

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 10010 of 2022

Ramkrishna Sarkar

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Subrata Ghosh, Adv.
Mr. Sayantan Hazra, Adv.

For the State : Mr. Nilotpal Chatterjee, Adv.
Mr. Sutanu Chakraborty, Adv.

Last Heard on : 20.09.2022.

Delivered on : 23.09.2022.

Moushumi Bhattacharya, J.

1. The petitioner prays for a direction on the Executive Engineer, Vidyasagar University Division and the Superintending Engineer, South Western Circle, Social Sector, Public Works Directorate, Paschim Medinipur to carry out measurement of the work done by the petitioner and cause payment of the bills of the petitioner along with applicable

interest. The petitioner relies on a letter dated 14th May, 2019 from the Superintending Engineer to the Executive Engineer directing that the Junior Engineer should take necessary steps for finalization of the measurement of the Contract no. mentioned in the letter after informing the petitioner to attend the joint measurement.

2. Learned counsel appearing for the State respondents objects to the prayer on the ground that by a letter dated 14th November, 2019, the Executive Engineer, Jhargram Division, objected to the letter being issued by the Superintending Engineer asking for a fresh measurement on the ground that the petitioner (described as contractor in the said letter) refused to attend the joint measurement on the date that it was done.

3. From the submissions made on behalf of the parties and the documents before the Court, it appears that the petitioner was engaged as a contractor for construction of a three-storied Girls Hostel for a Government Polytechnic Institute at Jhargram, Paschim Medinipur. The contract was terminated on 23rd May, 2012 on the ground that the petitioner failed to perform the work within the agreed time frame. The balance work of the tender was completed by another contractor who was engaged by the respondent. The work was completed in January, 2015.

4. The petitioner filed several writ petitions before this Court from 2012 onwards seeking a stay on the State appointing a new contractor. A learned Single Judge of this Court passed an order on 29th August, 2012 directing that proper measurement of the work executed by the petitioner should be undertaken before the respondents appoint any other contractor for completing the construction of the hostel building. This order was passed in W.P 18176 (W) of 2012. A second writ petition was filed by the petitioner being W.P 6452 (W) of 2013 where the petitioner was favoured with an order dated 15th March, 2013 by which the Notice Inviting e-Tender was stayed and noting that the earlier order directing measurement was not undertaken by the State. The petitioner filed a third writ petition being W.P 32114 (W) of 2013 wherein by an order dated 7th November, 2013, the Court noted that the writ petition was filed for stopping the project for setting up the Polytechnic Institute. This writ petition was dismissed by a learned Judge on costs and the State was directed to proceed for completing the work. The petitioner failed to prosecute the appeal before the Division Bench where the matter was taken up for consideration.

5. The entire case of the petitioner is based on the letter of the Superintending Engineer dated 14th May, 2019 by which the Junior Engineer was directed to take necessary steps for finalization of the measurement of the contract after informing the petitioner to attend the

joint measurement. The communication of the Executive Engineer dated 14th November, 2019 records that the petitioner failed to attend the joint measurement undertaken thereafter by reason of which the final bill was prepared without the inputs of the petitioner. Although the State respondents are opposed to any further measurement being done and have disputed the letter written by the Superintending Engineer dated 14th May, 2019, the grounds for rejecting the said documents are required to be revisited.

6. The reason given is that all the Court cases have gone in favour of the State respondents. There is no evidence of this from the material before the Court. On the other hand, two orders referred to of 29th August, 2012 and 15th March, 2013 noted that the State respondents did not carry out the measurement of the work executed by the petitioner as directed by the Court. The order passed on 7th November, 2013 in the third writ petition cannot assist the respondent since the said writ petition was confined to the prayer for stopping the work for completing the construction of the girls' hostel at the Polytechnic Institute.

7. This Court is hence of the view that the petitioner being absent on the date of the joint measurement cannot be held against the petitioner and the petitioner's right to additional payment cannot be denied on that basis. The internal letter of the State respondents dated 14th May,

2019 show that there was a specific direction to undertake a fresh measurement which was rendered infructuous by reason of the petitioner's absence on the designated dates. It is undisputed that the petitioner executed a part of the work before the petitioner's contract was terminated in 2012.

8. Hence, WPA 10010 of 2022 is disposed of with a direction on the concerned State respondent to inform the petitioner of a mutually convenient date and time when the parties can exchange their respective documents with regard to the measurement of the work executed by the petitioner before 23rd May, 2012. The State respondents shall make all efforts to settle the matter upon payment of any additional amounts, if due, to the petitioner for the work done along with applicable rate of interest. The parties shall also undertake a joint measurement, if that is possible at the present moment for quantification of the amount of work done. The State respondents shall make an endeavour to complete the entire exercise within eight weeks from today.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)