

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 801 of 2023

Sri Ratan Sarkar, son of late Rajendra Sarkar, resident of Ramnagar Road No.4, PO- Ramnagar, PS- West Agartala, Sub-Division-Sadar, District-West Tripura, PIN-799002, aged about 51 years.

..... **Petitioner**

Versus

1. The State of Tripura, represented by the Commissioner & Secretary, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura.

2. The Commissioner & Secretary to the Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura.

3. The Executive Engineer, Kumarghat Division PWD (R&B), Government of Tripura, District- Unakoti Tripura.

.....**State respondents**

4. National Buildings Construction Corporation Limited (NBCC), a Company, incorporated under the Companies Act, 1956, having its registered office at NBCC Bhawan, Lodhi Road, New Delhi-110003, Represented by its General Manager, having his office at NBCC Bhawan, Lodhi Road, New Delhi-110003.

5. The General Manager, having his office at NBCC Bhawan, Lodhi Road, New Delhi-110003.

6. The Senior General Manager (Engg), RBG Head-Tripura, National Buildings Construction Corporation Limited, having his office at Jackson Gate Building, 3rd floor, Lenin Sarani, Agartala-799001, West Tripura.

7. The Additional General Manager, National Buildings Construction Corporation Limited, having his office at Jackson Gate Building, 3rd floor, Lenin Sarani, Agartala-799001, West Tripura.

..... **NBCC Respondents**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For Respondent(s)	:	Mr. KK Pal, Advocate Mr. K. De, Add. G.A.
Date of hearing and delivery of judgment and order	:	27.06.2024.
Whether fit for reporting	:	Yes/No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order(Oral)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. KK Pal, learned counsel appearing for respondents No.4 to 7. Mr. K. De, learned Addl. G.A. is present on behalf of the State respondents No.1 to 3.

[2] The present writ petition is filed under Article 226 of the Constitution of India by the petitioner seeking following reliefs:

- “(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, relevant to the subject matter of this writ petition 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 forfeited Performance Guarantee, amounting to Rs.12,80,147/, alongwith Interest, @ 12% per annum, from the date of invocation of Bank Guarantee, till its actual realization, in favour of the petitioner;
- (iii) Call for the records appertaining to this petition.....”

[3] The case of the petitioner in brief is that the National Buildings Construction Corporation Limited (NBCC for short) had issued a Work Order in favour of the petitioner dated 23.08.2010 and subsequently, the petitioner had entered into an Agreement dated 26.11.2010 with the NBCC. Thereafter, the Senior General Manager (Engg.) issued a Letter of Acceptance dated 23.08.2010, in favour of the petitioner and subsequent thereto, a Notice dated 14.10.2010 was issued to the petitioner, directing him to proceed with the execution of the said work. It is contended that the Deputy General Manager (Fin) issued a letter dated 21.02.2020 to the Senior Branch Manager, State Bank of India, for encashment of the Bank Guarantee, amounting to Rs.12,80,147.00, submitted by the petitioner, and remit the sum, in favour of the NBCC. Pursuant thereto, the Assistant General Manager, State Bank of India issued a letter dated 25.02.2020 in favour of the petitioner with a request to arrange sufficient balance in the account of the petitioner for the purpose of realization of Bank Guarantee, as invoked by the NBCC.

[4] It is contended by the petitioner that he submitted a letter to the General Manager (Engg), NBCC Ltd. PMGSY Works dated 04.06.2020, inter alia praying for releasing the amount of Rs. 19,36,302/-, withheld from the account of the petitioner and on the same date, he submitted another letter to the General Manager (Engg), NBCC Ltd. PMGSY Works, inter alia praying for releasing the Security Deposit, amounting to Rs.12,63,003/-. Since, the above letters did not evoke any response thereto, the petitioner submitted another letter to the Assistant General Manager dated 13.10.2020, inter alia praying for issuing the Performance Guarantee, and thereupon, for issuance of a new Bank Guarantee of Rs. 12,80,147/- in favour of the NBCC Ltd. Thereafter, the Additional General Manager (Engg), NBCC, issued a Show Cause Notice dated 03.03.2021, thereby directing the petitioner, to furnish a reply within a period of 7 days, as to why the action, as per SBD Clause 52.00 shall not be taken against him. Accordingly, the petitioner submitted his reply on 22.03.2021 to

the said show-cause notice. Regarding the claim of the petitioner for the release of the Performance Bank Guarantee, he submitted a further letter to the General Manager (Engg.), NBCC Ltd. PMGSY Works on 27.07.2021, thereby praying for releasing the Performance Bank Guarantee, at the tune of Rs.12,80,147/-, in favour of the petitioner. But, since the claim of the petitioner has not been fulfilled, he has approached this Court by filing the instant writ petition.

[5] Mr. Somik Dab, learned senior counsel appearing for the petitioner contends that the petitioner has executed the works in favour of the respondents in terms of the contract to which the petitioner had entered into an agreement dated 26.11.2010 with the NBCC- respondent. On execution of the work, petitioner was also taken for the maintenance of the works for five years in accordance with the contract. He further submits that the execution of the work was satisfactorily completed on 30.03.2014 as per the information received from the official website of the NBCC. During the contract period, there were no grievances and no notice was issued to the petitioner to say that he was rendering defective works or there was defect in maintenance of the said work. Mr. Deb, learned senior counsel submits that the respondents have not provided any documentary proof to show that the works allotted to the petitioner or maintenance of works have not been executed properly. He, therefore, urges this Court to allow the instant petition with all the reliefs as sought for by the petitioner herein.

[6] Mr. Deb, learned senior counsel to support his contention on behalf of the petitioner, has placed reliance on the judgment of the Hon'ble Supreme Court in ***M.P. Power Management Company Limited, Jabalpur v. SKY Power Southeast Solar India Private Limited and others*** reported in **(2023) SCC 703**. The relevant paragraphs of the said judgment as referred by the learned senior counsel, is quoted hereinbelow:

".....82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary. *****

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in *ABL* explaining how it distinguished the decision of this Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, by its observations in SCC para 14 in *ABL*].

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant....."

[7] On the contrary, Mr. KK Pal, learned counsel for the NBCC respondents i.e. respondents No.4 to 7 submits that the petitioner did not fulfill the contractual obligation as per the agreement as a result, the physical condition of the road was terrible and the respondents have faced humiliation as there were several public representations to the respondents about the poor condition of the road. He submits that the petitioner was repeatedly requested to carry out the repairing works but no action was taken. It is contended by the learned counsel that the instant case is squarely covered by the judgment and order dated 31.07.2023 of the Division Bench of this Court in WP(C) No.249 of 2023 [*Hindustan Steelworks Construction Limited v. The State of Tripura and others*], wherein this Court dismissed the writ petition. For the purpose of

reference the said order of this Court dated 31.07.2023 is reproduced herein-below:

".....6. Having considered the submissions of learned counsel for the parties and in view of the nature of the factual dispute involved herein, including those with private contractors/agencies who have also been joined as party and against whom the petitioner HSCL may have independent cause of action to agitate, we are not inclined to entertain the writ petition under Article 226 of the Constitution of India, as not only clause 8.0 of the Tripartite agreement, but Clause 24 of the General Conditions of Contract provide for Alternative Dispute Resolution (ADR) mechanism.

7. Accordingly, the writ petition is dismissed. Petitioner may have liberty to approach the appropriate forum.

8. Pending application(s), if any, also stands disposed of."

[8] Mr. Pal, learned counsel for the respondents No.4 to 7 further contends that as the petitioner did not comply with the provisions of the contract agreement, it does not appear viable to release the Security Deposit/Performance Bank Guarantee to the delinquent agency. It is prayed by the learned counsel that as per the terms and conditions of the contract, respondents have ample power for seizure and forfeiture of the deposits which the petitioner has provided during the contract period and in the event, if the petitioner is aggrieved, clause-24.1 of the contract is available to him for referring the disputed matter to the concerned authority. Learned counsel, therefore, urges this Court to dismiss the present petition filed by the petitioner.

For the purpose of reference, the said clause-24.1 of the contract is quoted hereunder:

"24.1 If any dispute in difference of any kind what-so-ever shall arise in connection with or arising out of this Contract of the execution of Works or maintenance of the Works there under, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent authority within 45 days of arising the dispute or difference, described along with their powers in the Contract Dates, above the rank of the Engineer. The competent authority shall, within a period of forty-five days after being

requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works are already in progress, the Contractor shall proceed with the execution of the Works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence."

[9] Heard learned counsel for the parties. Perused the record. Prima facie, on perusal of record along with the counter affidavit, this Court finds that the action of the respondents in dealing with the contract is not justified as the respondents on no occasion, have indicated the defectiveness in the works/maintenance of works and they have not placed on record as to how they made things good and what is the amount they have incurred. There is no communication or any information provided in the counter-affidavit to that effect. Undoubtedly, the agreement has provided ample powers upon the respondents to withhold the amounts or to impose penalty or to make things good but, all those powers are supposed to be exercised with due diligence strictly within the ambit of law by following the principles of natural justice.

[10] In view of the above, this Court is of the view that there are allegations and counter allegations made by the parties but, the record is not sufficiently placed before this Court by both the parties. Thus, it will be appropriate if the matter be resolved by both the parties under the earlier quoted clause 24.1 of the contract agreement, wherein it is categorically stated that if any dispute in difference of any kind what so ever shall arise in connection with or arising out of that Contract of the execution of works or maintenance of the works be referred for settlement to the competent authority. Hence, both the parties are directed to avail the remedies under clause-24.1 of the said contract as this Court cannot go into the disputed questions of facts which are not placed on record. It is needless to observe that once the matter is

referred under clause 24, it is open for both sides to place all material in support of their claim and counter claim as desired.

[11] In so far as granting any relief as prayed is declined and the writ to the extent is dismissed.

However, with the above observation and direction, this writ petition is accordingly disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE



Sabyasachi G.

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GHOSH

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