

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.16060 of 2022

**M/s Goswami Electrical and Construction
Vs.
West Bengal State Electricity Distribution
Company Limited and others**

For the petitioners : Mr. Soumya Majumdar,
Mr. Sougata Mitra,
Ms. Ankita Dey

For the WBSEDCL : Mr. Sumit Kumar Panja,
Mr. Sumit Ray

Hearing concluded on : 06.12.2022

Judgment on : 13.12.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a Proprietorship Firm represented by its sole proprietor Arup Kumar Goswami. The said Firm is a contractor under the West Bengal State Electricity Distribution Company Limited (WBSEDCL). On a tender being issued on July 10, 2015 by the WBSEDCL for maintenance of 33KV, 11KV and LV Lines and installations, air-conditioning equipment, recording of various measurement, inter-communication system, operation and maintenance of water-supply system, etc., the petitioner participated in the same and came out the successful bidder.

2. The said job was awarded to the petitioner. The contract stipulated its period to be two years, extendable for a further period of six months by the Ordering Authority with the same terms and conditions.
3. Accordingly, on September 1, 2015, the WBSEDCL issued a Work Order to the petitioner to perform the job.
4. Subsequently, on the instruction of Officials of WBSEDCL, the petitioner continued as per the terms and conditions of the Contract to do the job. The petitioner contends that the WBSEDCL Officials had requested the petitioner in several meetings held between the petitioner's proprietor and the WBSEDCL, in view of workers' agitations, that the petitioner disburses the salaries for the off-days as well.
5. However, when the petitioner claimed its dues, the WBSEDCL refused to honour the same, for which the present writ petition has been filed.
6. Learned counsel for the petitioner, by placing reliance on the letter issued by the Chief Engineer and Project Manager, Purulia Pumped Storage Project (PPSP) of the WBSEDCL, submits that the petitioner, by the said communication, was directed to continue the subject-matter works from September 01, 2021 to November 30, 2021 on the existing rates, terms and conditions, without creating any rights or equity in favour of the petitioner and without prejudice to the rights and contentions of the WBSEDCL. The petitioner was also advised to conform to the statutory compliances as well as contractual obligations in this regard.
7. It is required to be noted that since after the expiry of the original period of contract, the petitioner had been continuing to do the work as per the

terms and conditions of the contract due to the exigent nature of the job, on the request of the WBSEDCL.

8. It is submitted that on December 24, 2020 a meeting was held between the petitioner-Firm and the PPSP Officials. In the said meeting, the Minutes of which are annexed at page 70 of the writ petition, the issue of workers' agitation was mentioned and the WBSEDCL Authorities had arranged a meeting with the petitioner-Firm where the said Officials verbally advised the petitioner to pay those allowances which were being given before the order, including off-day duty salary to the workers, and assured that these additional payments would be reimbursed by modification of the order.
9. The committee members present requested the petitioner to continue the work peacefully and wait for the final decision of the WBSEDCL till March 31, 2021. The Officials of the WBSEDCL also assured that the petitioner's demand for enhancement of rate would be placed before "Higher Authority" and the Agency was advised to submit the break-up of demand justifying the enhancement claimed by him shortly.
10. It is contended by learned counsel that the petitioner had continued to work on the insistence and assurance of the WBSEDCL-Authorities at the same rates, terms and conditions as the original contract, despite the increasing expenses due to rising prices of materials and labour. As such, enhancement in the rates was being requested by the petitioner repeatedly, but the same fell on deaf ears.
11. Ultimately, the petitioner claimed its dues with regard to the off-day duty allowances which were paid in terms of the request of the WBSEDCL Officials.

12. However, the WBSEDCL, after sitting tight over the issue for long, refused to honour their commitment by paying such dues to the petitioner.
13. It is further submitted that although a previous writ petition was filed in connection with a fresh Tender issued by the WBSEDCL without termination of the previous contract, the same has no nexus with the issues involved herein.
14. Learned counsel appearing for the petitioner cites the Judgment of *Hari Krishna Mandir Trust Vs. State of Maharashtra and others*, reported at (2020) 9 SCC 356, for the proposition that the High Courts exercising jurisdiction under Article 226 of the Constitution of India not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, rule, policy decision of the Government or has exercised such discretion *mala fide* or on irrelevant considerations. A statutory duty can be enforced through mandamus and for such purpose, the High Court has jurisdiction to try issues both of fact and law. It was further reiterated that merely because one of the parties to the litigation raises a dispute in regard to facts of the case, the writ court is not always bound to relegate the parties to a suit. By quoting excerpts from previous judgments of the Supreme Court, it was held that if the facts required, the writ court can even go to the extent of taking oral evidence. Hence, it is argued that the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar to

entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

15. Learned counsel next cites *ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others*, reported at (2004) 3 SCC 553, which was also followed in *Hari Krishna Mandir Trust* (supra) for the same proposition.
16. Learned counsel appearing for the WBSEDCL disputes the contentions raised in the writ petition and submits that it is clear from the contract that mere verbal agreement would not entitle the petitioners to raise claims in respect of any additional terms and conditions which were not there in the original contract.
17. Further, Clause 8.0 of the conditions of contract with the petitioner clearly provided that when asked in writing by the WBSEDCL's engineer, the Contractor shall perform extra work and furnish extra material not included in the Contract. The terms for payment for such extra work or material, as per the said clause, shall be agreed upon mutually, and shall be recorded in writing unless otherwise stated in the Contract.
18. In the present case, it is submitted, no such written agreement was entered into between the parties.
19. Since the moot question raised in the present writ petition is the entitlement of the petitioner to get reimbursement for the extra payments made to workers in lieu of off-day salaries, affidavits have not been invited in the matter.
20. It is seen from the nature of dispute involved that the same does not pertain to "extra work" or "extra material" not included in the Contract.

- 21.** Rather, the petitioner acted on the specific understanding given by the WBSEDCL that the petitioner was to continue the job at hand even after expiry of the original contract period, on the same terms and conditions as the original contract.
- 22.** The payment of extra wages for the off-duty days was clearly the result of meetings held between the WBSEDCL Officials and the proprietor of the petitioner-Firm. The Minutes of one such meeting dated December 24, 2020, annexed at pages 70 – 71 of the writ petition, clearly shows that the meeting had been convened due to workers' agitation and consequential stoppage of work. The crux of the dispute was that, previously, the same work was being executed by a different Contractor who was paying different allowance and four days' off-day duty salary to the workers beyond the terms and conditions of the order.
- 23.** When the petitioner made payments to the workers after completion of the first month, the extra allowances were stopped being paid by the petitioner, on which the workers' agitation and cease-work started.
- 24.** The PSIC, PPSP Site arranged a meeting where the petitioner and the higher officials of the WBSEDCL were present. Such Officials verbally advised the petitioner to pay the allowance including off-day duty salaries to the workers as before and also expressed the opinion that these additional payments would be reimbursed by modification of the order. The petitioner had made it clear that if the order was not modified, it could not continue to pay such allowances, including off-day duty salary, from the next month.

- 25.** However, the modification and reimbursement was stalled on the pretext of an existing court case (the previous writ petition).
- 26.** It is clear and unambiguous from the minutes of the said meeting that the WBSEDCL committee requested the petitioner-Agency to continue the work peacefully and wait for the final decision of the WBSEDCL and that the petitioner's demand for enhancement of rates would also be placed before the higher authority and the petitioner was advised to submit the break-up of its demand justifying the enhancement.
- 27.** In the minutes of another meeting dated January 25, 2021, annexed at page 73 of the writ petition, the demand with calculation-sheet for settlement of dues from September 2015, to December, 2020 was submitted by the petitioner-Firm. The Agency was again requested to continue their work peacefully and wait till the final decision of the WBSEDCL. Again, in the Minutes of the meeting dated February 18, 2021 (annexed at page 74 of the writ petition), fresh calculation-sheet was prepared and shown to the petitioner. Since some parts of the calculation were doubted by the WBSEDCL, the petitioner was asked to submit a fresh calculation-sheet, upon receipt of which, it was assured, a meeting would be arranged at the PPSP Headquarter for finalization of the same for consideration of the appropriate authority in due course.
- 28.** It was also assured that the proposal of the petitioner for enhancement of rate was discussed at the PPSP site on December 24, 2020 and minutes had been drawn. Decision in such respect was to be effected from the next date of extension, if agreed to.

29. The petitioner, thereafter, on July 19, 2021 communicated to the WBSEDCL, through its Chief Engineer and Project Manager, PPSP at Vidyut Bhaban, requesting to release of his due payments from September 01, 2015 to June 30, 2021 which, according to the petitioner, had accumulated to around Rs.1.23 crore plus interest.
30. The petitioner also gave a detailed break-up of the dues, which is also annexed to the writ petition at pages 78 to 83.
31. However, the PPSP of the WBSEDCL, through its Chief Engineer and Project Manager, denied the claim of the petitioner and withheld the entire dues of the petitioner.
32. Upon the petitioner reiterating the claim for payments *vide* Letter dated May 31, 2022, the WBSEDCL again denied the claim by a reply dated June 16, 2022.
33. In paragraph 2 of the said reply, the previous writ petition bearing W.P. No.1669 (W) of 2020, challenging a different tender dated January 6, 2020 which had been issued afresh despite non-termination of the previous contract with the petitioner, was cited without context and in an unwarranted manner. The said writ petition has no nexus whatsoever with the present claim of the petitioner, nor has the WBSEDCL alleged in its reply any embargo by dint of any court order in that regard.
34. The petitioner repeatedly went on making claims, lastly on June 19, 2022.
35. All the claims of the petitioner, detailed break-ups and the respective replies on behalf of the WBSEDCL are annexed to the writ petition. The question which arises for consideration in the present case is primarily as

to whether the petitioner is entitled to the extra payments made for off-day wages.

- 36.** Clause 8.0 of the conditions of Contract between the petitioner and the WBSEDCL contemplates the WBSEDCL's Engineer writing to the contractor to perform extra work and furnish extra material not included in the Contract.
- 37.** However, in the present case, the petitioner does not claim dues for any extra work or material. What the petitioner claims is its legitimate dues for work incurred within the four corners of the contract, which was extended from time to time by the WBSEDCL on the same terms and conditions, pursuant to which the petitioner carried on with the job entrusted to it all along.
- 38.** Thus, by virtue of the its own conduct, the WBSEDCL is estopped from denying the due payments to the petitioner for having continued the work after the contractual period, even with regard to the off-day salaries/wages, since such payments were made by the petitioner on the specific request by the WBSEDCL personnel who were in liaison with the petitioner at all material times. It is, rather, commendable as to how the petitioner, to obviate labour unrest and stoppage of the essential work of the WBSEDCL, which is of a public nature, continued to render its services at the old rate which was fixed on September 1, 2015 even till recently, despite the soaring prices of labour and materials.
- 39.** The WBSEDCL, instead of enhancing the rates and/or honouring the petitioner's bills for his due payments, has brazenly refused to disburse such payments in favour of the petitioner.

- 40.** A perusal of the relevant Contract clearly shows that Clause 1.0 thereof stipulates that the quoted price would be variable following minimum wage announced by the Government of West Bengal time to time and Clause 3.0 provides that subject to any deduction made under the Contract, the Contractor shall, on the certificate of the WBSEDCL's engineer, be entitled to payment. The progressive payment was to be made once in a month against RA Bill.
- 41.** Clause 12.0 of the same also stipulates that the Contractor-Agency shall have to comply with all statutory obligations towards engagement of contract labourers for the work and any deviation/non-compliance of the relevant provisions shall attract penal actions as per the relevant Act.
- 42.** In Clause 17.0 of the Contract, the normal working hours were stipulated.
- 43.** However, solely on the insistence and assurance of the WBSEDCL Officials in charge, the petitioner carried on with the work even after the contractual period and has been making the extra payments in lieu of off-day wages for the benefit of the WBSEDCL, so that the public work undertaken is not stalled or hampered.
- 44.** Hence, it does not lie in the mouth of the WBSEDCL, at this juncture, to resile from its assurance given to the petitioner. None of the claims made by the petitioners are *de hors* the terms of the Contract or contrary to any law. Rather, in order to honour the very terms of the Contract and repeated requests of the WBSEDCL, the petitioner has done the work and expended the amounts-in-question. As such, at this juncture, the WBSEDCL has no authority in law or as per the Contract, to withhold the payments claimed by the petitioner.

- 45.** In the absence of any controversy at the relevant point of time to the petitioner's bills and the break-up of payments submitted by the petitioner, the WBSEDCL cannot now turn back and say that they will improve their original case by way of using an affidavit-in-opposition in the writ court to dispute the claims factually. It is well-settled that the original defence cannot be improved by filing affidavits and pleadings in a writ petition subsequently.
- 46.** Hence, even on the materials annexed to the writ petition, it is clear that the petitioner's claims are legitimate and the WBSEDCL acted palpably in an arbitrary and *mala fide* manner to refuse such payments. In fact, the reference to the previous writ petition in the communications of the WBSEDCL engineers clearly brings out the *mala fides* behind such refusal. Such reference, particularly in the communication of the WBSEDCL dated June 16, 2022, is entirely without context and bearing and can furnish no ground of refusal of payment to the petitioner for dues with regard to works already done by the petitioner.
- 47.** The ratio propounded in the judgments cited by the petitioner as mentioned above is, thus, apt and applicable in the circumstances of the present case.
- 48.** In such view of the matter, the petitioner has made out a successful case for release of the dues of the petitioner along with interest at the rate of ten per cent per annum from the date of the Demand Notice dated July 19, 2021.
- 49.** Hence, W.P.A. No.16060 of 2022 is allowed, thereby directing the respondents/WBSEDCL to disburse the dues of the petitioner to the tune of Rs.1,23,23,830.42p, along with interest at the rate of 10 (ten) per cent per

annum, from July 19, 2021 till the date of payment of such amount to the petitioner. Such payment shall positively be disbursed within January 31, 2023.

50. There will be no order as to costs.
51. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)