

15.09.2023
01
AN/Ct. No.07

WPA 9051 of 2021

**Civtect (India) Pvt. Ltd. & Anr.
versus
State of West Bengal & ors.**

Mr. Pratik Dhar, Id. Sr. Adv.
Mr. Ritwik Pattanayak
... for the petitioners

Mr. Samrat Sen, Id. AAAG
Mr. Saikat Chatterjee
... for the State

The petitioner has prayed for issuance of writ of mandamus commanding the respondents to show cause as to why the entire claim of the petitioner was not allowed by the Additional Chief Secretary, Public Works Department vide order dated 09.02.2021. By the said order dated 09.02.2021, the Additional Chief Secretary directed that the petitioner agency be paid a sum of Rs. 1,29,41,775.00 which is 50% of the first running bill of Rs. 2,58,83,550.00.

The petitioner was awarded with a contract for the work of construction of river front rejuvenation at Diamond Harbour in the District of South 24 Parganas during the year 2018-19 pursuant to the e-tender notice dated 20.09.2018. The tender accepted amount was Rs. 11,52,53,710.00 which was 21% above the amount put to tender. Work order was issued on 29.01.2019 and a 365 days period was stipulated for completion of the work

counting from 29.01.2019. On 13.08.2019, the petitioner submitted the first running account (R.A. Bill) amounting to Rs. 2,61,18,163.00 and alleging that the authorities did not pay such amount, inspite of several representations being made, approached this Court by filing a writ petition being WPA 10461/2020. A Coordinate Bench of this Court by an order dated 18.12.2020 directed the Additional Chief Secretary, P.W.D. to consider the representation of the petitioner dated 30.09.2020 and to take a decision on such representation with a view to an early disbursal of the pending bills of the petitioner to which the petitioners are entitled to. Pursuant to the said order, the Additional Chief Secretary being the second respondent in this writ petition passed the order dated 09.02.2021 which is under challenge in this writ petition.

Mr. Dhar, learned senior counsel appearing for the writ petitioners submits that the claim of the petitioners to the extent of Rs. 2,58,83,550.00 has been admitted by the respondent authorities. He questions the basis on which the entitlement of the petitioners to the extent of 50% of the said amount has been denied by the said respondent. Mr. Dhar submits that since the claim of the petitioner has been admitted, this Court can decide as to whether the authorities are liable to pay the balance 50% of the amount of Rs. 2,58,83,550.00. He refers to the decision of the Hon'ble Supreme Court in the case of **ABL International Ltd. & Anr. vs. Export Credit Guarantee**

Corporation of India Ltd. & Ors. reported in (2004) 3

SCC 553 in support of his contention that when there is no factual dispute, the issue as to whether the authorities are liable to pay the balance amount can be decided by a learned writ court. For the same proposition, he referred to a decision of Hon'ble Supreme Court in the case of **Surya Constructions vs. State of Uttar Pradesh & Ors. reported in (2019) 16 SCC 794.**

Per contra, Mr. Sen, learned Additional Assistant Advocate General assisted by Mr. Chatterjee, learned advocate representing the State submits that the amount claimed by the petitioner by way of raising the R.A. Bills is a disputed one as to whether the petitioners had successfully completed the work is a disputed question of fact. He further submitted that R.A. Bill raised by the petitioners is an inflated one and, therefore, this Court cannot decide as to the amount which the petitioners are entitled to. In course of his argument, Mr. Sen made an attempt to refer to the Bills raised by the petitioner which are part of this writ petition in order to show that such claim is a disputed one.

In reply, Mr. Dhar submits that since the second respondent has passed an order on certain grounds, this Court has to test the validity of such order only by judging the reasons mentioned therein. He further submits that the reasons contained in the order of the authority cannot be supplemented by fresh reasons in the shape of affidavit

or otherwise. In support of such contention, Mr. Dhar refers to a decision of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill & anr. vs. The Chief Election Commissioner, New Delhi & Ors. reported at (1978) 1 SCC 405.**

Heard learned counsel for the parties at length and perused the materials placed.

After going through the order of the Additional Chief Secretary dated 09.02.2021, it appears that the second respondent had carefully gone through the relevant official records and have also consulted the field officers alongwith several technical officers of the Department in order to ascertain the relevant technical details which might have a bearing on the claim raised by the petitioner. It further appears from the said order that the views put forth by the Public Works Department Officials were also considered. After considering the official records and the views of the various officials, the second respondent arrived at a positive finding that due to rising of the river, major parts of the embankment of NH-17 at the said location got severely eroded and the already constructed 22 number of piles were dislocated. The said authority after taking note of the fact that the petitioner submitted a claim of Rs. 2,61,18,163.00 on account of first running bill for the works done till 31.07.2019 and after considering all technical details and the views of the Officials calculated the final amount at Rs. 2,58,83,550.00. The last

paragraph of the said order records that the petitioners may be paid 50% of the approved first running account bill of Rs. 2,58,83,550.00. Therefore, the said amount has been duly approved by the second respondent. Since the said amount of Rs. 2,58,83,550.00 was approved by the second respondent in the order dated 09.02.2021, it does not lie in the mouth of the respondent authorities to allege that the aforesaid amount of Rs. 2,58,83,550.00 or any part thereof is a disputed one.

The second respondent was of the view that since the Department concerned failed to derive any benefit out of the contract in question due to absence of any standing work on any site on account of the natural calamity, the petitioner agency will be only entitled to 50% of the amount approved under the first running account bill submitted on 13.08.2019 on account of the work done till 31.07.2019 that is one day prior to the natural calamity which took place on 01.08.2019.

Since the amount which the petitioners were entitled to is not in dispute being approved by the respondent authorities, this Court is of the considered view that the issue whether the respondent authority is liable to pay the balance 50% of the first R.A. Bill after approving the same can be decided by the writ Court in view of the decision of the Hon'ble Supreme Court in the cases of **Surya Constructions (supra) and ABL International Ltd. (supra).**

The liability of a party to pay an amount in terms of a contract does not depend upon whether after completion of the work such party can derive any benefit out of the contract in question. It is to be seen whether such party was liable to pay in respect of work done as on the relevant date. Liability to pay shall arise only upon satisfactory performance of the work as per the terms of the contract. It is not in dispute that the petitioner performed a part of the total work entrusted to the petitioner. The balance part of the work could not be completed due to natural calamity. The extent of work done is also not in dispute and the amount in respect of the work done till 31.07.2019 has also been approved.

Therefore, the right of the petitioner to get the entire amount and the liability of the respondent authority to pay the same in respect of the work done by the petitioner till 31.07.2019 got crystallised. Such liability or any portion thereof cannot be said to be extinguished merely because of the fact that the benefit of the work done by the petitioner could not be derived by the respondent authority due to natural calamity. Since the second respondent has approved the first running account bill of Rs. 2,58,83,550.00 on account of work done till 31.07.2019, it goes without saying that as on 31.07.2019, the respondent authorities was liable to pay the entire amount. In view thereof, this Court is of the view that the order of the second respondent dated 09.02.2021 holding

that only 50% of the approved first running account bill is to be paid to the petitioner calls for interference. It is, however, not in dispute that the balance 50% of the total amount has already been released by the authority in favour of the petitioner and the petitioner has also accepted such amount.

This Court, therefore, holds that the respondent P.W.D. is liable to pay the balance 50% of the amount of first running account bill of Rs. 2,58,83,550.00. Such amount shall be paid by the respondent authority to the petitioner agency as expeditiously as possible but positively within a period of four weeks from the date of receipt of the server copy of this order. This Court further directs the respondent authorities to pay simple interest @ 6% p.a. on the balance outstanding amount with effect from the date the payment has been made in terms of the impugned order till the date of making the payment of the balance amount in terms of this order.

This Court is of the view that since this Court is deciding the propriety of the order dated 09.02.2021, the grounds on which the said order was passed, is only to be considered and the stand taken in the affidavit-in-opposition supplementing the reasons in the impugned order cannot be considered in view of the proposition laid down by the Hon'ble Supreme Court in the case of **Mohinder Singh Gill (supra)**.

With the above observations and directions, the instant writ petition stands **allowed**.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)