

Item No. 8

03.08.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 7265 of 2021
Md. Nojrul Islam
v.
State of West Bengal & Ors.

Mr. Gaus ul Alam
... for the petitioner.

Mr. Debjit Mukherjee
Ms. Rupsha Chakraborty
... for the State respondents.

Mr. Prabal Sarkar
... for the Municipality.

The matter relates to payment of the admitted amount to the petitioner by the Murshidabad Municipality in accordance with the work order issued by the Murshidabad Municipality in favour of the petitioner in the year 2015.

The petitioner has annexed certificates signed by the Chairman and the Sub-Assistant Engineer of the Municipality certifying that the petitioner completed the work as per the tender specification.

Presently, the stand of the Municipality is that the payment cannot be made to the petitioner due to shortage of funds. The Municipality sought help from the State Government for disbursing payment in favour of the petitioner.

The Additional Secretary, Government of West Bengal, Urban Development & Municipal Affairs Department has clearly mentioned that no approval and financial sanction was accorded by the department for the scheme, accordingly, the Municipality is to take the responsibility for paying the outstanding dues from the own source of the Municipality. The department cannot bear the responsibility of any expenditure which was incurred without the prior administrative approval and financial sanction of the Government.

When the tender was floated by the Municipality, it was known to the Municipality that the same would require expenses on the part of the Municipality. If the Municipality was in shortage of funds, then the Municipality ought to have taken a prior approval from the department for proceeding with the work. Instead of taking prior approval, the Municipality proceeded to issue the work order in favour of the successful tenderer.

After the work was completed and certificates issued by the Municipality that the work was done as per the tender specification, the Municipality cannot be heard to say that payment cannot be made for want of funds. It is not only the duty but the obligation and responsibility of the Municipality to clear the

outstanding dues of the tenderer who performed the work successfully.

The stand of the Municipality for non-payment on account of paucity of funds cannot be a valid ground to withhold payment in the eye of law.

In view of the above, the Murshidabad Municipality, the Chairman and the Board of Councillors are directed to take all necessary steps to clear the outstanding dues of the petitioner at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

In the event, the amount is not cleared within the stipulated time period, the petitioner shall be entitled to receive the amount with interest @ 7% per annum from the date of submission of the bills till the date of actual payment.

The writ petition stands disposed of.

Instruction given by the Additional Secretary, Government of West Bengal signed on July 29, 2022 be retained with the records.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)