D/L. 6.
October 5, 2023.
MNS.

WPA No. 14907 of 2023

Raa Contractors & Builders Private Limited
Vs.
State of West Bengal and others

Mr. Manjit Singh,
Mr. Biswajit Mal,
Mr. Abhishek Bagal

… for the petitioner.

Mr. Nabhajit Prasad Basu,
Ms. Mousumi Banerjee

…for the State.

Mr. Debanjan Mukherji

…for the WBSEDCL.

1. The dispute which arises in the present writ petition is regarding the alleged non-payment of the GST component of the bills raised by the petitioner for work done by the petitioner in terms of a contract awarded on September 5, 2017.
2. Learned counsel appearing for the petitioner places reliance on the annexures to the writ petition and the affidavit-in-reply of the petitioner to indicate that all the bills and the documents pertaining to payment of the GST

component by the petitioner have been annexed to the said pleadings.

3. Despite having raised such bills, the respondent authorities have not disbursed the due amount to the petitioner, which is alleged to be to the tune of Rs.14,48,633/-.
4. Learned counsel for the respondent authorities submits that the work done is of the pre GST era and, as such, the respondent authorities are not liable to reimburse such GST component to the petitioner.
5. Learned counsel also places reliance on a Schedule of Rates effective from November 1, 2017, annexed at page 22 of the affidavit-in-opposition and submits that if not specifically indicated in the items themselves, the rates appearing in the schedule are inclusive of cost of all supply, carriage, etc. and all other incidental works involved, but exclusive of GST. By placing reliance on the said expression, it is argued that GST component was excluded from the said Schedule of Rates.
6. Learned counsel for the respondents also places reliance on an unreported co-ordinate Bench judgment dated August 24, 2022

passed in WPA 18512 of 2022 in support of his contentions.

7. Learned counsel for the respondent also challenges the maintainability of the writ petition.

8. Learned counsel for the petitioner, while dealing with the maintainability issue, cites *Unitech Limited and others Vs. Telengana State Industrial Infrastructure Corporation (TSIIC) and others* reported at *2021 SCC OnLine SC 99*, in particular, paragraphs 38 to 41 thereof. It is submitted that since public interest is involved, the respondent authorities being public authorities cannot avoid of judicial scrutiny under Article 226 of the Constitution of India.

9. The objection as to maintainability cannot but be turned down, since learned counsel for the petitioner is justified in arguing that the respondents, being public authorities, have to be fair of a higher standard in comparison to ordinary employers. That apart, an ingredient of public law is involved in the present case as well, since although the petitioner entered into a private contract with the respondents, the same was for discharging public duty for the

West Bengal State Electricity Distribution Company Limited.

10. Entering into the merits of the contentions of the parties, the present case is squarely covered by the post GST era.

11. The Notification dated August 16, 2017 issued by the Government of West Bengal, Finance Department, Audit Branch annexed to the affidavit-in-opposition of the respondents clearly delineates the pre and post GST eras, the cut-off date being July 1, 2017. In the present case, the contract awarded to the petitioner was dated September 5, 2017 and, as such, falls within the post GST era.

12. The reliance of the respondents on the Schedule of Rates is misplaced, since the Schedule of Rates merely mentions that the said schedule is exclusive of GST.

13. However, the expression “exclusive” is neither here nor there and does not fix the liability on anybody to pay the GST component, but merely indicates that the GST component is not included in the Schedule of Rates mentioned therein.

14. As per law, the liability to pay GST component is fixed on the petitioner-contractor at the first

instance which is recoverable from the employer, that is the, respondent authorities, within the contemplation of the Notification dated August 16, 2017 itself.

15. Hence, there cannot be any doubt that the petitioner, having paid the GST component, is entitled to have the same reimbursed from the respondent authorities.

16. The unreported judgment cited by the respondent authorities does not help the respondents in any manner, since no ratio or proposition of law was laid down therein.

17. In the said order, the learned Single Judge merely directed a final decision to be taken by the Additional Chief Secretary with regard to the impact of unforeseen additional tax burden on government contracts since the introduction of the GST.

18. Considering such perspective as indicated above, the petitioner is entitled to reimbursement of the entire GST component paid by the petitioner in respect of the work awarded by the respondent authorities.

19. Accordingly, WPA No. 14907 of 2023 is allowed, thereby directing the respondent authorities to disburse the entire dues of the

petitioner, including GST paid by the petitioner, taking note of all the annexures to the present pleadings of the parties.

20. Such disbursal shall be done by the respondent authorities in favour of the petitioner as expeditiously as possible, positively within November 17, 2023.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)