

24.11.2022

Ct. 5

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WPA 19572 of 2022

Suman Mitra

-Vs-

**The Executive Engineer, HPIU, WBSRDA, Malda
Division & Ors.**

Mr. Sanjay Saha

Mr. Utpal Das

.... for the petitioner

Mr. Srikanta Dutta,

Mr. Prodyot Kumar Roy

... for the respondent nos. 1 & 4

The petitioner was engaged as a contractor in terms of a work order dated 17th March, 2020 issued by the Executive Engineer, Malda Division under the Scheme of Prime Minister Gramin Sadak Yojana (PMGSY). The petitioner was to construct a stretch of road from Point A to Point B in Malda. The petitioner's grievance arises out of a letter of termination dated 6th July, 2022 by which the contract was terminated and the performance security deposit furnished by the petitioner was forfeited by the authority.

The petitioner's contention in brief is that the petitioner was unable to complete the work from 17th March, 2020 by reason of successive lockdowns and the monsoons in 2020-2021.

Learned counsel appearing for the petitioner submits that while the petitioner completed about 70% of the work, the respondents paid for about 40% of the work done by the petitioner and that too without joint inspection undertaken for assessing the amount of work completed. Counsel points to several representations from the petitioner to the authority asking for extension of time.

Learned counsel appearing for the respondent nos. 1 and 4, namely, the Executive Engineer, Malda Division places several replies of the respondents acceding to the requests for extension of time made on behalf of the petitioner. Counsel submits that the respondents gave sufficient leeway to the petitioner on account of the pandemic but that the petitioner was unable to complete the work despite such extensions. Counsel also submits that the petitioner was forewarned by way of show cause and was given a final extension until 30th December, 2021.

The material before the Court makes it evident that the petitioner was, understandably, stopped in completing the work by reason of the 2nd wave from April, 2021 onwards by reason of the lockdown following the pandemic. The correspondence, however, shows that the respondents made sufficient allowance for the delay caused by the pandemic and gave several extensions to the petitioner for completing the work.

The petitioner, in fact, was warned time and again that the petitioner was way behind the schedule since the contract was only for a period of nine months from 17th March, 2020. The reason given for the difficulties during the monsoons in 2020-2021 is not sufficient since monsoons at least in this country is not an unprecedented occurrence. The contention of the petitioner that the requests for extension of time were not responded to is belied by the documents on record. Hence, the delay in completing the work cannot be condoned.

Clause 27 of the Tender Terms with regard to extension of the Intended Completion Date if a Compensation Event occurs which makes it impossible for completion to be achieved by the specified date. The Clause does not say that the Engineer must extend the date on request from the contractor in all cases.

Clause 52 of the Tender Terms with regard to termination provides for a series of fundamental breaches, which shall be a ground for the Employer to terminate the contract. Since the petitioner stopped the work intermittently, the petitioner would come under Clause 52.2(a) of the Tender Terms.

Clause 53, however, casts an obligation on the Engineer to issue a certificate for the value of the work done less liquidated damages in the event the contract

is terminated because of a fundamental breach by the contractor.

The only issue in which the Court can interfere is that the certificate which was to be issued by the Engineer under Clause 53 with regard to quantum of the work completed has also not been issued as on date. Admittedly, the certificate is to be issued after a joint inspection by the parties concerned, which has also not been done as on date. The petitioner has been paid Rs. 81.24 lacs on the measurement of the work undertaken by the respondents alone but not in conjunction with the petitioner.

Since the contract was awarded to a third party in September, 2022, this Court is disinclined to interfere in that part of the petitioner's grievance. The parties shall, however, cause a joint inspection to be made of the work done by the petitioner before the contract was terminated on 6th July, 2022 to assess the compensation which is to be paid to the petitioner for total amount of the work done. The joint inspection shall take place within seven days from today and the Engineer shall issue a certificate under Clause 53 of the Tender Terms within two week from the date on which the joint inspection is undertaken. The amount arrived at shall be paid to the petitioner within four weeks from the date on which the joint inspection is undertaken by the parties.

The petitioner shall also be at liberty of availing of the Dispute Redressal System under Clause 24 of the Tender Terms within two weeks from date. The Designated Authority under the said Clause shall consider the application for redressal of the petitioner and decide the same within five weeks from the date on which such application is made and upon hearing the petitioner.

WPA 19572 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)