

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.541 of 2024

Sri Kashinath Bhattacharjee

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s).

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

For Respondent(s) : Mr. Ratan Datta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

19/11/2024

Writ petition has been preferred for setting aside the impugned letter dated 13.05.2024 [Annexure-8] which conveys the approval of the competent authority for deduction of liquidated damages charge @10% of the estimated amount against each work orders of R.K. Pur-Amarpur, IGW & KMT PGCIL section of 24.720 km OFC Patch Work against NIT No.DE(M)CNTx/AGT/77/II/2022-2023/03 dated 18.10.2022. The work was allotted for execution of the aforesaid work order under NIT dated 03.08.2022 to the petitioner as he was found the lowest bidder. Agreement was executed with the respondent-BSNL on 24.08.2022 [Annexure-2]. The stipulated period for completion of the work was 180 days. According to the petitioner, the sight was handed over after some delay. After completion of work, petitioner handed over the site and raised his final running account bill, but the Divisional Manager, BSNL has imposed liquidated damages @10% of estimated cost of work. Petitioner has submitted his representation on 15.05.2024 for revocation of the impugned letter and further on 15.06.2024 made a request for refund of Rs.7,80,456/- deducted as liquidated damages.

Learned senior counsel for the petitioner submits that the deduction of 10% liquidated damages from the gross bills of the petitioner is unsustainable. Petitioner has also made request for reimbursement of the payment of GST for Rs.4,88,411.23/- [Annexure-11] which was also entered in the portal. Learned senior counsel for the petitioner has referred to the terms and conditions of the NIT which form part of the agreement whereunder the estimated cost of work excluded the GST amount. He has further submitted that apart from the final bills, petitioner has also raised a claim for reimbursement of the GST levied for Rs.4,88,411.23/-. It is submitted that in view of the amendment to the Arbitration & Conciliation Act, 1996 with effect from 23.10.2015, the General Manager, CNTx NER, Shillong is statutorily disqualified to act as an arbitrator in view of the Explanation 1 & 2 of Section 12(1) read with Section 12(5) and 6th and 7th Schedule of the amended Act. Therefore, petitioner has approached this Court. Learned senior counsel for the petitioner submits that it would suffice at this stage if the respondents are directed to consider and dispose of the representation of the petitioner as it is still pending before respondent No.4.

Learned counsel for respondents No.3 & 4 submits that the matter has been taken up for the first time today. Therefore, instructions are awaited. However, this Court may dispose of the matter with a direction to respondent No.4 to decide the representation of the petitioner in accordance with law after taking note of the attendant facts and circumstances and the terms of the agreement.

In view of the prayer made, we do not intend to enter into the merits of the dispute at this stage. Writ petition is disposed of with a direction

upon respondent No.4 to consider the representations of the petitioner dated 15.05.2024 [Annexure-9] and 15.06.2024 [Annexure-10] and pass a reasoned order thereupon within a reasonable time; preferably 12(twelve) weeks from the date of receipt of copy of this order.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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