

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.91 of 2015

Smti Kalyani Debnath,
Wife of Sri Rakhal Debnath,
Resident of Sonai Road, Silchar,
P.O - Link Road, Pin - 788006,
District of Cachar, Assam.
(Represented by her Constituted Attorney Sri Rajesh Debnath),
son of Sri Rakhal Debnath, Resident of Sonai Road, Silchar,
P.O - Link Road, Pin - 788006 in the District of Cachar, Assam.

..... *Petitioner.*

- Vs -

- 1. The State of Tripura,**
Represented by its Secretary, Public Works Department
(Roads), Government of Tripura, Agartala, Civil Secretariat,
Capital Complex, P.O - Kunjaban, Pin No. 799006.
- 2. M/s Hindustan Steelworks Construction Ltd.**
(A Govt. of India Undertaking), Registered Office at P-34A,
Gariahat Road(South), Kolkata - 700031 (Represented by its
Chairman-cum-Managing Director).
- 3. M/s Hindustan Steelworks Construction Ltd. Tripura Unit,**
having its Tripura Unit Office at 'Banik Kutir' Chowmuhani,
Krishnanagar, P.O Agartala, West Tripura - 799001
(Represented by its Head Project).
- 4. Head Project,**
M/s Hindustan Steelworks Construction Ltd. Tripura Unit,
having its Tripura Unit Office at 'Banik Kutir' Sankar
Chowmuhani, Krishnanagar, P.O Agartala,
West Tripura - 799001.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the petitioner : Mr. D S Bhattacharjee, Advocate,
Mr. A Sengupta, Advocate.

For the respondents : Mr. T D Majumder, Govt. Advocate,
Mr. S K Deb, Sr. Advocate,
Mr. P Datta, Advocate,
Mr. S Datta, Advocate.

Date of hearing : 18.8.2015.

Date of Judgment : 22.9.2015

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has prayed that a writ be issued quashing the communication(Annexure 21) whereby the State has rescinded the contract between the parties vide letter dated 30th September, 2013. It has also been prayed that a writ of Mandamus be issued directing the respondents 2 to 4 to refund a sum of Rs.70,24,400/- to the petitioner. Writ of a Mandamus has also been prayed to direct the respondents 2 to 4 to refund an amount of Rs.56,78,018/- illegally deducted from the petitioner. The petitioner has also prayed that the respondents be directed to pay an amount of Rs.1,24,38,000/- and an amount of Rs.42,476/- as per the contractual work done by the petitioner.

2. The undisputed facts are that respondent No.4 floated NIT No.28 inviting bids for construction and maintenance of rural

roads under the Pradhan Mantri Gram Sarak Yojana(PMGSY) in north Tripura District. The petitioner being the lowest bidder was awarded contract for construction of 8 rural roads and their maintenance for 5 years for a consideration of Rs.14,04,88,000/-. The terms of the contract provided that the petitioner was first to complete the construction and thereafter was also required to maintain the constructed roads for 5 years.

3. The claim of the petitioner is that in terms of the conditions of the contract the petitioner contractor is entitled to receive final payment for the construction within the time frame stipulated. The case of the petitioner further is that the payment for construction has to be done immediately on completion of the work and that has no connection with the maintenance of the roads. The claim of the petitioner is that though the roads had been constructed by her a sum of Rs.1,48,78,771/- is still due to her and she is, therefore, suffering badly. It is further alleged that the action of the respondents in terminating the contract and not paying the amounts due to her, is totally illegal and arbitrary and therefore, entitled to maintain the claim petition.

4. A preliminary objection has been raised by Sri Sankar Deb, learned senior counsel for the respondents 2 to 4 that this is a contractual matter and this Court should refrain from exercising its

writ jurisdiction in such a case where there are disputed questions of fact.

5. According to the petitioner, the roads had been completed and in this reference the petitioner has placed reliance on the monthly progress reports in which the roads are stated to be completed and the date of completion has been given. These roads were completed in the years 2011, 2012 and 2013. It was also pointed out with reference to Annexure - 6 which is a communication dated 23rd May, 2014 that the roads are complete. In the said communication the head of projects of Hindustan Steel Works Construction Ltd.(HSCL) has directed all concerned engineers to prepare final bill on top priority for financial closure of completed roads. Reliance has also been placed on the document in which it is mentioned that these roads are complete and this document reflects that the payment made to the petitioner contractor in all the eight cases is less than the value of the work done by her.

6. It is submitted by Mr. D S Bhattacharjee, learned senior counsel for the petitioner that these documents which are documents of the respondents clearly indicate that the roads are complete; these documents also show what is the value of the work done and what is the amount payable to the petitioner. It is, therefore, prayed that this Court by exercising its writ jurisdiction may issue a writ of

Mandamus directing the respondents to pay the amount due and payable to the petitioner.

7. The next contention of the petitioner is that though there was some delay in construction of the roads, this delay was due to the fact that the respondents failed to handover the land to the contractor in time. Furthermore, relying upon Clauses 27.1, 27.2, 44.1 and 44.2 it is urged that since the engineer has extended the completion date the full amount is payable to the contractor. It is lastly urged that in terms of Clauses 43.1 and 43.2 of the contract agreement the employer could retain only 5% of the security deposit and no security deposit/retention is to be made from the payments for routine maintenance of roads. Furthermore Clause 43.2 provides that on completion of the whole construction work, half of the total amount of security retained is to be repaid to the contractor and half after the defect liability period has passed and the engineer has certified that all defects notified by the engineer to the department have been corrected.

8. On the other hand, Sri Deb learned senior counsel, submits that no amount is due to the petitioner from the contract. He has referred to certain documents. The first of these documents is a communication dated 26th July, 2014 whereby the petitioner has been informed that there is a lot of defective works and she was given a chance to get joint measurement done by deputing a

technical person from her side. The technical person was to report at Kanchanpur on 7th August, 2014 at 10.00 a.m. One Sri Siddhartha Datta was the technical person and his statement has been recorded on 21st July, 2014 which reads as follows :

*“To
The Manager,
HSCL – Kanchanpur.*

*Sub : Ref our letter no.KDN/HSCL/Authority letter/06/14-15,
Dt : 20-07-2014.*

Respected Sir,

With reference of above subject being authorised person of M/s Kalyani Debnath (authorised letter enclosed herewith) for joint measurements of NIT 28 and NIT 59 for which I am unable to explain any measurements, as I am a non-technical and don't know any measurements and also I cannot sign any paper.

Hence, I accepting my inefficiency.

Thanking you.

Yours faithfully

*(Siddhartha Datta)
Authorised person of M/s Kalyani Debnath.”*

Thereafter there are some further correspondences in this regard and it has been stated that the site was not measured due to fault of the petitioner since their authorized representative refused to give any explanation for the measurements and also refused to sign any paper. Another communication was sent to the petitioner on 3rd November, 2014 and according to the respondents there is an excess amount of Rs.1,92,64,829/- which has been paid to the petitioner.

9. Therefore, it is apparent that whereas the petitioner claims that huge amount of money is payable to her by the respondents, the respondents have clearly stated that though some amount is payable to the petitioner but since the petitioner has not completed the balance work which is being got executed by the respondents through other agencies, this balance amount of Rs.4,81,929/- is not being paid to the claimant petitioner till the work is complete.

10. Sri Deb has also referred to the Dispute Redressal Clause No.24 in the contract agreement wherein it is mentioned that whereas any dispute arises the same shall be sent to the Dispute Redressal Committee. The relevant Clause reads as follows :

“24. Dispute Redressal System

24.1 If any dispute or difference of any kind what-so-ever shall arises in connection with or arising out of this Contract or 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, described along with their powers in the Contract Data, 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 is 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.

24.2 *Either party will have the right of appeal, against the decision of the competent authority, to the Standing Empowered Committee if the amount appealed against exceeds rupees one lakh.*

24.3 *The composition of the Empowered Standing Committee will be:*

- I. One official member, Chairman of the Standing Empowered Committee, not below the rank of Additional Secretary to the State Government;*
- II. One official member not below the rank of chief engineer; and*
- III. One non-official member who will be technical expert of Chief Engineer's level selected by the Contractor from a panel of three persons given to him by the Employer.*

24.4 *The Contractor and the Employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the Contractor and the Employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of ninety days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.*

24.5 *The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to five percent of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of five percent of the Initial Contract Price, he will be free to approach the courts applicable under the law."*

11. We are of the considered view that there are highly disputed questions of fact involved in this writ petition. These disputes cannot be decided in writ proceedings. A writ Court normally does not enter into contractual matters. It is not the job of the writ Court to assess what is the amount due and payable. Only in rare cases where there is no dispute with regard to the amount payable, the writ Court may issue a writ directing payment of the amount. We are clearly of the view that in view of the absolutely contradictory stands taken by both sides there is a dispute between them. This dispute cannot be decided without recording the evidence.

12. We, therefore, dismiss this writ petition with liberty reserved to the petitioner to either take recourse to the dispute redressal mechanism mentioned in Clause 24 of the agreement or to file a suit in the Court of competent jurisdiction. We, however, make it clear that this dispute cannot be decided in the writ proceedings. Therefore, the writ petition is dismissed with the aforesaid directions. No order as to costs.

JUDGE

CHIEF JUSTICE