

25.08.2021
Sl. No.32
Cp

W.P.A. No. 5373 of 2021
Ganguly Construction & anr.
Vs.
The State of West Bengal & Ors.

Mr. Sanghamitra Nandy
...for the Petitioners.

Mr. Debabrata Saha Roy,
Mr. Arka kumar Nag,
Mr. Subhankar Das
...for the Bidhannagar Municipal Corporation.

Mr. Himadri Sikhar Chakraborty
Ms. D. Dutta
...for the State.

Affidavit of service is taken on record.

Petitioners had executed certain work on the basis of a notice inviting tender floated by the Bidhannagar Municipality. According to the petitioners, the work was completed satisfactorily. Bills were raised but not paid. Pending payment of the said bills, the Bidhannagar Municipality was converted to Bidhannagar Municipal Corporation. The petitioners filed representations for payment of the bills, which went unheeded.

It is alleged that similarly situated persons who had also submitted bills pursuant to the execution of works for the erstwhile Bidhannagar Municipality but had not been paid, approached this Court under Article 226 of the Constitution of

India. The matter went up in appeal and a Division Bench of this Court in MAT No.1345 of 2019 directed the Commissioner of Bidhannagar Municipal Corporation to consider the representations of the petitioners therein in accordance with law upon granting them an opportunity of being heard. The order passed by the Hon'ble Division Bench is quoted below:

“Having heard learned advocates for the parties, we are of the view that the learned Judge erred in the exercise of jurisdiction by disposing of the writ petition with mandatory direction in the absence of the Corporation on the very first day the same was moved. Such an approach is in the teeth of the decision of the Supreme Court in Bar Council of India Vs. Ram Chandra Prasad, reported in (2010) 15 SCC 770 and a coordinate Bench decision of this Court in Satpalsa High School Vs. Krishna Ram Bhattacharya & Ors. reported in 2018 (1) CHN (Cal) 222. In that view of the matter, the order impugned stands set aside.

We do not see reason to remand the writ petition for fresh hearing. Interest of justice, in our view, would be sufficiently served if the Commissioner of the Corporation, appellant no. 2, proceeds to consider the representation of the respondents 1 to 3 dated 16th May, 2019 in accordance with law and upon granting an opportunity of hearing to the respondents 1 to 3.

In the event the Commissioner is of the opinion that the respondents 1 to 3 had executed the work entrusted to them fully and to the satisfaction of the Corporation, release of the dues of the respondents 1 to 3 shall not be unduly delayed. However, if the Commissioner is of the view that execution of the works by the respondents 1 to 3 is deficient on any count or there are other reasons for which release of payment claimed by the respondents 1 and 2 in full or in part would not be permissible in law, a reasoned order shall be passed and communicated to them. Let this exercise be completed as early as possible but not later than eight weeks from date of receipt of a copy of this order.”

Relying upon the said order of the Hon'ble Division Bench, another co-ordinate Bench of this Court in a writ petition filed out by similarly situated persons has passed the following order:

"Submission at the Bar is that challenge in this writ petition is covered by **order dated 10th December, 2019** disposing of appeal **MAT 1398 of 2019 (The Bidhannagar Municipal Corporation Vs. Sayo San Construction & Ors.)**. Operative paragraphs in the order are reproduced below: -

"We do not see reason to remand the writ petition for fresh hearing. Interest of justice, in our view, would be sufficiently served if the Commissioner of the Corporation, appellant no. 2, proceeds to consider the representation of the respondents 1 and 2 dated 10th June, 2019 in accordance with law and upon granting an opportunity of hearing to the respondents 1 and 2.

In the event the Commissioner is of the opinion that the respondents 1 and 2 had executed the work entrusted to them fully and to the satisfaction of the Corporation, released of the dues of the respondents 1 and 2 shall not be unduly delayed. However, if the Commissioner is of the view that execution of the works by the respondents 1 and 2 is deficient on any count or there are other reasons for which release of payment claimed by the respondents 1 and 2 in full or in part would not be permissible in law, a reasoned order shall be passed and communicated to them. Let this exercise be completed as early as possible but not later than eight weeks from date of receipt of a copy of this order."

The writ petition is disposed of as covered by said order, deeming to incorporate therein date of representation as made by petitioners."

It is prayed that similar order be passed as per the direction of the Hon'ble Division Bench subsequently followed by another co-ordinate Bench.

Mr. Saha Roy, learned Advocate appearing on behalf of the Bidhannagar Municipal Corporation, submits that the issue has been decided by the Hon'ble Division Bench and similar orders may be passed by this Court.

On the submissions made by the learned Advocates for the respective parties, the writ petition is disposed of in terms of the order of the Hon'ble Division Bench which is quoted hereinbefore, deeming to incorporate therein the date of the representation of the petitioners.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)