

GAHC010027052020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case : WP(C)/1156/2020

M/S. PROTIVA ENTERPRISE
A PROPRIETORSHIP FIRM
REP. BY
SRI SIDDHARTHA CHAKRABORTY
AGED ABOUT 47 YEARS
S/O- LT. BYOMKESH CHAKRABORTY
RESIDENT OF 9/6 VIJOYGARH
JADAVPUR
KOLKATA
700032
WEST BENGAL.

VERSUS

UNION OF INDIA AND 3 ORS.
REP. BY THE SECY.
DEPTT. OF INFORMATION AND BROADCASTING
GOVT. OF INDIA
SHASTRI BHAWAN
039A AND 039 WING
NEW DELHI- 110001.

2:CHIEF EXECUTIVE OFFICER
PRASAR BHARATI BROADCASTING CORPORATION OF INDIA
PARLIAMENT STREET
NEW DELHI 110001.

3:DIRECTOR GENERAL
ALL INDIA RADIO
SANSAD MARG
NEW DELHI
110001.

4:ADDL. DIRECTOR GENERAL (NEZ)
ALL INDIA RADIO

DOORDARSHAN KENDRA COMPLEX
R.G. BARUAH ROAD
GUWAHATI- 781024
KAMRUP(METRO)
ASSAM.

For the petitioner (s) : Mr. S. S. Barooah, Advocate

For the respondent (s) : Mr. K. K. Parasar, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

31.08.2023

The instant writ petition has been filed seeking a writ in the nature of mandamus directing the respondents to release the security deposit in relation to the contract work with interest.

2. The facts involved in the instant writ petition as could be seen from a perusal of the pleadings are that a work order dated 24.09.2015 was issued in favour of the petitioner for supply, fabrication, fixing and fixing of MS C-section with other allied works at 200 KW MW DRM Transmitter AIR, Pasighat. From a perusal of the said work order dated 24.09.2015, it reveals that there are various terms and conditions mentioned therein. It further reveals that value of the work order was mentioned as Rs.4,10,000/-. The period of completion of the work was 30 days from the date of issuance of the work order or LoI whichever is earlier. As per Clause 9 of the terms and conditions stipulated in the work order, 10% of the work value would be retained as security deposit for the warranty period from the date of completion of the work. In terms with Clause 13

of the work order, the liquidated damage for late delivery was stipulated. It was mentioned that the store/work is to be supplied/completed within the delivery period as stipulated in the work order. Otherwise, the liquidated damage for delay as per the details given shall apply. The details so given stipulated that normally the liquidated damage is payable @ 2% of the contract price per month subject to a maximum of 10% of the contract price.

3. It reveals from the records, more particularly, from the affidavit-in-opposition filed by the respondents that though the contract value was Rs.4,10,000/- and the period of completion of the work was on or before 23.10.2015, but the work could not be completed by the petitioner. There were various extensions given without the liquidated damage and subsequently there was an extension given with liquidated damage. It further reveals that the petitioner had submitted the bill on 09.12.2015 for payment of Rs.4,10,000/-. It reveals that though the petitioner completed the works at Sl. Nos.2, 3, 4, 6, 8 & 9, but the works at Sl. Nos.1, 5 & 7 were not completed. It further reveals that the final bill was finalized by the Installation Officer of the respondents at Rs.1,77,000/- and the said amount was duly paid to the petitioner without any deductions.

4. It further reveals from the affidavit-in-opposition that the respondent authorities claim to be entitled to Rs.41,000/-on account of liquidated damages in terms with Clause 13 of the Work Order, i.e. Rs.41,000/-. It is also the case of the respondent authorities that no amount was deducted at the time of releasing the amount of Rs.1,77,000/-. Further to that the FDR of Rs.41,000/- so submitted by the petitioner had also expired on 14.03.2017 but presently lying in the custody of the respondents.

5. I have heard the learned counsels for the parties and perused the materials on record. From the materials on record, it reveals that in the Agreement entered into by and between the petitioners and the respondents dated 24.09.2015, it was stipulated at Clause 2 that 10% of the order value would be retained as security deposit for one year from the date of completion of the work. It was also stipulated that successful tenderers who had deposited a Performance Guarantee equivalent to 10% cost of the total job after getting the LoI, can convert it into security deposit after completion of the work.

6. The facts further show that the petitioner submitted the Performance Guarantee FDR on 14.02.2015 which was reviewed on 17.09.2015. Now coming to the Agreement dated 24.09.2015, and more particularly to Clause 13, it shows that the maximum liquidated damage that can be imposed is 10% of the contract value, i.e. Rs.41,000/- in the instant case.

7. It further reveals from Annexure-8 to the affidavit-in-opposition that out of the total value of work, the petitioner completed work to the tune of Rs.1,77,000/- and work of the value of Rs.2,33,000/- was not done and as such Rs.1,77,000/- was released that too without any deduction made of 10% from the bill.

8. Under such circumstances, the question arises as to whether the petitioner would be entitled to the return of the Performance FDR of the value of Rs.45,665.74p as could be seen from Annexure-7 of the affidavit-in-opposition. In the opinion of this Court, this aspect needs to be best left to the respondent authorities to take a call as to whether the respondent authorities would invoke Clause 13 of the Agreement for the purpose of liquidated damages in as much as the materials on record do not show

that such action have been resorted too.

9. Accordingly, this Court disposes of the writ petition granting liberty to the petitioner to submit a representation along with this order seeking return of the FDR of the value of Rs.45,665.74p lying with the respondents. The respondents, upon receipt of the representation, shall take a call as regards the imposition of liquidated damages if deemed fit, which under no circumstances can be more than Rs.41,000/- and do the needful. It is observed that keeping the FDR with the respondents would not serve the purpose of both the petitioner as well as the respondents as the amount lying in FDR is only stagnating. This Court further directs that the entire exercise be completed within 45 days from the date of submission of the representation along with the certified copy of this order.

JUDGE

Comparing Assistant