

Court No. 24

11.02.2021

(Item No. 98)

(AB)

W.P.A 8522 of 2019

G. M. Construction & Anr.

vs

The State of West Bengal & Ors.

Mr. Asraful Haq
Mr. Md. Sarwar Jahan
Mr. M. Rahaman

...for the Petitioner

Mr. Sakya Sen
Mr. Hasibul Islam
Mr. S. K. Gupta
Mr. Dipanjan Biswas

..... for respondent Nos. 10-11

Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu

..... for the State

The petitioners are aggrieved by the communication dated 26th March, 2019 by the Executive Engineer of the West Bengal Rural Development Agency, Jangipur Division, Murshidabad whereby the petitioner no. 1 has been intimated that it could not take any steps to complete the 5th year routine maintenance work of the road named Pania to Dangrail in terms of the work order being No. 1155/MD/SRDA/WO-13-ADB-18 dated 19.03.2020 and many defects have been detected during inspection and steps were not taken for repairing the defects. Reminder was given to rectify the defects detected, failing which action would be taken in terms of the office memo. The petitioner was intimated that it will be terminated from all sorts of works of construction of the road as per Section 53.1 and the Performance Security Deposit and the Security Deposit Money stood forfeited following the

Sections 43.4, 46 and 55 of the Bidding Document of PMGSY.

The petitioners refer to an Abridged Tender Notice (e-tender) floated by the West Bengal State Rural Development Agency, Jangipur Division on 06.03.2019 whereby online applications have been invited for construction work of Post Five Year Maintenance Work.

According to the petitioners, work order was originally issued for construction of the road and thereafter to maintain the same for the next five years. The petitioners submit that the construction work was completed successfully and a certificate to that effect has been issued in its favour by the Executive Engineer of the Development Agency, Murshidabad Division on **15th March, 2013.**

The petitioners admit that the maintenance work for the 5th year could not be completed within the due date. A notice was given to the petitioner no. 1 on 31.01.2019 by the Executive Engineer of the Agency with request to start the maintenance work immediately and to complete the same as per PMGSY guideline. The petitioner no. 1 by a letter dated 29th March, 2019 intimated the Executive Engineer that work has already completed. Prayer was made for clearance of 5th year routine maintenance bill as well as to refund the Security Deposit and the Performance Security Deposit. The maintenance work for the 5th year

could not be concluded as the contract of the petitioner no. 1 stood terminated on 26th March, 2019.

The petitioner no. 1 has however by a letter dated 29th March, 2019 followed by reminder dated 01.04.2019 intimated the Executive Engineer that the maintenance work for the 5th year was completed satisfactorily and prayer was made for clearing the pending bills for the 3rd and 4th years' maintenance. Immediately on the self-same date the Sub-Assistance Engineer of the Agency intimated the petitioner no. 1 that it was observed that the 5th year's routine maintenance work could not be completed within the scheduled date of 31st December, 2018. Even though communication was made to complete the work of 5th year's maintenance, no initiative was taken by the petitioners to execute the same. The petitioner no. 1 was intimated that the claim which has been raised was unjustified and accordingly the previous letter issued to forfeit the Security Deposit lying in the office stands.

The statement of the petitioner no. 1 that the work was completed is denied by the respondent authority. The respondents have produced documents in Court wherefrom it appears that the petitioner no. 1 was intimated by a communication dated 2nd August, 2017 that the routine maintenance work for the 3rd and 4th years was not done in a proper manner. The condition of the road was not satisfactory. In places the road remix and the seal coat was found to be seriously damaged.

The petitioners pray for a direction upon the respondent authorities for releasing the pending bills and for withdrawal of the order of termination. The petitioners also pray for refund of the bidding amount and the Performance Security Deposit as well as the Security Deposit money which are lying with the agency.

The prayer of the petitioners has been vociferously opposed by the respondents. It has been submitted that the petitioners did not perform the work in the proper manner and for not maintaining the road in terms of the scheme, fresh tender had to be floated which involved huge sum of money. The respondents submit that the Security Deposit of the petitioner has been rightly forfeited in terms of the provisions of the scheme. The respondents also support the order of termination of the petitioner no. 1.

It appears from the submissions of the parties that there are several disputed questions of facts involved in the instant writ application. The Court sitting under Article 226 of the jurisdiction is not entitled to enter into such disputed questions of facts. The submission of the petitioners that the road was constructed satisfactorily and the maintenance work was completed by the petitioners has been disputed by the respondents.

In view of the above, no relief can be granted to the petitioners in the instant case.

However, the petitioners will be at liberty to approach the District Magistrate, Murshidabad by filing representation highlighting their grievances along with supporting documents. In the event, the petitioners approach the District Magistrate, Murshidabad within a fortnight from date, then necessary steps shall be taken by the aforesaid respondent authority to consider the representation of the petitioners, strictly in accordance with the scheme, after giving an opportunity of hearing to the petitioners and all other necessary parties and pass a reasoned order within a period of eight weeks from the date of receipt of the representation from the petitioners. The said respondent shall communicate the reasoned order to the petitioners and all other parties immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)