

24.03.2021
SL No. 14
Court No.24
(P.M.)

WPA 5056 of 2019
Kalyani Enterprises
Vs.
Asansol Municipal Corporation & Ors.

Mr. Debabrata Saha Roy,
Mr. Falguni Bandopadhyay,
Mr. Manas Ghosh,
Mr. Sk. Ali,
Mr. Neil Basu

... for the petitioner

Mr. Santanu Chatterjee
.... For Asansol Municipality

The petitioner is aggrieved by the order dated 7th January, 2019 passed by the Commissioner, Asansol Municipal Corporation allegedly in compliance of the direction passed by this Court on 11th September, 2018 in W.P. No. 14169 (W) of 2018.

By the aforesaid order the Court granted liberty to the petitioner to submit a detailed representation along with relevant documents to the said respondent within a specified time claiming the dues pertaining to the works completed by the petitioner in the year 2013 and onwards.

The grievance of the petitioner in the earlier writ petition was that no payment was made in respect of the amount due pertaining to the work orders issued by the Kulti Municipality.

The Commissioner in the impugned order recorded that the hearing was arranged in terms of the direction passed by the Court and the writ petitioner was present.

The petitioner did not submit any document in support of his defense of the work orders pertaining to the execution of the work for the period 2013-2014 and the Commissioner recorded that in the hearing, the petitioner could not remember the amount allegedly payable by Kulti Municipality.

It has further been recorded that the petitioner did not produce any other documents in support of his defense. After consulting the relevant files the Commissioner opined that the ingredients required to be fulfilled prior to the execution of the civil work was not followed by the Municipality. The essential requirements of the resolution taken in the meeting of the Board of Councillors were not placed in the meeting to show that the members of the erstwhile Kulti Municipality approved the proposal for execution of the work.

The Commissioner referred to Sections 67 and 69 of the West Bengal Municipal Act, 1993 which provides that no payment of any sum normally be made out of municipal funds unless the expenditure is covered by the current budget. The provision of Section 73A of the Act was also taken into consideration. The Commissioner was of the considered opinion that the prayer of the petitioner for monetary claim cannot be entertained.

The last paragraph of the impugned order reads as follows :

“Hence representations, if any, in connection with the work orders mentioned by the writ petitioner in the instant writ petition have not been considered due to want of merit and are hereby disposed of without extending any consequential relief”.

The learned advocate for the petitioner submits that the expression “if any” implies that the Commissioner did not consider the representation of the petitioner at all. It has also been submitted that the expression “writ petition have not been considered due to want of merit” indicates that the prayer of the petitioner was not considered by the Commissioner of the Asansol Municipal Corporation. The petitioner submits that a detailed representation along with all supporting documents was filed but the Commissioner considered the matter mechanically in a slip shod manner. A prayer has been made for a direction upon the Commissioner, Asansol Municipal Corporation to rehear the issue and passed necessary orders.

The learned advocate representing the Asansol Municipal Corporation submits that part payments have already been made to the petitioner in accordance with the direction passed by the Court on 11th September, 2018.

It has been submitted that the payments in respect of the bills raised in the year 2013 – 2014 onwards have been duly paid to the petitioner.

The submission of the petitioner that his representation has not been considered by the

Commissioner does not appeal to the Court. After going through the impugned order it appears that the Commissioner has applied his mind and has given detailed reasons for rejecting the monetary claim of the petitioner.

Whether the materials supplied by the petitioner were as per the materials required by the Municipality for road construction or not cannot be looked into by the writ court. The same requires evidence to be taken. That apart, it appears that there are several other disputed questions of facts and the amount claimed by the petitioner has also not been admitted by the respondent authorities. It is not a case where the supply of materials is admitted by the Municipality. It does not appear that any of the fundamental rights of the petitioner has been infringed by the action on the part of the Municipality in not releasing the disputed money claim of the petitioner.

WPA 5056 of 2019 fails and is hereby dismissed.

However, dismissal of the writ petition will not stand in the way of the writ petitioner from approaching the appropriate forum, in accordance with law, for redressal of its grievances, if so advised.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)