

Court No. - 40

Case :- WRIT - C No. - 30905 of 2023

Petitioner :- M/S Yuwa Shakti Construction And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Durga Tiwari

Counsel for Respondent :- C.S.C.,Chandra Shekhar Singh,Chetan Chatterjee

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Mrs. Durga Tiwari, learned counsel for the petitioners; learned Additional Chief Standing Counsel for the State respondent no. 1 and Sri C.S. Singh, learned counsel for the Purvanchal Vidyut Vitran Nigam, Varanasi (respondent nos. 2 to 6).

2. The matter was heard at length on 02.11.2023 and 28.11.2023 and this Court had proceeded to pass detailed orders with the following observations.

"2.11.2023

1. Heard Ms. Durga Tiwari, learned counsel for the petitioners, Sri S.C. Upadhyay, learned Standing Counsel for State-respondent no.1 and Sri Chandra Shekhar Singh, learned counsel for respondent nos.2 to 6.

2. Sri C.S. Singh, learned counsel for contesting respondents, on the basis of instructions, submits that the respondent department had raised two objections and in absence of removal of the said objections, the department is unable to process the claim set up by the petitioners.

3. Learned counsel for the petitioners states that for one reason or the other, the petitioner company is being unnecessarily dragged in the litigation. Even though all the relevant papers have already been furnished but in case the Court is inclined to fix some date, then definitely on the said date the authorised representative of the company would appear before the respondent authority so that the objections may be removed. It is also pressed that after removal of the objection, the time may be fixed so that the entire amount may be released in favour of the petitioner.

4. In view of above, we direct that in case, the petitioner appears before the concerned authority within a week's time and removes

all the objections, it is expected that thereafter the claim of the petitioner is to be processed by the authority and apprised on the next date fixed.

5. On the joint request of parties, put up this matter again as fresh on 28.11.2023.

28.11.2013

1. Heard Mrs. Durga Tiwari, learned counsel for the petitioners; learned Additional Chief Standing Counsel for the State respondent no.1 and Sri C.S. Singh, learned counsel for Purvanchal Vidyut Vitran Nigam, Varanasi (respondent nos. 2 to 6).

2. Present writ petition is preferred for a direction commanding the Managing Director, Purvanchal Vidyut Vitran Nigam, Varanasi (respondent no.2) to decide the claim set up by the petitioner and ensure the payment in pursuant to the bill/order dated 12.10.2020 and demand letter dated 22.10.2020 submitted by the Chief Engineer (Distribution), Basti Region, Basti (respondent no.4) to the Executive Engineer, Electricity Distribution Division-II, Domariaganj, District Siddharthnagar (respondent no.6).

3. The matter was heard at length on 02.11.2023 and on the said date, Sri C.S. Singh, who appears for the respondent Corporation, on the instructions submitted that the respondent Corporation had raised two objections and in absence of removal of the said objections, the department is unable to process the claim set up by the petitioners. Even on the said date, the letters dated 19.06.2023 and 03.10.2023, which were written by the Director (Finance), Purvanchal Electricity Distribution Nigam, Varanasi to the Executive Engineer, Electricity Distribution Division, Dumariaganj, Siddharthnagar, were placed and while writing these letters, certain clarifications were asked so that the claim of the petitioners could be processed. On the previous date, the petitioner's counsel had raised an objection that for one reason or the other, the petitioner company is being unnecessarily dragged in the litigation. Even though on various occasions, for reconciling bills, adequate details have already been supplied to the respondent Corporation but till date, the objections have not been removed and actual payment has not been ensured. For reconciling the bills, the matter was adjourned on 02.11.2023.

4. Today, when the matter is taken up, learned counsel for the petitioners has vehemently contended that inspite of the order dated 02.11.2023 neither the respondents have given any opportunity to the petitioner till date nor processed the bill and till date actual payment has not been ensured by the petitioners. Said action of the respondent Corporation causes immense loss to the petitioner.

5. Considering the facts and the repeated letters, which were sent

by the Director (Finance), Purvanchal Electricity Distribution Nigam Limited, Varanasi, we deem it appropriate to direct the Superintending Engineer, Electricity Distribution Division, Siddharthnagar (respondent no.5) and the Executive Engineer, Electricity Distribution Division (Second), Domariaganj, Siddharthnagar to be present before this Court on the next date and show cause as to under what circumstances inspite of sufficient time till date the claim set up by the petitioners has not been processed.

6. Put up this matter again on 30.11.2023 as fresh."

3. Thereafter, when the matter was taken on 30.11.2023 even though the officers concerned were present before this Court but in spite of the repeated orders, neither the respondents had given any opportunity to the petitioners nor they had processed the bill till that date. Only in this backdrop, we have asked the Managing Director, Purvanchal Vidyut Vitran Nigam Varanasi/respondent no. 2 to file his personal affidavit in the matter.

4. In response thereof, Sri Sanjay Kumar Paswan, Superintending Engineer, Electricity Distribution Division, Siddharthnagar (respondent no.5) and Sri Ram Murat Singh, Executive Engineer, Electricity Distribution Division (Second), Domariaganj, Siddharthnagar are present before the Court. An Affidavit of Compliance is filed today on behalf of the Managing Director, Purvanchal Vidyut Vitran Nigam Varanasi/respondent no. 2, which is taken on record. Sri C.S. Singh, learned counsel for the contesting-respondent has placed reliance upon paragraphs 12 and 13 of the affidavit, the same are reproduced herein under:-

"12. That out of Six (6) numbers of Bills of Contractors, 3 numbers of Bills as detailed below has been cleared and processed for releasing payment. The bank invoice will be produced before the Court on 06.12.2023 during the course of hearing.

FI Invoice No Gross amount payable against the document

1900000060 Rs 99,614.00

1900001804 Rs 1,30904.00

5100000044 Rs 22,20696.00

Total Rs 24,51,214.40

(Rs Twenty four Lakh Fifty One Thousand Two Hundred Fourteen and Forty Paise) Only

13. That so far as remaining one number of Document (FI Invoice No 5100000045, 1900003515, 1900003516 gross amount payable Rs 47,63,380.32 are under verification for Extension/Excess Quantity as per direction of audit. On completion of the same and availability of funds payments will be released with in two months. The necessary exercise as to under what circumstances the bill for extra work has been raised and who has granted extension etc. On completion of the aforesaid exercise the process for payment will be considered."

5. In this backdrop, learned counsel for the contesting-respondent submits that out of six bills, admittedly, three bills amounting Rs. 24,51,214/- is already processed and the said amount has been released in favour of the petitioners. So far as the remaining three bills, the process is on for verification for Extension/Excess Quantity as per direction of Audit. He submits that some reasonable time may be accorded so that payment of remaining bills may be ensured in the matter.

6. Considering the facts and circumstances of the case and in view of categorical averments made in the affidavit filed today, we are not inclined to keep the matter pending for consideration. Once the deponent himself has given undertaking the process is on for verification of the bills and the time of two months has been asked for, we hope and trust that the claim of the petitioners must be processed and accordingly, the admitted amount would also be released in favour of the petitioners within the said period.

7. Personal presence of the officers concerned is dispensed with.

8. With the aforesaid observations and direction, the writ petition stands ***disposed of***.

Order Date :- 6.12.2023

Vikram