events that have been put forward by the respondents such as, the charges of corrupt practices, the institution of criminal cases, and other documents illustrating the breach of agreement and the default of the writ petitioner in the execution of the contract, this writ petition fails on the ground of maintainability itself.

17. Accordingly, for the foregoing reasons and discussions, this writ petition stands dismissed and disposed of.

18. No order as to costs.

**Judge**

Meghalaya  
05.05.2023  
"D.Thabab-PS"

