

GAHC010027052020



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

Case No. : WP(C)/816/2020

M/S. PROTIVA ENTERPRISE
A PROPRIETORSHIP FIRM, REP. BY SRI SIDDHARTHA CHAKRABORTY, S/O.
LT. BYOMKESH CHAKRABORTY, R/O. 9/6 VIJOYGARH, JADAVPUR,
KOLKATA, 700032, WEST BENGAL.

VERSUS

UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY, 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 (M)
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 19.02.2015 was issued in favour of the petitioner for supply, fabrication, fixing and installation of 120 ohm 16 wire feeder line works at 100 kw MW DRM Transmitter at All India Radio, Pasighat. From a perusal of the said work order dated 19.02.2015, it reveals that there are various terms and conditions mentioned therein. It further reveals that value of the work order was mentioned as Rs.15,72,687/-. The period of completion of the work was 90 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.15,72,690/- and the period of completion of the work was 20.05.2015, 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.

4. It further reveals that the petitioner had submitted the bill on 29.03.2016 for payment of Rs.10,83,669/- and the said amount was paid after making deduction of 10% of the bill amount. It further reveals that the final bill was finalized by the Installation Officer of the respondents at Rs.13,18,783/- and by deducting the earlier part payment of Rs.10,83,669/-, the differential amount was Rs.2,35,114/-. Upon deduction of another 10% from the said amount, the petitioner was paid an amount of Rs.2,11,603/-. Therefore, 10% of the final bill of Rs.13,18,783/-, i.e. Rs.1,31,878/- was retained by the authority due to non-completion of the work by the petitioner.

5. It is relevant further to take note of that the imposition of 10% as liquidated damage on the value of the work done by the petitioner has not been put to challenge. Therefore, the deduction and retainment of the amount of Rs.1,31,878/- by the respondent authorities cannot be called in question.

6. Be that as it may, the petitioner at the time of submission of the bill submitted an FDR of an amount of Rs.1,57,269/- which was 10% of the value of the contractual work. However, while the disputes were going on as to whether the security deposit should be paid to the petitioner or not, the said FDR was encashed by the petitioner.

7. Under such circumstances, it is the opinion of this Court that the question of issuance of a direction in the instant proceedings for payment of security deposit of Rs.1,31,878/- to the petitioner does not arise as the same forms the liquidated damage which the respondents have levied upon the petitioner for non-completion of the work in terms with Clause 13.

8. In that view of the matter, the writ which have been sought for in the instant writ petition cannot be issued, and accordingly, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant