



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 401 of 2022

Date of Decision: 23.07.2024

M/s Marbaniang Enterprise
Having its registered office at Springside,
Jingkieng, Nongthymmai, Shillong, East
Khasi Hills District, Meghalaya represented
by Mayven T. Marbaniang, Proprietor of
M/s Marbaniang Enterprise, Resident of
Lower New Colony, Laitumkhrah,
Shillong, Meghalaya

:::Petitioner

-Vs-

1.Meghalaya Power Distribution
Corporation Limited
Represented by its Director
Shillong, Meghalaya

2.The Chief Engineer (RE),
Meghalaya Power Distribution
Corporation Limited,
Lumjingshai, Shillong,
East Khasi Hills, Meghalaya

3.The Chief Engineer (Distribution)
Meghalaya Power Distribution Corporation
Limited, Lumjingshai, Shillong,
East Khasi Hills, Meghalaya



4.The Company Secretary
Meghalaya Power Distribution Corporation
Limited, Lumjingshai, Shillong,
East Khasi Hills, Meghalaya

5.Superintending Engineer (RE)
Meghalaya Power Distribution
Corporation Limited, Lumjingshai,
Shillong, East Khasi Hills, Meghalaya

6.Executive Engineer (RE)
Meghalaya Power Distribution
Corporation Limited,
Lumjingshai, Shillong,
East Khasi Hills, Meghalaya

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Thapa, Adv.
Ms. B. Kharwanlang, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Mr. A.S. Pandey, Adv.
Ms. R. Colney, GA

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER



1. The petitioner by this application under Article 226 is before this Court with a prayer for directions to issue to the Respondent Corporation for release of outstanding bills of the Petitioner Enterprise amounting to Rs.1,80,24,719/- (Rupees One Crore Eighty Lakhs Twenty-Four Thousand Seven Hundred and Nineteen) only and Rs.1,02,36,278 (Rupees One Crore Two Lakhs Thirty-Six Thousand Two Hundred and Seventy-Eight) only with regard to service charges on successful completion of the contract work with the respondent.

2. The brief facts are that the Petitioner Enterprise in the year 2006, was awarded with a contract by the Respondent Corporation under the APDRP Project for reconductoring, feeder bifurcation and construction of new feeders, Package-C in the Eastern Circle (Supply and Erection contract) in Jaintia Hills District, and that the said project was completed in the year 2008. A completion certificate was issued by the Respondent Corporation after payment of outstanding dues. Apart from this contract, the Respondent Corporation had also awarded contracts to the Petitioner Enterprise for supply of various materials required for implementing the Rajiv Gandhi Grameen Vidyutikaran Yojna(RGGVY) Scheme at the cost of Rs.27,00,07,294/-



(Rupees Twenty-Seven Crores Seven Thousand Two Hundred and Ninety-Four) only referred to as the first contract or Supply contract. By another letter dated 16.07.2007, the Petitioner Enterprise was awarded a contract for all services including inland transportation insurance, handling, storage at site, erection, testing and commissioning of all equipment for supply of service connections to BPL consumers at a cost of Rs.2,00,54,100/- (Rupees Two Crores Fifty-Four Thousand and One Hundred) only referred to as the second contract or Erection contract. A formal contract was then executed on 25.10.2007 between the parties.

3. Thereafter, in the course of the work and other developments, the Petitioner Enterprise by a letter dated 06.06.2013, while acknowledging receipt of certain payments, had requested for release of Rs.1,02,36,278/- (Rupees One Crores Two Lakhs Thirty-Six Thousand Two Hundred Seventy-Eight) only which he alleged had been erroneously withheld against the excess payment of service tax, inasmuch as, while quoting the rate for Supply and Erection, the rate quoted had been quoted inclusive of all taxes and duties, and as such there was no question of excess payment. Further claims were also made from the Respondent Corporation in relation to return of surplus



materials which were not utilized for the project and as per the statement of the Petitioner Enterprise on this account, the balance due from the Respondent Corporation stood at Rs.1,95,15,528/- (Rupees One Crore Ninety-Five Lakhs Fifteen Thousand Five Hundred and Twenty-Eight) only. Further communications on this aspect with regard to payment of balance amount due and return of surplus materials continued between the Petitioner Enterprise and the Respondent Corporation.

4. It appears thereafter, the Respondent Corporation by a letter dated 07.08.2014, called the petitioner for a meeting with regard to the payment of service tax on the RGGVY Scheme and the petitioner was asked to bring all supporting documents. The said meeting took place on 26.08.2014, and as per the minutes generated which have been placed on record, it was observed by the Chief Engineer of the Respondent Corporation that outstanding bills of the Petitioner's Enterprise be processed for payment, with due compliance of audit observation in that aspect. Thereafter, vide letter dated 17.08.2015 addressed to the Respondent Corporation, the Petitioner Enterprise acknowledged receipt the payment of Rs.14,19,809/- (Rupees Fourteen



Lakhs Nineteen Thousand Eight Hundred and Nine) only to its Bank account.

5. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Thapa, learned counsel on behalf of the petitioner submits that even though the work had been completed, the Respondent Corporation paid no heed to the request made by the petitioner with regard to the extra materials utilized for the RGGVY Scheme, and that the petitioner was not supplied with a detailed statement, item wise showing the details of deduction made on both Supply and Erection contract, at which the amount paid to the petitioner was arrived at.

6. It is to be noted at this juncture that from the part of the Respondent Corporation, Mr. A. Kumar, learned Advocate General assisted by Mr. S. Sahay, learned counsel has raised issues with regard to the maintainability and the merit of the writ petition. It has been submitted that the petitioner is seeking to recover alleged dues for work which were awarded on 16.07.2007, and executed under a contract dated 25.10.2007, and that further the petitioner's own case, is that the financial claims agitated in these writ proceedings pertain to



dues that became payable in the year 2013-2015. It has been also pointed out that the petitioner has deliberately omitted to mention in its petition, that the said agreement contains an arbitration clause, which therefore ousts the jurisdiction of the writ court, as also any other civil court.

7. The learned Senior counsel has then submitted that the instant writ application is an abuse of the process of law, as the petitioner has come forward with claims that are time barred, and are therefore liable to be rejected in view of Section 3 of the Limitation Act. It is further submitted that in such commercial matters, a writ petition seeking enforcement of contractual obligations against the State or its instrumentalities is not maintainable, inasmuch as, the same are matters of private law arising purely out of a contract. In support of this contention, the learned Senior counsel has placed the following decisions: -

- i) ***M/s Radhakrishna Agarwal & Ors. vs. State of Bihar & Ors. reported in (1977) 3 SCC 457***
- ii) ***Premji Bhai Parmar & Ors. vs. Delhi Development Authority & Ors. reported in (1980) 2 SCC 129***



- iii) ***Divisional Forest Officer vs. Bishwanath Tea Co. Ltd.*** reported in (1981) 3 SCC 238
- iv) ***Joshi Technologies International Inc. vs. Union of India & Ors.*** reported in (2015) 7 SCC 728
- v) ***Bareilly Development Authority & Anr. vs. Ajai Pal Singh & Ors.*** reported in (1989) 2 SCC 116
- vi) ***Kerala State Electricity Board & Anr. vs. Kurien E. Kalathil & Ors.*** reported in (2000) 6 SCC 293
- vii) ***Union of India & Ors. vs. Puna Hinda*** reported in (2021) 10 SCC 690

8. It has also been contended by the learned Senior counsel that the writ petition is not maintainable in view of the existence of alternative remedy, and has drawn the attention of the Court to clause 48 of the contract, wherein an arbitration clause has been provided, and in this regard has placed reliance on the following judgments:-

- i) ***M/s Titagarh Paper Mills Ltd vs. Orissa State Electricity Board & Anr.*** reported in (1975) 2 SCC 436
- ii) ***State of U.P. & Ors. vs. Bridge & Rood Company (India) Ltd.*** reported in (1996) 6 SCC 22
- iii) ***Kerala State Electricity Board & Anr. vs. Kurien E. Kalathil & Ors.*** reported in (2000) 6 SCC 293



iv) *State of Gujarat & Ors. vs. Meghji Pethraj Shah Charitable Trust & Ors. reported in (1994) 3 SCC 552*

9. The dispute raised by the petitioner, it also has been submitted by the learned Senior counsel, makes the writ petition not maintainable as it relates to the adjudication of disputed questions of fact, which in the instant case, concerns amounts billed towards the contract works in the years past, which have to be examined from old records. On this point, reliance has been placed on the following decisions: -

- i) *Sanjay Kumar Jha vs. Prakash Chandra Chaudhary & Ors. reported in (2019) 2 SCC 499***
- ii) *World Tel Inc. & Anr. vs. Union of India & Ors. reported in (2001) 10 SCC 513***

10. It is lastly submitted that for the dues of 2015, the writ petition had been preferred only in the year 2022, which renders the claim of the petitioner a stale claim, especially after final payment for the contract had been acknowledged vide letter dated 17.08.2015. Further, the learned Senior counsel submits that in the meeting dated 26.08.2014, there was no computation of the liability, nor any admission of debt, and as such the same cannot vest any right or any actionable claim upon the petitioner. As such, therefore it is submitted



that the writ petition being hopelessly delayed, the same is liable to be dismissed on this ground alone, apart from the other grounds of maintainability as set forth.

11. Mr. K. Paul, learned Senior counsel in reply to the challenge to maintainability and other grounds submits that there is no denial of the existing claims of the writ petitioner as the meeting dated 26.08.2014 has recognised this fact. He further submits that there is no question of invoking arbitration, inasmuch as, the dispute that is present, does not arise from the contract nor there is dispute as to the entitlement, but it is only with regard to non-settlement of dues by the Respondent Corporation. Accordingly, he submits as there is no dispute, the instant case cannot be classified as commercial matter that will bar this Court from exercising jurisdiction under Article 226 of the Constitution. It is further submitted that the writ petition is not hit by delay and laches, inasmuch as, the dues of the writ petitioner till the settlement thereof, is a continuing wrong. In support of the submissions, the learned Senior counsel has placed reliance on the following cases:-

- i) ***Smt. Maya Rani Punj vs. Commissioner of Income Tax, Delhi reported in (1986) 1 SCC 445***



ii) *M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) vs. Mahant Suresh Das & Ors. reported in (2020) 1 SCC 1*

iii) *ABL International Ltd & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors. reported in (2004) 3 SCC 553*

12. He therefore prays that appropriate directions be issued for clearance of outstanding dues within a timeframe and that interest be allowed at 24% to be calculated from the date of completion of the work till the date the said payments are made by the respondents.

13. Heard learned counsel for the parties. This Court notes at the outset that the writ petitioner is before this Court, after a lapse of many years for recovery of dues that were allegedly payable in the years 2014-2015. Further, no recourse was taken for invocation of arbitration in spite of the presence of arbitration clause, and though arguments have been advanced that the dispute does not arise from the contract agreement, the same in the view of this Court is incorrect as it is related to payments and adjustments that have arisen from the execution of the contract. Even if the argument is accepted that there is no arbitrable dispute, for the recovery of the dues as alleged, no suit



for recovery for the same was ever instituted by the petitioner. Further, the case as presented before this Court contains questions of disputed facts, as it relates to alleged unpaid amounts, which if is to be adjudicated, will involve the examination of old records that have to be authenticated and the veracity thereof ascertained.

14. In this scenario, the question before this Court is therefore, whether the petitioner will be entitled to claim any relief by way of the instant writ petition. This Court apart from the other materials placed, while perusing the minutes of the meeting held on 26.08.2014, (Annexure-16) on which heavy reliance has been placed by the petitioner to make out the case, notes that outstanding dues have been acknowledged by the respondents which was directed to be processed. However, in a subsequent letter dated 17.08.2015, from the Petitioner Enterprise addressed to the respondent No. 6 under the caption ‘Final Payment of Supply and Erection bills under RGGVY’ acknowledgement is given of the receipt of payment by the petitioner of Rs.14,19,809/- (Rupees Fourteen Lakhs Nineteen Thousand Eight Hundred and Nine) only. This letter on a plain reading, apart from requesting the respondents to furnish the details statement-wise, is



silent on any other or further claim of outstanding dues. As such, this letter which comes after the acknowledgement given in the meeting dated 26.08.2014, makes it a difficult task to discern or to come any clear finding, as to whether the petitioner's dues had been finally settled by the respondents after adjustments to the service charges as claimed, or whether other amounts remain unpaid. The pleadings in the writ petition on this aspect, also are vague and are of no assistance in assisting this Court to come to any conclusion.

15. This Court therefore in order to fully understand and appreciate the claim of the writ petitioner, and whether inspite of the delay and the question of disputed facts, the matter could be effectively adjudicated under writ jurisdiction, had called for the records to be produced by the respondents. From the records, it is noted that approval for closure of the RGGVY Project, Jaintia Hills, was given on 27.03.2014, by the Chief Project Manager, Rural Electrification Cooperation Limited to the respondent Corporation. It is noteworthy to mention that by a letter dated 04.11.2014, from the respondent No. 5 addressed to the respondent No. 6, request was made that necessary action may immediately be taken to process all pending bills of the



Petitioner's Enterprise in line with the closure approval. The records also contain a statement dated 06.08.2015, showing final payment made to the petitioner, under various heads, which however is not clear on the component of service tax, although payment made to the Department of Income Tax, and the Tax Department on account of royalty have been indicated. However, as aforementioned the final payment under the RGGVY scheme, had been acknowledged by the petitioner vide its letter dated 17.08.2015. The records as produced however, do not reveal whether the petitioner had raised any claim thereafter, after acknowledging the receipt of the payment vide the said letter dated 17.08.2015.

16. Though a case of continuing wrong has been sought to be made out by the petitioner and judgments placed in support thereof, in the facts of the present case where even the petitioner has not been able even to clearly establish the existence of any outstanding dues, the same are of no assistance to the petitioner and accordingly are not discussed. The judgments placed by the respondents being on aspects of settled law, are also not elaborated upon.



17. It is also interesting to note that the petitioner has also sought to link the alleged outstanding dues to a disconnection notice dated 13.10.2014, served on the petitioner's concern, a commercial establishment, for unpaid bills, making the payment of the same thereof to the respondents, contingent upon the release of the alleged outstanding dues. This in the considered view of this Court is of no relevance and the pleadings made in this regard are rejected.

18. As such, looking into the totality of the facts and circumstances of the case, this Court notes that the petitioner failed to avail of arbitration, which had been provided in the contract agreement itself, which at this belated stage, by operation of law, cannot be taken recourse to. Further, no civil proceedings for recovery of any alleged dues had been instituted within three years of the acknowledged receipt of final payment, which also effectively bars recourse to a money suit, except under exceptional circumstances which the petitioner would have to demonstrate. The other factors of delay, disputed facts and absence of any clear outstanding dues, also come in the way of this Court, exercising its jurisdiction or discretionary powers under Article 226 of the Constitution of India.



19. As such, in view of the reasons and discussions herein above, the instant writ petition cannot be entertained by this Court, and is accordingly dismissed, leaving the petitioner to seek other alternative remedy, if available.

20. Writ Petition accordingly stands closed and disposed of.

21. Records to be returned to the learned counsel for the Respondent Corporation.

Judge

Meghalaya
23.07.2024
"D.Thabab-PS"