

10.05.2023
Item No.18
Court No.32
Avijit Mitra

**FMA 1959 of 2018
with
IA No. CAN 1 of 2017 (Old No. 6462 of 2017)**

**Sri Arun Ghosh
- Versus -
State of West Bengal & ors.**

Mr. Rabindra Narayan Datta,
Mr. Sibasis Ghosh,
Mr. Hare Krishna Halder,
Mr. Arkaday Mukherjee
...for the appellant

Ms. Nandini Mitra,
Mr. Sanjay Saha
...for the respondent no.4

The present appeal has been preferred challenging an order dated 12th June, 2017 passed in a writ petition being W.P. No.7623 (W) of 2017. The writ petition was preferred primarily praying for a direction upon the respondents to release the monetary claim of the petitioner towards completion of the work awarded *vide* Notice Inviting Tender No.1073/Conts-89 of 2012 issued by the Managing Director (in short, the MD) of the West Bengal Fisheries Corporation Limited (in short the WBFCL) along with accrued interest. The writ petition was admitted with a direction towards exchange of affidavits on 11th April, 2017. During pendency of the writ petition, by a letter dated 12th April, 2017, the appellant through his learned advocate issued a notice seeking information regarding the

first and final running account bill settled by WBFCL. In reply thereto, the MD by a letter dated 24th April, 2017 intimated and confirmed that the settlement of bill of Rs. 15,45,399/- against concerned work order was true and that such settlement has been recorded in the measurement book. The said amount of Rs. 15,45,399/- was thereafter disbursed but without the interest, as prayed for by the petitioner. Such fact was brought on record by an application being CAN No.4260 of 2017. The writ petition was thereafter finally heard and the petitioner's prayer for interest was refused by the order dated 12th June, 2017. Aggrieved thereby, the appellant has preferred the present appeal along with an application for appropriate order being CAN 6462 of 2017 and in the same, the parties were directed to exchange their affidavits. In the midst thereto, the WBFCL stood merged with the State Fisheries Development Corporation Limited (in short, the said Corporation). The appellant and the said Corporation have exchanged their affidavits. Let the same, as filed, be kept on record.

Mr. Datta, learned advocate appearing for the appellant submits that within 60 days from the date of issuance of the work order on 7th March, 2013, the appellant concluded the work and such fact was certified by the MD on 18th August, 2014. The settlement bill was of Rs. 15,45,399/- and such settlement stands recorded in the measurement book maintained by WBFCL, as would be

explicit from the memo dated 24th April, 2017. The respondents have thus illegally withheld the dues in respect of the work admittedly completed by the appellant and for such withholding of the admitted dues, the appellant is entitled to the interest.

He argues that there is no disputed question of fact in the instant *lis*. The said Corporation being an instrumentality of the State in terms of Article 12 of the Constitution, is amenable to writ jurisdiction. It discharges public function and by withholding the appellant's admitted dues, it has acted in an arbitrary and illegal manner. Without considering the said argument as advanced, the learned Single Judge refused the writ petitioner's prayer for interest by a cryptic order.

He submits that the amount of Rs. 15,45,399/- was due and payable to the appellant on 26th April, 2013. Such admitted due was withheld by the said Corporation till the month of May, 2017. Interest is the normal accretion on capital. The amount of Rs. 15,45,399/- had been enjoyed by the said Corporation for the period from 26th April, 2013 till the month of May, 2017 without disbursing the same in favour of the appellant. In the said conspectus, the learned Single Judge ought to have directed the said Corporation to pay the interest to the appellant. The appellant ought not to have been relegated to any lengthy and dilatory process by a Civil Court against a public authority. In support of the arguments advanced reliance has been placed upon the

judgments delivered in the cases of *Secretary, Irrigation Department, Government of Orissa & ors. Vs. G.C. Roy* reported in (1992) 1 SCC 508 and *State Trading Corporation of India Ltd. vs Global Steel Holding Limited & Others*, reported in (2019) 2 SCC 387.

Ms. Mitra, learned advocate appearing for the said Corporation denies and disputes the contention of the appellant and submits that even if it is assumed that the appellant completed the work on 26th April, 2013, the first representation claiming interest was submitted three years thereafter on 20th February, 2017. The appellant's claim for interest is barred by limitation. There was also no agreement between the parties towards payment of interest and as such the appellant did not claim any interest in the series of representations submitted after alleged completion of the work on 26th April, 2013 till the date of issuance of the demand notice on 20th February, 2017.

She contends that the said Corporation floated the tender as it was assigned such responsibility by the State Government. During pendency of the writ petition, the amount of Rs. 15,45,399/- was sanctioned and the same was thereafter disbursed in favour of the appellant.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Exercise of writ jurisdiction is discretionary and payment of interest is also not a matter of course. In the

instant case, the appellant has not been able to establish a legal right to claim interest.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgments delivered in the cases of *Secretary, Irrigation Department (Supra)* and *State Trading Corporation of India Ltd. (Supra)*, upon which reliance has been placed by the appellant, are distinguishable on facts.

There was no agreement between the parties towards payment of interest. After completion of the work on 26th April, 2013, the appellant submitted about ten representations to the authorities. In none of the said representations, the appellant claimed any interest. Such prayer for interest was for the first time incorporated in the demand notice dated 20th February, 2017. Such sequence of fact fortifies the contention of the said Corporation that the appellant consciously did not claim any interest since there was no agreement between the parties and that such claim was also not raised within a reasonable time.

In the said conspectus the learned Judge refused to exercise discretion in favour of the appellant and we do not find any infirmity in the said order warranting interference in the present appeal.

Accordingly the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)