

23.11.2022
Sl. No.419(ML)
srm

W.P.A. No. 5880 of 2022
Palton Mazumder
Versus
The State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Sankar Halder

....for the Petitioner.

Mr. Rabintra Narayan Dutta,
Mr. Hare Krishna Halder

...for the respondents.

Affidavit-of-service is taken on record.

The petitioner is aggrieved by a communication dated March 7, 2022 issued by the Executive Engineer-in-Charge, West Bengal State Rural Development Agency, Nadia Division. By the said letter, the petitioner's claim for refund of security deposit was denied.

The petitioner claims to have successfully completed the contract within time. The contract included construction and maintenance of a road.

According to the petitioner, the contract value as per the bills raised by the petitioner, were also paid. Suddenly, the petitioner's claim for refund of security deposit after the expiry of the maintenance period was rejected.

The claim for refund was rejected on the ground that the road condition had deteriorated and required repair. An amount of Rs.38,81,000/- was spent for such repair as the petitioner failed to maintain the road.

The learned Advocate for the petitioner submits that the allegation with regard to the road not being properly maintained and the question as to whether the petitioner could be faulted for the damage caused to the road, were issues arising out of the contract.

He submits that the Executive Engineer-in-Charge could not have rejected the claim of the petitioner outright, without allowing the petitioner to submit his case with proper documents in order to rebut such allegation.

Further, it is submitted that in the entire period of five years, not a single complaint had been received from any quarter alleging that the road condition was bad and maintenance work was not being done properly by the petitioner.

Having considered the issues involved and the tenor of the letter written by the Executive Engineer-in-Charge, this Court is of the view that the matter should have been decided in terms of clause 24.1 under Section 4 of Part-I of the General conditions of the Bidding Documents for PMGSY.

The said clause provides the mechanism for disposal of all disputes and differences arising out of a contract. The clause which was invoked to forfeit the security deposit is a part of the contract. Lack of maintenance of the road is also an allegation which touches the very essence of the petitioner's claim to have successfully completed the contract.

Under such circumstances, the writ petition is disposed of with a direction upon the concerned authority to treat the writ petition as a dispute raised by the petitioner and refer the same to the competent authority so earmarked or the Chief Engineer, as the case may be. Upon giving an opportunity of hearing to the petitioner as also to any such authority who was supervising the work of the petitioner, a reasoned order shall be passed and communicated. The petitioner will be allowed to furnish additional documents in support of his claim.

The entire exercise shall be completed within a period of eight weeks from the date of communication of this order.

The competent authority shall apply his independent mind on the basis of the records and submissions to be made by the petitioner. The decision of the Executive Engineer-in-Charge cannot be treated as a final decision in this regard in view of the specific provision with regard to redressal of

disputes arising out of a contract. At best, it can be an opinion of the authority.

This Court has not gone into the merits of the claims and counterclaims of the parties. All the issues shall be decided by the authority, independently.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)