

GAHC010217112024



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

Case No. : WP(C)/5536/2024

AGARWAL STORE AND ANR
A PROPRIETORSHIP FIRM, HAVING ITS REGISTERED OFFICE AT H.O.
RADHA RANI MARKET, T.R.P. ROAD, GUWAHATI-781001, ASSAM

2: DWARKA PRASAD AGARWAL
PROPRIETOR OF AGARWAL STORE
SON OF LATE SATYANARAYAN AGARWAL
RESIDENT OF CHINMOY COMPLEX
A.T. ROAD
GUWAHATI-781001
ASSA

VERSUS

THE GUWAHATI METROPOLITAN DRINKING WATER AND SEWERAGE
BOARD (JAL BOARD) AND 2 ORS
GUWAHATI METROPOLITAN DRINKING WATER AND SEWERAGE BOARD
(JAL BOARD), (GMDW AND SB) 1ST FLOOR, TRIPTI TOWER, GANESHGURI,
GHY-781005.

2:THE MANAGING DIRECTOR
GUWAHATI METROPOLITAN DRINKING WATER AND SEWERAGE BOARD
(JAL BOARD)
(GMDW AND SB)
1ST FLOOR
TRIPTI TOWER
GANESHGURI
GHY-781005.

3:THE EXECUTIVE ENGINEER
ZOO ROAD WATER SUPPLY SCHEME
GUWAHATI JAL BOARD
HAYAMAMA PATH
R.G. BARUAH ROAD

GHY-24

Advocate for the Petitioner : MR. B PHUKAN,

Advocate for the Respondent : SC, JAL BOARD,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

30.10.2024

1. Heard Mr. B. Phukan, learned counsel for the petitioners. Also heard Mr. S. Bora, learned counsel for all the respondents.
2. Mr. B. Phukan, learned counsel for the petitioners submits that the petitioner no.1 is a small scale Industrial Unit registered under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the Act"). As the petitioners' bills for supply of Ferric Alum to the respondents for the month of April, May and June, 2018 was not being given, the petitioners filed WP(C) 7331/2019. WP(C) 7331/2019 was disposed of on 09.12.2022, by directing the respondents to pay the outstanding dues for the month of April and May, 2018, with liberty being given to the petitioner to approach the authorities for the bill for June, 2018, as the same was disputed.
3. The petitioners' counsel submits that the respondents have now cleared the entire bill amount of the petitioner for the months of April, May and June, 2018. However, the respondents have not paid any interest for the delayed payment of the bills, which was to be paid within 3 months of the order dated 09.12.2022 passed in WP(C) 7331/2019. He submits that interest on the bills

would have to be paid from 10-02-2023 in terms of the "Act." However, interest has not been paid, in spite of the petitioners submitting representation dated 26.07.2024. The petitioners' counsel prays that a direction should be issued to the respondents to pay to the petitioners, the interest accrued in terms of the Act.

4. I have called for the records of WP(C) 7331/2019 and a perusal of paragraph 10 of the writ petition along with the prayer made in WP(C) 7331/2019 shows that the petitioners had not only prayed for payment of the supplied bills, but also prayed for payment of interest, in terms of the Act. Paragraph 10 and the prayer portion in the writ petition in WP(C) 7331/2019 states as follows:-

“10. That the Petitioners state that the petitioners are suppliers within the meaning of the MSMED Act and far more than the period prescribed in the MSMED Act for making payments have expired, but the Authorities have not cleared the payments due to the Petitioners as yet. The dues to the Petitioners are admitted by the Respondents. In the circumstances, the Petitioners have become entitled to and the Respondents have become liable to pay interest under the provisions of the MSMED Act. Even the representation dated 05.02.2019 to the Authorities praying for release of the outstanding dues and interest as per the mandatory provisions of the MSMED Act has not yielded any result and the Authorities with scant regard to the mandate of law are sitting over the same.

Prayer portion

In the premises aforesaid, the humble petitioners pray to your Lordships to be graciously pleased to call for the records of the case and issue a Rule calling upon the Respondents to show cause why a writ in the nature of Mandamus directing Respondents to perform their statutory duty and obligation under the Micro, Small and Medium Enterprises Development Act, 2006 and in the consequence thereof release the outstanding dues of the Petitioners along with interest thereon as per the provisions of the Micro Small and Medium Enterprises Development Act, 2006 and upon perusal of the records and hearing the parties be pleased to make the Rule absolute and/ or pass such further or other order or orders as your Lordships may deem fit and proper.

5. The operative portion of the order dated 09.12.2022 in WP(C) 7331/2019 is at paragraph-8, which is as follows:

“8. In view of the above, the writ petition is disposed of by directing release of the aforesaid amount of Rs.3,18,176/- to the petitioners within a period of 3 (three) months from today. As regards the period of June 2018, the petitioners are at liberty to approach the appropriate forum praying for relief.”

6. The above clearly shows that the petitioners had made a prayer for payment of interest in terms of the Act in the earlier writ petition, i.e. WP(C) 7331/2019 filed by the petitioners. However, this Court had not granted the said prayer for payment of interest under the Act.

7. Sections 15, 16 & 17 of the Act are reproduced hereinbelow as follows :

“Section 15

Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Section 17

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."

8. A perusal of the same present petition shows that the interest that the petitioners has been praying for from 10.02.2023, cannot be in terms of the Act, as the prayer for interest has been made for not paying the bills within three months of the order dated 09.12.2022 passed in WP(C) 7331/2019. However, payment of interest in terms of the Act would have to be solely in terms Section 15, 16 & 17 of the Act, which prayer had not been granted in the earlier writ petition. This Court accordingly is of the view that the present writ petition is not maintainable as the order dated 09.12.2022 passed in WP(C) 7331/2019 has already attained finality, as on date. As such, this Court cannot act as an Appellate Authority over the order dated 09.12.2024 passed in WP(C) 7331/2019 by a Co-ordinate Bench.

9. At this stage, Mr. B. Phukan, learned counsel for the petitioners prays that

he may be allowed to withdraw the writ petition.

10. Prayer is allowed.

11. The writ petition is dismissed as withdrawn.

JUDGE

Comparing Assistant