Serial No. 10-13
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA. No. 4 of 2020 with
WA. No. 5 of 2020
WA. No. 6 of 2020
WA. No. 7 of 2020

Date of Order 10.02.2020

Shri. Daskhem Doome	Vs.	State of Meghalaya & Ors.
Shri. Daskhem Doome	Vs.	State of Meghalaya & Ors.
Shri. Donbert Pyrbot	Vs.	State of Meghalaya & Ors.
Shri. Donbert Pyrbot	Vs.	State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N.Mozika, Sr. Adv. with
Ms. S.A.Shallam, Adv.

For the Respondent(s) : Mr. B.Bhattacharjee, AAG with
Ms. R.Colney, GA.

i) Whether approved for reporting in Law journals etc: Yes

ii) Whether approved for publication in press: No

Per Mohammad Rafiq, 'CJ'

1. These four writ appeals, being similar in nature, are disposed of by this common judgment.

2. Learned counsel for the appellants submitted that the appellants had filed four writ petitions before the learned Single Bench, inter alia, with the prayer that the respondents be directed by issuance of a writ of mandamus to issue formal work orders to them for contract work being:

Appellant in WA. No. 4 of 2020 (Shri. Daskhem Doome)

(i) Construction of Raw Water Intake Structure, Pump House and Approach Steel Bridge, Raw Water Intermediate RCC Sump and Pump House (Group B).

(ii) Laying of Mild Steel Raw Water Rising Main (Group-A).

(iii) Construction of RCC Impounding Dam for the Laitryngew -12 Shnong-Sohra and Neighbouring Villages Water Supply Scheme.

Appellant in WA. No. 5 of 2020 (Daskhem Doome)

(i) Laying of Mild Steel Raw Water Rising Main.

(ii) Construction of Raw Water Intake Structure, Pump House and Approach Steel Bridge, Raw Water Intermediate RCC Sump and Pump House pertaining to the New Shillong Water Supply Scheme.

Appellant in WA.No. 6 of 2020 (Donbert Pyrbot)

(i) Construction of Raw Water Intake Structure, Pump House and Approach Steel Bridge, Raw Water Intermediate RCC Sump and Pump House (Group-A).

(ii) Laying of Mild Steel Raw Water Pumping Main (Group B) pertaining to Laitryngew -12 Shnong-Sohra and Neighbouring Villages Water Supply Scheme.

Appellant in WA. No. 7 of 2020 (Donbert Pyrbot)

(i) Construction of RCC Impounding Dam.

(ii) Construction of Raw Water Intake Structure, Pump House and Approach Steel Bridge, Raw Water Intermediate RCC Sump and Pump House (Group-B).

(iii) Laying of Mild Steel Raw Water Pumping Main (Group A) pertaining to the New Shillong Water Supply Scheme.

3. The respondents in reply to the writ petition did not dispute the fact that the appellant/writ petitioner was the successful bidder in the Tender

invited by the PHE Department, Government of Meghalaya, but contended that the work in question was to be executed under Centrally Sponsored Scheme to the extent of 90% viz., the National Rural Drinking Water Supply Programme (in short NRDWP) and Special Plan Assistance Scheme (in short SPAS). Both the schemes have since been discontinued by the Central Government. The Government of Meghalaya shall now not receive any fund from the Central Government for these projects. Therefore, no further steps are required to be taken by the Government of Meghalaya to implement the project.

4. On perusal of the counter affidavit filed by the respondents, it is revealed that the whole project was based on 90% fund to be provided by the Government of India under NRDWP and SPAS schemes. Pointers on the said programme and guidelines were modified with effect from 2016-2017. Ministry of Drinking Water & Sanitation vide letter dated 28th February, 2017 conveyed to the respondents that all ongoing projects having physical progress less than 25% are to be funded by the State's own resources. The Government of Meghalaya being unable to fund the project on its own, the project could not be implemented and the work order could not be issued.

5. Perusal of the impugned judgment reveal that the Learned Single Judge has heavily relied on the decision of the Hon'ble Supreme Court in the case of ***Sri Ram Builders vs. State of Madhya Pradesh reported in (2014) 14 SCC 102*** to hold that the relief prayed for by the petitioners in the writ petition could not be granted by writ court and appropriate remedy

for him would be to claim the relief before the Civil Court for damages, compensation, specific performance or any other reliefs.

6. At this stage, learned counsel for the appellants has submitted that apart from other relief which the appellants would claim before the Civil Court, interest of the amount of Contract Performance Guarantee ordered to be refunded by the learned Single Judge which the respondents admittedly retained for more than three years, should also be granted to the appellants. The learned Single Judge has erred in law in not granting the relief of interest, even though he has directed the respondents to refund the amount of Contract Performance Guarantee.

7. Mr. B.Bhattacharjee, learned AAG has submitted that no such case was set up by the appellants in the writ petition for refund of Contract Performance Guarantee or for payment of interest thereon. Even then, the learned Single Judge, on his own, has directed refund of amount of the Contract Performance Guarantee. The appellants never approached the department for the refund of the said amount or interest thereon. It is for the appellants to approach the department for the refund and interest, only then they could have approached this Court. Mr. B.Bhattacharjee further submits that it is not that learned Single Judge has not observed anything about payment of interest. Learned Single Judge has granted liberty to the petitioner to seek compensation in the form of interest on the amount of Contract Performance Guarantee before the Civil Court. The learned Single Judge has observed in para 10 of the judgment that having regard to the fact that the petitioner has not set up any specific case for either refund of amount of Contract Performance Guarantee or interest, though granted

refund of the principal amount but not interest as the respondents did not set up any case for payment of interest.

8. We do not find any infirmity in the approach taken by the learned Single Judge, in directing on his own, refund of the amount of Contract Performance Guarantee to the appellants. Learned Single Judge has also directed that such refund shall be made within eight weeks from the date of the order. However, liberty was granted to the petitioner to seek compensation in the form of interest against the contract penalty amount which had been lying with the department for over three years. It would still be open for the appellants to request the respondents to grant interest at a reasonable rate for the period the money was retained by the department. If not granted, the remedy of the appellants would still be to claim the same while filing a suit for specific performance, damages, compensation or any other relief, if so advised. We therefore, do not find any reason to interfere with the view taken by the learned Single Judge.

9. Accordingly, all the writ appeals are dismissed with the aforesaid observations.

(W.Diengdoh)
Judge

(Mohammad Rafiq)
Chief Justice

Meghalaya
10.02.2020
"Samantha PS"