

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.537 of 2024

M/s M.P. Khaitan, a Partnership Firm, Represented by its Partners,

- i. Shri Sanjay Khaitan,
- ii. Shri Govind Khaitan,
- iii. Shri Virendra Khaitan,

All of them are sons of late Mahabir Prasad Khaitan, permanent residents of 97SD, Block-E, 3rd Floor, New Alipore, Kolkata, PIN-700053, presently residing at Kunjaban Colony, Abhoynagar near Tripura Small Industries Office, P.O. Abhoynagar, P.S. New Capital Complex, Sub-Division- Agartala, District West Tripura, PIN-799005.

.....Petitioner(s)

Versus

- 1. The Tripura University, represented by its Vice Chancellor, having his office at Suryamaninagar, Agartala, Tripura, PIN-799130.
- 2. The Registrar, Tripura University, having his office at Suryamaninagar, Agartala, Tripura, PIN-799130.
- 3. M/s Engineering Projects (India) Limited, represented by its Executive Director, having his office at Block-A, Hindustan Tower, 4th Floor, Hindustan Tower, Jawahar Nagar, National Highway 37, Beltola, Guwahati, PIN-781022, having its local office at 21 Krishnanagar Road, Bijoy Kumar Chowmuhani, Agartala-799001 represented by its Deputy General Manager.
- 4. The Deputy General Manager, M/s Engineering Projects (India) Limited, having his office at 21 Krishnanagar, Bijoy Kumar Chowmuhani, Agartala-799001.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Pranabindu Chakraborty, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. S. Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

14/08/2024

Heard Mr. Somik Deb, learned senior counsel for the petitioner and Mr. Debalay Bhattacharya, learned senior counsel for the respondents- Tripura University.

- 2. Facts as pleaded by the writ petitioner are briefly stated as under:

Tripura University [TU, *for short*] issued an NIT for execution of work titled as “Construction of Phase II Project Works (Part I) of the Tripura University at Suryamaninagar, Agartala, Tripura (West)” with an estimated period of completion as 30 months from the date of issue of the work order. Respondent No.3- M/s Engineering Projects (India) Limited [EPIL, *for short*] turned out to be the successful tenderer with whom agreement was entered by TU. For execution of the labour component of the said work, EPIL further issued NIT reference No.DLI/CON/713/414 titled as “Construction of various buildings and allied development works at Tripura University campus, Suryamaninagar, Tripura (West)” on a turnkey basis with an estimated completion period of 24 months. Petitioner, being the successful tenderer, got Letter of Intent on 03.05.2014 and entered into a contract with EPIL on 19.05.2014. The stipulated date for completion of the work was 18.05.2016. Suitable extensions were granted due to project delays which the petitioner attributes to EPIL and TU. Petitioner claims to have successfully completed the work and handed over the project to EPIL on 28.12.2018 in respect of which an intimation letter of completion was also issued by EPIL. He submitted his final bill on 20.12.2021 incorporating claims for enhanced rates due to price increase for the delay. Petitioner has referred to the report of a Sub-Committee constituted by TU which, according to him, accepted the legitimacy of his claims, acknowledging the delays from 12.12.2016 to 31.12.2018. Petitioner has approached this Court as despite completion of work, EPIL has not released the security deposit of Rs.1,65,82,247/-, his outstanding dues of Rs.31,23,309/- and the amount claimed for price variation of Rs.1,88,98,395.13. Despite request made, EPIL has not responded. Petitioner also apprehends that due to

the delay following the expiry of defect liability period of one year from the date of completion of the work on 28.12.2018, the rate of GST on works contract enhanced to 18% would be now levied upon the petitioner, though at the time of execution of the work, it was 12% only. Therefore, petitioner has approached this Court in writ jurisdiction with the following prayers:

- “i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for directing them, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioner;
- ii) Issue Rule, calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to forthwith release the admitted dues, due and payable to the petitioner, under the heads of Security Deposit, amounting to Rs.1,65,82,247/-, outstanding dues, amounting to Rs.31,23,309/-, & Price Variation, amounting to Rs.1,88,98,395.13/-, in favour of the petitioner, despite successful execution of the work on 24.12.2019, alongwith Interest @15% from the respective dates the amounts fell due, till the date of actual payment;
- iii) Issue Rule, calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to abstain from levying GST at the rate of 18% (instead of 12%), while releasing the admitted dues, due and payable to the petitioner;
- iv) Issue Rule, calling upon the respondents and each one of them to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued, for restraining/prohibiting them, from levying GST at the rate of 18% (instead of 12%), while releasing the admitted dues, due and payable to the petitioner;
- v) Call for the records appertaining to this writ petition;
- vi) After hearing the parties, be pleased to make the Rule Absolute in terms of i. & ii. above;
- vii) Costs of and incidental to this writ proceeding;
- viii) Any other Relief(s) as to the Hon'ble High Court may deem fit and proper”

3. Learned senior counsel for the petitioner has referred to Clause 5 of the General Conditions of Contract entered into between TU and EPIL which provides for the stipulated completion period of 30 months from the 15th day after the letter of award or from the date of site hand over which was extendable under Clause 5A. He further submits that time was extended on multiple times by the TU in favour of EPIL as would be evident from Annexure-4. Since extensions were granted without penalties of liquidated damages, time does not appear to be the essence of the contract. Reference is

made to Clause 8 which provides for procedure for issuance of completion certificate once the contractor has fulfilled his obligations. The completion letter was issued on 28.12.2018 from EPIL indicating the fault on petitioner's part. He has also referred to Clause 10 of the contract which stipulates that no price variation will be allowed within the initial 30 months completion period, but it would be applicable for the extended period, the computation of which is governed by Clause 10.2.

4. Learned senior counsel for the petitioner has also referred to Clause 25 which provides for arbitration for settling any dispute, differences or questions arising from the contract. The arbitration process is governed by the Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The jurisdiction of the dispute resolution would be within Agartala. He has referred to Clause 35 which relates to release of security deposit after expiry of 12 months defect liability period following the handing over of the project. It is submitted that since completion letter was issued on 28.12.2018, there is no reason why the security deposit and other outstanding dues be not released in his favour. He has also referred to Clause 76 which provides for in-house remedies and then reference to arbitration by the CMD of EPIL, if necessary. Learned senior counsel for the petitioner submits that Clause 76 is not invocable as there is no dispute or difference between the petitioner and the EPIL. The grievance of the petitioner is regarding non-payment of admitted dues which the TU has to release in favour of EPIL in turn to be paid to the petitioner. Petitioner has invested considerable amounts in execution of the work, but despite completion of work and satisfactory completion certificate

issued in his favour, the dues have not been paid. Therefore, he has been compelled to approach this Court for relief.

5. Mr. Debalay Bhattacharya, learned senior counsel for the respondents-Tripura University, submits that the dispute essentially relates between the petitioner and the EPIL. The respondents-Tripura University is no way privy to the contract between these two parties. The writ petition is, therefore, not maintainable for seeking a relief against TU in the circumstances that there is no subsisting agreement between TU and the petitioner. Petitioner, being a sub-contractor of the EPIL if at all, is guided by the terms and conditions of the contract entered between them which provides forum for adjudication of disputes and differences. Since there is no direct nexus of the petitioner with the respondent No.1-Tripura University, it has unnecessarily been impleaded as a party herein. Therefore, this Court may refuse to entertain the writ petition as many questions of fact and construction of terms and conditions inter-parties are involved. The appropriate remedy would be in arbitration proceedings or the competent Civil Court.

6. We have considered the submission of learned senior counsel for the petitioner and the respondents-Tripura University and taken note of the relevant bare facts placed from the records.

Having regard to the nature of the dispute raised by the petitioner arising out of execution of works under a contract and that too between the petitioner and respondent No.3-EPIL in which the Tripura University is nowhere privy, we are of the considered opinion that the writ jurisdiction is not the right remedy for seeking relief. The dispute between the petitioner and

EPIL, if any, and that if related to TU could only be agitated in an appropriate forum agreed between the parties or before the competent Civil Court where issues of fact and construction of terms and conditions inter-parties between the petitioner and EPIL and between TU and EPIL could be gone into. As such, we are not inclined to entertain in the writ petition. It is accordingly dismissed. Petitioner may have liberty to approach the appropriate forum for relief.

7. Pending application(s), if any, shall stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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