03.02.2022
Court No. 19
Item no.03
CP

WPA 557 of 2022

Modern Construction
Vs.
Howrah Municipal Corporation & ors.

Mr. Ayan Banerjee
Mr. Arindom Chatterjee

....for the petitioner.

Ms. Sutapa Sanyal
Ms. Sunita Saha

....for the State.

Mr. Sandipan Banerjee
Mr. Ankit Sureka

....for the H.M.C.

The contention of the writ petitioner is that the legitimate dues of the writ petitioner who had done substantial work pursuant to a tender floated by the Howrah Municipal Corporation (hereinafter referred to as the corporation), have not been paid over a period of time. Reliance is placed on a decision of this court by which the corporation was directed to take steps for clearing the dues of the petitioner in accordance with law within the specified period. The court was also of the view that non-release of funds by the State authorities could not be a reason for withholding the legitimate dues of the petitioner. It was specifically recorded that non-receipt of government grant and sanction would not be a valid reason to sit tight over the matter. The corporation was also directed to intimate the petitioner in case there were any disputes with regard to the bills.

Pursuant to the direction of this court, a hearing was given to the petitioner and an order was passed rejecting the claims of the petitioner for grounds mentioned in the order dated November 29, 2021, issued by the Controller of Finance of the corporation. It has been stated that the bills of the petitioner were never approved but the bills submitted by the petitioner were merely checked by the accounts clerk. There is nothing on record to show why the bills were not sanctioned.

The factual background as stated in the said order does not impress the court, inasmuch as, the authorities who had floated the tender and had granted the work order to the petitioner ought to pay the money to the petitioner in case the work has been done. If there are illegalities in the tendering process, the petitioner cannot be blamed for the same unless it is shown that the petitioner was personally responsible for such illegalities in the process. If the authorities are of the opinion that the tendering process suffered from illegalities, then the authorities are at liberty to pin the responsibility on the erring officials and take steps against the concerned employees for flouting the law. The law does not allow the authorities who are State under Article 12 of the Constitution of India to withhold the money payable to a contractor who had invested in the work and had completed the work. The contractor was entitled to be paid to the satisfaction of the authority who was deputed to supervise the work, the amount raised in the bills, which shall be proportionate to the work done.

The order impugned before this court dated November 29, 2021, issued by the Controller of Finance of the Howrah Municipal Corporation is set aside and cancelled. The matter is sent back for a fresh hearing by the Commissioner and/or his delegatee above the rank of the Controller of Finance to decide the issues afresh in terms of the order dated January 18, 2021, passed by an Hon'ble Judge of this court.

The only issue to be decided in this case is whether the work was completed or to what extent was the work completed by the petitioner and what amounts should be released to the petitioner on the basis of the bills raised pursuant to the work done by the petitioner. Illegalities in the tendering process detected subsequent to the work being completed, cannot be a ground for non-payment of the dues of the petitioner.

The legitimate dues of the petitioner as per the work completed by the petitioner must be released by the authority. Sanction or grant of the government cannot be a relevant issue.

This court has not gone into the merits of the claims of the petitioner and the Commissioner and/or his delegatee of the corporation shall decide the issue afresh without being influenced by the order of the Controller of Finance and strictly on the basis of the records.

The inquiry will be restricted to ascertaining whether the work order was issued to the petitioner, whether such work was completed by the petitioner and whether the bills raised by the petitioner were correct and commensurated with the work done by the petitioner. If there are reasons for not allowing the payment, such reasons shall be recorded in the order. The petitioner shall be paid in proportion to the work done.

A hearing shall be given to the petitioner. A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of two months from the date of communication of this order. The court has not decided on the quantum. The question of payment of interest is also not decided. Such points can be agitated at the appropriate stage.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)