25.07.2022
Item 9 & 10.
Court No.6.
AB

**F.M.A. 767 of 2022**
**With**
**I A CAN 1 of 2022**

**The Howrah Municipal Corporation & Others**
**Vs**
**Modern Construction & Others**

**With**

**C.O.T. 64 of 2022**
**With**
**I A CAN 1 of 2022**

**Modern Construction, Partnership Firm**
**Vs**
**Howrah Municipal Corporation & Others**

Mr. Sandipan Banerjee,
Mr. Sobhan Majumdar,
Mr. Ankit Sureka ...for the Appellants in FMA No.767 of 2022 & Respondents in COT No.64 of 2022.

Mr. Ayan Banerjee,
Mr. Arindam Chatterjee...for the Respondent in FMA No.767 of 2022 & Cross Objector in COT No.64 of 2022.

By consent of the parties, the appeal, the cross objection and the applications are taken up for hearing together.

This appeal and the cross objection have been preferred against a judgment and order dated February 3, 2022, whereby the writ petition of Modern Construction, a Partnership Firm, was disposed of.

The writ petitioner (in short "Modern") had done some work for the Howrah Municipal Corporation (in short "HMC") after having participated in a tender process. Modern contends that it completed the work to the satisfaction of HMC sometime in 2015. Bills were prepared by the Assistant Engineer of HMC. However, even seven years after completion of the work, the bills have not been paid. Modern is suffering acute financial crunch.

Modern had approached this Court earlier complaining of non-payment of bills by filing WPA No.10112 of 2020. By an order dated January 18, 2021, a learned Single Judge disposed of the writ petition on the following terms:

> *"The petitioner has performed its part of the work and it is the duty of the Howrah Municipal Corporation to pay the bills in respect of the work done by the petitioner.*
>
> *In view of the above, the instant writ petition is disposed of by directing the Howrah Municipal Corporation to take steps for clearing the dues of the petitioner strictly in accordance with law, within a period of four months from the date of communication of a copy of this order.*
>
> *In the event the Howrah Municipal Corporation disputes the bills which have been raised by the petitioner, the same shall also be intimated to the petitioner immediately."*

Subsequent thereto, a hearing appears to have been held before the Controller of Finance, HMC, wherein Modern participated. The Controller of Finance passed an order dated November 29, 2021, wherein the Officer has noted non compliance of several Rules in granting the work to Modern. In our view, those are all internal matters of HMC. If financial and other Rules have been flouted by HMC in awarding the work to Modern, it is the problem of HMC and not of Modern. It is nobody's case that Modern by making any kind of misrepresentation induced HMC to award the work to it.

There is a vague allegation in the order of the Controller of Finance to the following effect:

> *"The department was not fully satisfied with the quality of work and the quality of materials used by the petitioner while doing the work."*

No details, no particulars whatsoever have been mentioned. Such bald allegations are not to be taken into consideration. Towards the end of the order, the Controller of Finance records as follows:

> *"In this context, it is submitted that bills have not yet been approved by the Accounts Department, Howrah Municipal Corporation due to non-observance of the Government order and tender rules and for not having adequate funds due to non-issuance of the Administrative Approval and Financial Sanction (AA & FS) from the UD and MA Department so far."*

Non-receipt of Government grant or lack of funds are not legitimate grounds for a Statutory Authority like HMC to withhold legitimate dues of a person, who has rendered service and has performed work for it. From the order impugned in the writ petition, we find that the grounds cited by the author of the order are all internal problems of HMC with which Modern cannot be concerned. The learned Judge, in our opinion, has rightly sent back the matter to the Commissioner of HMC after setting aside the order of the Controller of Finance, which was impugned in the writ petition.

The learned Judge was also right in restricting the scope of the reference to the Commissioner. We reiterate that the Commissioner will only consider the following questions:

i. Whether the work was awarded to Modern ;
ii. Whether Modern completed the work ;
iii. Whether Form-A has been issued by the concerned Engineer ;
iv. Whether the bills of Modern have been certified by the Competent Authority.

If the answers to the above questions are in favour of Modern, there can be no legitimate reason for withholding Modern's bills, unless of course, the Commissioner comes to a finding, supported by reasons and requisite details that Modern did not perform the work as per tender specifications. The Commissioner shall pass a reasoned order after giving an opportunity of hearing to the writ petitioner i.e. Modern Construction, in accordance with law, within a period of six weeks from the date of a copy of this order being placed before the Commissioner. We have not gone into the merits of the claim of the writ petitioner. The Commissioner shall take an informed decision in accordance with law. Needless to say, if the

Commissioner finds that there is no legitimate ground not to release the bills of the writ petitioner, immediately he will pass appropriate directions so that the writ petitioner receives payment at the earliest.

The Commissioner shall also consider the eligibility of the writ petitioner to receive interest on delayed payment of his bills as per applicable law including Statutes.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

FMA No.767 of 2022 stands disposed of along with IA CAN 1 of 2022. COT No.64 of 2022 also stands disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Rai Chattopadhyay, J.)** **(Arijit Banerjee, J.)**