

GAHC010213012018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6659/2018

VAIDYA V AND I INFRASTRUCTURES PVT. LTD.
A PRIVATE LIMITED COMPANY HAVING ITS REGISTERED OFFICE AT
KHASRA NO. 89, MOUZA BELTARODI, TAHSIL NAGPUR RURAL), NAGPUR-
441108, REP. BY ITS AUTHORISED REPRESENTATIVE, NAMELY, MR. ARUP
BAISHYA,
S/O LAT ESISHU RAM BAISHYA, R/O REHABARI, GUWAHATI- 781008.

VERSUS

TINSUKIA MUNICIPAL BOARD AND 2 ORS.
REP. BY ITS CHAIRPERSON, GNB ROAD, TINSUKIA- 786125, ASSAM

2:EXECUTIVE OFFICER

TINSUKIA MUNICIPAL BOARD

GNB ROAD

TINSUKIA- 786125
ASSAM

3:THE DEPUTY COMMISSIONER

OFFICE OF THE DEPUTY COMMISSIONER

TINSUKIA- 786101

For the petitioner (s) : Mr. P. K. Sharma, Advocate

For the respondent (s) : Mr. S. Borthakur, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

16.02.2024

By the instant writ petition, the petitioner being aggrieved has challenged the order of cancellation dated 09.01.2018 issued by the respondent No.1 whereby the supply order dated 24.04.2017 was cancelled and have sought for a direction upon the respondent authorities to accept the 5000 Nos. of Litre Capacity Twin Litter Bins which as per the petitioner have already been manufactured and lying in petitioner's stock in accordance with "Manufacturing & Supply Order" dated 24.04.2017.

2. From a perusal of the materials on record, it reveals that on 19.04.2017, the Chairman of the Tinsukia Municipal Board on the basis of a Resolution of the Board dated 18.04.2017 asked the petitioner to supply 5000 dustbins to Tinsukia Municipal Board. Thereupon, an agreement was entered into by and between the Tinsukia Municipal Board and the petitioner on 19.04.2017. From a perusal of the said agreement, it reveals that the petitioner was required to supply 5000 Nos. of 200 Litre Garbage Twin Bins with stand and the total value of the contract amount was Rs.8,12,18,100/-. It was also mentioned in Clause 2 of the said agreement that the supplier, i.e. the petitioner had to supply the entire ordered quantity within four months from the date of issuance of purchase order/the work order at the destination, i.e. Tinsukia. It is also seen that there was a quantified liquidated damages to be imposed if the ordered

quantity was not delivered within the stipulated time. The record further reveals that on 24.04.2017, the work order was issued.

3. It is the case of the petitioner that on the very date of issuance of the work order, 80 Nos. of the dustbins out of the 5000 were supplied. The record further reveals that the Chairman of the Tinsukia Municipal Board vide the communication dated 15.07.2017 extended the period for another 120 days, i.e. from 25.07.2017 to 24.11.2017. Thereupon, on 24.01.2018, i.e. much after the period of extension having ended, the petitioner submitted a request to the Chairman of the Tinsukia Municipal Board that a further extension is required to be given, i.e. upto 31.03.2018 for supply of the Garbage Bins. In the meantime, it is the case of the petitioner that on 01.02.2018, the petitioner received an order of cancellation dated 09.01.2018. This order of cancellation dated 09.01.2018 has been impugned in the instant proceedings.

4. It is also seen from the records that the petitioner had duly submitted a representation, but the said representation was not considered. The instant writ petition was filed on 20.09.20018, i.e. almost after 7 months from the date the petitioner received the order of cancellation.

5. This Court vide an order dated 26.09.2018 issued notice and stayed the order of cancellation dated 09.01.2018 and the representatives of the petitioner was given the liberty to approach the Chairman, Tinsukia Municipal Board so that the matter could be amicably settled.

6. This Court has heard Mr. P.K. Sarma, the learned counsel for the petitioner as well as Mr. S. Borthakur, the learned counsel appearing on

behalf of the respondent Nos.1 & 2 and Mr. S. Baruah, the learned counsel appearing on behalf of the respondent No.3.

7. From the materials on record, it is apparent that the petitioner was granted a supply order for supplying 5000 Nos. of dustbins of 200 Litre within a period of 120 days. Taking into account that the supply order was of 24.04.2017, the period ended on 23.08.2017. The record further reveals that the period was further extended by another 120 days by the Chairman, Tinsukia Municipal Board, i.e. upto 24.11.2017. There was no further extension so granted. It has been duly submitted by the petitioner that the petitioner wanted to supply the quantity, however, the Tinsukia Municipal Board did not permit them to supply. Be that as it may, on 09.01.2018, much after the period of extensions being over, the supply order dated 24.04.2017 was cancelled.

8. It is the case the petitioner that the petitioner wanted to supply whereas the respondents did not permit the petitioner to supply for which the petitioner had to incur huge loss in as much as the dustbins in question has already been manufactured as claimed by the petitioner. In the opinion of this Court, the said aspect as alleged in the writ petition would be a case at best a breach of contract and if there is of breach of contract, the remedy therefore lies with the petitioner under the private law for claiming damages. Under such circumstances, as no public law element is involved in the instant case and is purely a case falling within a breach of contract, this Court is of the opinion that the exercise of jurisdiction under Article 226 of the Constitution is not warranted.

9. Consequently, this Court therefore dismisses the instant writ petition on the ground of maintainability.

10. Be that as it may, it is also relevant to take note of that the petitioner has remedies available for claiming damages if the petitioner is able to substantiate its claim in accordance with law. The same would require adjudication of facts on the basis of evidence, both oral and documentary.

11. Considering the above, the petitioner is given the liberty to approach the competent Civil Court seeking appropriate declaration including consequential relief of damages.

12. This Court has also taken note of that the instant writ petition was filed on 20.09.2018 and the same has been pending since then and the petitioner has approached this Court on the legal advice and has been bonafidely pursuing the instant writ petition. Under such circumstances, it is the opinion of this Court that the period during which the instant writ petition has been pending i.e. from 20.09.2018 till date, be exclude while computing the period of limitation.

13. With the above observations and directions, the writ petition stands disposed.

JUDGE

Comparing Assistant