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11.03.2022.
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A. 638 of 2022

M/S Niranjan Dey & Co.
-versus
The State of West Bengal & Ors.

Mr. Amales Ray
Mr. Ajay Chaudhuri
Mr. Deborsi Dhar

... For the petitioner

Mr. Subir Kumar Saha, AGP
Mr. Momenur Rahman

... For the State

Mr. Anjan Dey

... Law Officer of respondent no. 5

The petitioner was engaged on contract by M/s. Westinghouse Saxby Farmer Limited respondent no. 5 for executing certain civil engineering works.

According to the petitioner the works were successfully completed and a completion certificate was issued in favour of the petitioner by the Company wherein it has been mentioned that the performance of the agency is satisfactory.

According to the contract which was entered into by and between the parties there is a provision for security deposit. The said provision mentions that the security deposit shall be deducted at the rate of 10 per cent including EMD from each contractor. The said security deposit money in full will be released to the contractor after

expiry of defect liability period that is 36 months from the date of completion of the work for the job executed in terms of the condition of the agreement. No interest would be paid on the security deposit money.

The petitioner submits that the defect liability period is over and presently the petitioner is entitled to take refund of the security deposit.

The inspection report issued by the Company in favour of the petitioner annexed to the writ petition mentions that the defect liability period has already been completed.

Presently, the petitioner prays for refund of the security deposit.

Mr. Anjan Dey, the legal officer of the Company is personally present in Court. It has been submitted that copy of the writ petition has been served yesterday and some time is required to review the papers of the petitioner.

It appears from the submissions made on behalf of all the parties that the petitioner did not file a proper representation before the Company praying for release of the security deposit prior to approaching this Court. Accordingly, leave is granted to the petitioner to make proper representation along with all supporting documents before the respondent no. 5.

On receipt of the representation from the petitioner, the respondent no. 5 being the Company through the Associate Chief Engineer-CEP shall take a decision with regard to the prayer of the petitioner for refund of the

security deposit in accordance with the terms of the contract at the earliest, but positively within a period of six weeks from the date of receipt of the representation from the petitioner. The said respondent shall pass a reasoned a reasoned order and communicate the same to the petitioner immediately thereafter.

The aforesaid respondent, if required, shall give an opportunity of hearing to the petitioner to produce all relevant documents in support of its claim.

It is made clear that this Court has not entered into the merits of the claim of the petitioner and all points are left open to be decided by the said respondent at the time of consideration of the representation of the petitioner.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)