

GAHC010027052020



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

Case No.: WP(C)/996/2020

M/S. PROTIVA ENTERPRISE
A PROPRIETORSHIP FIRM
REP. BY
SRI SIDDHARTHA CHAKRABORTY
AGED ABOUT 47 YEARS
S/O- BYOMKESH CHAKRABORTY
R/O- 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:THE 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
GHY.- 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
ORDER

31.08.2023

The instant writ petition is filed by the petitioner seeking a direction upon the respondents to release the security deposit along with interest agreed thereon on the deposit instrument and interest under Interest Act, 1978 in relation to the contract works.

2. The facts as could be discerned from the perusal of the writ petition and the affidavit-in-opposition are that the petitioner entered into an agreement on 15.09.2015 with the respondent authorities for the purpose of supply, fabrication, fixing head exchanger foundation, dummy load and other related works at 100 KW MW DRM Transmitter AIR, Pasighat. In terms with the said agreement, the completion period of the work was 90 days from the date of issuance of the work order or the date of the LoI whichever is earlier subject to force majeure.

3. It is pertinent to take note of that in the work order dated 20.10.2015, it was mentioned that LoI was issued on 03.06.2015 and as per the agreement Clauses, the completion period was 90 days from the date of issuance of LoI which was 02.09.2015. It is further seen from the said work order that the period of the contract was further extended to

15.11.2015.

4. It is further relevant to take note of that the petitioner could not complete the work within the given time, i.e. 15.11.2015 and the petitioner requested for an extension vide the communication dated 10.12.2015 by another two months. The respondent Department, thereupon, vide the letter dated 16.12.2015, extended the time upto 15.01.2016. It further reveals that the petitioner submitted a bill on 29.03.2016 for an amount of Rs.7,05,000/-. The Installation Officer of the respondent authorities, however, verified the bill for final payment of Rs.3,19,000/-. Accordingly, after deducting Rs.31,900/-, the remaining amount of Rs.2,87,550/- was released to the petitioner. The record further reveals that the petitioner had submitted certain representations before the respondent authorities claiming the total amount of Rs.7,05,000/-. In view of the said representations, the respondent authorities proposed the joint inspection to be carried out on or before 30.09.2016 by the communication dated 30.08.2016, and subsequently, on or before 30.11.2016 vide the communication dated 21.10.2016. It further reveals that vide the communication dated 31.07.2017, the Deputy Director, Engineering of the respondent authorities issued the final bill payment. In terms with the said final bill payment, it was mentioned that the petitioner was only entitled to Rs.3,19,000/- and the petitioner be paid an amount of Rs.2,87,500/- being the 90% of the said amount after deducting 10%.

5. This Court further finds it relevant to observe that the petitioner had deposited an FDR of a value of Rs.70,500/- with the respondent authorities as Performances Guarantee which is however still lying with the respondent authorities.

6. In the backdrop of the above facts, the petitioner had filed the instant writ petition seeking a direction upon the respondent authorities to refund the security deposit. However, it is relevant to observe that in the writ petition, no details have been mentioned except stating in paragraph No.14 that the respondent authorities have retained the security deposit to the tune of Rs.1,02,400/-. On the other hand, from a perusal of the affidavit-in-opposition, it reveals that it is the claim of the respondent that they are entitled to an amount of Rs.70,500/- on account of liquidated damages being 10% of the total contract value as the petitioner failed to complete the work amounting to Rs.3,86,000/- out of the total work value of Rs.7,05,000/-. It was also mentioned that the respondent authorities have also incurred a loss of Rs.1,09,100/-.

7. In the backdrop of the above, the question, therefore, arises as to whether this Court should issue a writ directing the respondent authorities to refund the security deposit of an amount of Rs.1,02,400/- as claimed by the petitioner.

8. From a perusal of the materials on record it cannot be ascertained as to whether the petitioner had completed the work or not in as much as the petitioner had submitted a bill of Rs.7,05,000/- whereas as per the verification so carried out by the respondent authorities, the petitioner did not complete the work to the tune of Rs.3,86,000/- and had only completed the work to the tune of Rs.3,19,000/-. This Court also cannot be unmindful of the fact that the right has been conferred upon the respondent authorities to impose liquidated damages upto a maximum amount of Rs.70,500/- and not more in view of Clause 13 of the agreement. The fact that an amount of Rs.31,900/- has already been

deducted is not in dispute. Under such circumstances, the respondent authorities would best be entitled to an amount of Rs.38,600/- and not more.

9. Taking into account the limited scope in the instant writ petition in view of the disputed question of facts as to how much work the petitioner had completed, this Court can only directs the respondent authorities to return the FDR lying with the respondent authorities of the value of Rs.70,500/- subject to the petitioner depositing an amount of Rs.38,600/-, and accordingly, this Court, therefore, grants liberty to the petitioner to deposit an amount of Rs.38,600/- to the respondent authorities and the respondent authorities then shall forthwith return the FDR of the value of Rs.70,500/- lying in its custody.

10. It is further observed that the said direction under no circumstances shall prejudice the right of the petitioner to claim the remaining amount of Rs.3,86,000/- from the respondent authorities in a proceedings wherein the disputed question of facts can be adjudicated. This Court further clarifies that upon the petitioner depositing the amount of Rs.38,600/- along with certified copy of the instant order to the respondents, the respondents shall within 30 days therefrom return the FDR to the petitioner.

11. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant