

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 1197 of 2022
With
I.A. No. CAN 1 of 2022

Gautam Ghosh
VS
The State of West Bengal & ORS.

And

F.M.A. 1189 of 2022
With
I.A. No. CAN 1 of 2022

Gautam Ghosh
VS
The State of West Bengal & ORS.

BERORE: THE HON'BLE JUSTICE ARIJIT BANERJEE
AND
THE HON'BLE JUSTICE APURBA SINHA RAY

For the appellant : Mr. Arijit Bardhan, Adv.
Mr. Gopal Chandra Banerjee, Adv.
Mr. Amit Ranjan Pati, Adv.
Mr. Sunayan Ghosh, Adv.

For the 24 Parganas : Mr. Tapash Kumar Mandal. Adv.
(South) Zilla Parishad

For the State : Mr. Lalit Mohan Mahata, Adv.
Mr. Rudranil De, Adv.

Heard On : 6.12.2022 & 12.12.2022

CAV On : 12.12.2022

Judgment On : 20.12.2022

Arijit Banerjee, J.

1. These two appeals and the connected applications have been taken up together for hearing and disposal as common questions of fact and law are involved in the two appeals.

2. The issue involved in both the appeals is the validity/legality of termination of a works contract awarded to the appellant by the South 24 Parganas Zilla Parishad and forfeiture of earnest money deposit and security deposit. Two works contracts were terminated by orders, both dated February 16, 2022, issued by the District Engineer of the Zilla Parishad. Two writ petitions were filed by the appellant challenging the two orders of termination of contract. The two appeals were disposed of by similar orders, both dated July 20, 2022. Being aggrieved by the said two orders, these two appeals have been filed by the writ petitioner.

3. For the sake of convenience we will refer to the records of one of the writ petitions being W.P.A 8071 of 2022.

4. A Work Order was issued by the Zilla Parishad through the District Engineer in favour of the appellant for upgradation of road from Golar More to Chakda under Magrahat-I Panchayat Samity under RIDF – XVII on June 7, 2012. The terms of the work order required the appellant to start the work immediately and complete the same within 12 months.

5. Clause 2 of the conditions of contract required the appellant, in the event he failed to comply with any of the conditions, to pay compensation as indicated in the said clause, subject to a maximum of 10 per cent of the tender amount. Clause 3 of the conditions of contract empowered the Zilla Parishad to terminate the contract in the event the appellant was in breach of the conditions of contract and also to get any unfinished work done through some other contractor at the risk and cost of the appellant.

6. The appellant fail to complete the work within the stipulated period of 12 months. A show cause notice was issued to him on December 22, 2017. He replied to such notice. Time to complete the work was extended by the Zilla Parishad.

7. The appellant failed to complete the work even within the extended time period. On his request, time was again extended for completion of the work. Again the appellant was unable to complete the work within the further extended time period.

8. Another show cause notice was issued to him on October 4, 2021. He answered such notice. Further extension of time was granted to him to complete the work. However, again the appellant failed to complete the work within the extended time period.

9. Finally by a communication dated February 16, 2022, issued by the District Engineer, the contract was terminated, the security deposit and earnest money deposit were forfeited and the appellant was debarred for a period of 2 years from participating in any tender process floated by the said Zilla Parishad. This communication was challenged by the appellant before the learned Single Judge.

10. Before the learned Single Judge, the appellant urged the following points:-

- (i) The District Engineer of the Zilla Parishad is not the competent authority to terminate the contract.
- (ii) Time was never the essence of the contract since several extensions were granted by the Zilla Parishad.
- (iii) There is no provision in the contract to blacklist the appellant and debar him from participating in other procurement processes undertaken by the Zilla Parishad.

11. The Zilla Parishad urged the following points before the learned Single Judge:-

- (i) The subject work was required to be completed within 12 months from the date of issuance of the work order. Even after ten

years the writ petitioner was unable to complete the work. Several extensions were granted to the writ petitioner in the interest of the project. However, his performance was miserable. Ultimately the Zilla Parishad had no option but to terminate the contract.

(ii) The Zilla Parishad has engaged a separate contractor for completing the work that has been left unfinished by the writ petitioner.

(iii) Clause 3 of the conditions of contract clearly indicates that the District Engineer is the competent authority to terminate the contract.

12. It was, however, conceded on behalf of the Zilla Parishad that the contract did not have any clause authorizing or empowering the Zilla Parishad to blacklist a contractor for any period of time. On the basis of such concession, the learned Single Judge set aside the decision of the District Engineer to debar the writ petitioner from participating in procurement processes under the said zilla Parishad for a period of 2 years. The learned Judge however did not interfere with the decision of the District Engineer to terminate the contract and forfeit the security deposit and earnest money deposit. Being aggrieved the writ petitioner is before us by way of this appeal.

13. Appearing for the appellant, Mr. Arijit Bardhan, learned Counsel, submitted that the termination of the contract was bad in law. Although, initially there was a clause in the contract making time essence of the contract, after having granted several extensions to the appellant, the Zilla Parishad could not have relied on such clause for terminating the contract. Time ceased to be essence of the contract. It was unreasonable on the part of the Zilla Parishad to terminate the Contract.

14. Learned Advocate also argued that the Zilla Parishad could not have taken all kinds of coercive steps after terminating the contract. It has not only forfeited the security deposit and the earnest money deposit. It has withheld the dues of the appellant. It is getting the balance of the work done through another contractor at the risk and cost of the appellant.

15. Learned Counsel did not urge the point of lack of authority of the District Engineer to terminate the contract. Indeed, there is no substance in such point. The conditions of contract clearly authorize the District Engineer to issue termination letter in circumstances which, in our view, existed in this case.

16. We are of the considered view that in the facts and circumstances of this case, it was not unreasonable or arbitrary on the part of the Zilla Parishad to terminate the contract. The Zilla Parishad allowed the appellant almost ten years to complete the work which the appellant was required to do within one year. The Zilla Parishad showed indulgence of the highest degree to the appellant for reasons which are not clear to us. Even then, the appellant could not complete the work. In our view, the contract should have been terminated much earlier as it was a public project and it is of utmost importance that such projects are completed within a reasonable time period which would be reflected in the contract.

17. As regards forfeiture of the earnest money deposit and security deposit, the terms of the contract clearly authorized the Zilla Parishad to do so upon the failure of the appellant to perform in terms of the contract. It was an administrative decision of the Zilla Parishad which we do not find to be unreasonable in the factual matrix of the case. The learned Single Judge rightly refused to interfere with such forfeiture.

18. The Zilla Parishad is also entitled, under the terms of the contract, to have the unfinished portion of the work completed by engaging some other contractor at the cost of the appellant. The whole idea is that if the Zilla Parishaad has suffered monetary loss by reason of breach of contract committed by the appellant, the same is recoverable by the Zilla Parishad from the dues of the appellant. Of course the Zilla Parishad cannot make a windfall profit by blocking or not paying the entirety of the legitimate dues, if any, of the appellant, if such dues exceed the amount that the Zilla Parishad is entitled to recover from the appellant in terms of the conditions of contract.

19. The learned Judge has granted liberty to the appellant to approach the appropriate authority for disbursement of the monies which according to him are payable to him in terms of the contract. This will necessarily involve an accounting exercise. In the event the appellant makes any representation in the above regard before the appropriate authority, the same shall be disposed of by the authority in accordance with law and the terms of the subject contract, by a reasoned order, within 3 months from the date of receipt of such representation after granting adequate opportunity of hearing to the appellant or his authorized representative. The decision so taken shall be communicated to the appellant within a week from the date of the decision. Needless to say, if the authority finds after settlement of accounts, that monies are due to the appellant, such dues will be paid within a month from the date of the decision.

20. We see no apparent infirmity in the order under appeal. The order does not warrant any interference. **F.M.A. 1197 of 2022** With I.A. No. **CAN 1 of 2022** and **F.M.A. 1189 of 2022** with I.A. No. **CAN 1 of 2022** are accordingly disposed of with, however, no order as to costs.

21. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)