

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:

THE HON'BLE JUSTICE M. V. MURALIDARAN

W.P.A.No.18029 of 2019
Imran Enterprise & Anr.
Vs
The State of West Bengal & Ors.

Mr. Sarajit Sen,

Mr. Pradip Kumar Ghosh ----- for the Petitioners

Mr. Sandip Das ---for the respondent no. 6

Mr. Arindam Chattopadhyay,

Ms. Lipika Chatterjee, --- for the State

Hearing Concluded On : 13.12.2023

Judgment On : 22.12.2023

M. V. Muralidaran, J.

We have heard Mr.Sen, learned counsel for the petitioners; Mr.Das, learned Advocate for the sixth respondent and Mr. Arindam Chattopadhyay, learned Advocate for state respondent.

2. The petitioners have filed this writ petition seeking issuance of a writ of mandamus to direct the respondents to

release and refund the security deposit money, as recommended by the Executive Engineer and the Assistant Director of Fisheries within a stipulated time with interest at the prevalent rate of interest adopted by the bank from January, 2014 till the date of actual payment.

3. Succinctly put, the facts are as under: The first petitioner is a government contractor. The seventh respondent invited tenders for the works of construction of Brick Pavement Road from Panchayat Samity Road to 40 Bigha Gram Panchayat, Canning-1, Development Block, Canning South 24 Parganas. The first petitioner was the successful bidder and the seventh respondent issued work order on 19.3.2008 in favour of the first petitioner.

4. The first petitioner executed the work assigned to it on 18.12.2010 to the satisfaction of the concerned Sub-Assistant Engineer/seventh respondent, under whose supervision the work was executed. No objection was raised as to the proper execution of the work at any stage.

5. During part execution of the work, a first bill for Rs.8,51,945/- was raised by the first petitioner and the respondent concerned paid the said amount after deducting Rs.68,150/-. Likewise, after execution of the complete work, the first petitioner raised the final bill to the tune of Rs.1,02,607/-. The respondents paid the final bill amount, after making a deduction of Rs.8,209/-. The aforesaid deductions are said to be towards security deposit. Besides the above, the first petitioner also submitted earnest money of Rs.19,100/- with the tender and the said amount was also not paid back to the petitioners. According to the petitioners, a total sum of Rs.95,645/- remains unpaid with interest.

6. The petitioners made an application seeking refund of the aforesaid amount with interest. The Sub Assistant Engineer recommended refund of the security deposit money. The Executive Engineer also endorsed refund of the security deposit amount to the petitioners. However, the sixth respondent had withheld the amount without any assigning any rhyme or reason. Hence, the present writ petition for the relief stated supra.

7. In the affidavit-in-opposition filed by the sixth respondent, it has been categorically stated that, pursuant to the filing of the writ petition, two cheques [*One cheque for Rs.16,000/- and another cheque for Rs.76,364/-*] were issued in favour of the petitioners towards the security deposit money on 23.9.2019 and, in fact, the petitioners have encashed the same. In support of the said submission, the sixth respondent enclosed the statement of account showing the withdrawal of the said amount by the petitioners.

8. In case on hand, it is not in dispute that the petitioners had executed the work to the fullest satisfaction of the authority concerned and the major chunk of the amount, less the amount deducted towards security deposit has been paid to the petitioners. However, pursuant to the filing of the present writ petition, the respondents refunded the amount of Rs.92,364/- to the petitioners and the same is evident from the statement of account of the respondent authority placed on record.

9. The security deposit amount is refundable in nature and it is liable to be refunded upon successful execution of the

work contract. In the instant case, the petitioners executed the work on 18.12.2010. As the respondent authorities did not refund the amount withheld towards security deposit, the petitioners filed an application on 8.1.2016. The petitioners waited for over five years. Thereafter, the respondent authorities have recommended release of the amount withheld towards security deposit. However, the said amount reached the hands of the petitioners only on 23.9.2019. Admittedly, there is an unreasonable delay of nine years in making refund of the security deposit amount.

10. There is no plausible explanation given by the respondent authorities to withhold the security deposit amount for nine years. There is no complaint raised by the respondents with regard to the work executed by the petitioners. In fact, despite the recommendations made by the competent authority in the year 2016, a further delay of three years occurred.

11. Considering the overall facts and circumstances of the case, we dispose of the writ petition with a direction to the respondent authorities to pay interest to the petitioners on the

security deposit amount **from 18.12.2010** (*the date on which the work was completely executed by the petitioners*), **to 23.9.2019** (*the date on which the security deposit amount was paid to the petitioners*). The interest shall be calculated at the rate stipulated in the work contract. In case, the rate of interest is not stipulated therein, then the rate of interest prevalent during the relevant time on bank deposits would be paid. The interest amount shall be calculated accordingly and paid to the petitioners within four weeks from the date of receipt of a copy of this order.

There will be no order as to costs.

(M. V. Muralidaran, J.)