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30.01.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 27027 of 2022

**Global Enterprise & Anr.
-versus
The State of West Bengal & Ors.**

**Ms. Sanghamitra Nandy.
...For the Petitioners.**

**Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Tirthankar Dey.
...For BMC.**

**Mr. Himadri Sikhar Chakraborty,
Mr. S.T. Mina.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

The petitioners are aggrieved by the Act of the Bidhannagar Municipality presently the Bidhannagar Municipal Corporation in not disbursing the dues in respect of the work order issued in favour of the petitioner no. 1 in April 2015.

The date of commencement of the work was 30th April, 2015 and the time to complete the work was 30 days. It appears from records that the work was completed on 30th December, 2016.

From the documents annexed to the writ petition, it appears that the petitioners approached the

Bidhannagar Municipal Corporation for releasing the dues in January 2021 followed up by representation in November 2022.

Learned advocate appearing for the petitioners submits that admittedly the dues of the petitioners have not been cleared and a prayer has been made directing the Bidhannagar Municipal Corporation to inspect the measurement book and disburse payment accordingly.

Reliance has been placed on an order dated 13th December, 2022 passed by this Court in WPA 6817 of 2022 (Das & Brothers & Anr. -vs- The State of West Bengal & Ors.).

The prayer of the petitioners is opposed by the learned advocate appearing for the Bidhannagar Municipal Corporation.

It has been submitted that as the petitioners approached this Court beyond the prescribed period of limitation, this Court does not have the jurisdiction to entertain the writ petition. Provisions of the Limitation Act, 1963 has been relied and specially Article 18 of the said Act.

Reliance has also been placed on a judgment passed by the Hon'ble Supreme Court in the matter of Noharlal Verma -vs- District Co-operative Central Bank Limited, Jagdalpur reported in (2008) 14 SCC 445, paragraphs 32 and 33.

Prayer has been made for dismissal of the writ petition.

I have heard the rival submissions made on behalf of both the parties.

The petitioners contend that the period of limitation will only be restricted in case of suits filed for recovery of dues and not in respect of any proceeding under Article 226 of the Constitution of India.

It has been submitted that there is no period prescribed for filing the writ petition.

I am not inclined to accept the aforesaid submission of the petitioners.

The ultimate relief claimed for by the petitioners is disbursement of bills submitted way back in the year 2016 in connection with the work order issued in the year 2015.

There is no communication made by the petitioners to show that the bills were raised in proper time. Between the communication made in June 2016 and January 2021, there is nothing on record to show that the petitioners pursued their claim with the Corporation. There is no document to show that the bills were raised in accordance with the work order within the prescribed period of limitation. The date of submission of the bills is also not clear from the averments made in the writ petition.

The Hon'ble Supreme Court in Noharlal Verma (supra) laid down that limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

In the present case, the prayer for disbursement of the bills and filing of the writ petition before this Court is long after the prescribed period of limitation.

The Court entertained the prayer of the petitioners in Das & Brothers (supra) even though the work order was issued in the year 2018 and the writ petition was filed in 2022 keeping in mind the pandemic situation.

In the present case, pandemic was long after the prescribed period of limitation and, accordingly, the direction passed in Das & Brothers (supra) cannot be passed in the present case.

Even though the Limitation Act bars any proceeding if the same is filed after the prescribed period of limitation, but there is no bar upon the concerned authority to ensure that payment is made in favour of a claimant, if the work is completed in accordance with the work order issued by the authority. The authority cannot suggest that work will be done without making payment. Law does not prevent releasing payment of admissible dues beyond the prescribed period of limitation.

It is certainly the duty of the claimant to approach the Court within the prescribed period of limitation. At the same time it cannot be said that the liability to pay the dues of the claimant gets waived if the claimant does not press for his rights within the prescribed time period. The authority can always verify its own records to ascertain whether payment has been made in respect of the work done.

The Court cannot keep its eyes shut even after it comes to the notice of the Court that payment has not been made within the prescribed period of limitation. More often than not the claimant is more interested to get money released by persuading the officers of the authority. The claimant rightly apprehends that if any legal proceeding is initiated, then the authority will stop issuing work orders in its favour. Due to fear of not receiving future orders, the claimant refrains from drawing up legal proceedings and the claim remains unpaid.

There is nothing on record to suggest that payment was made to the petitioners after alleged completion of the work. No reason has also been forwarded by the Corporation for not releasing payment in proper time. It may be that the petitioners failed to perform the work in accordance with the specifications indicated in the work order.

It is the duty of any authority falling within the definition "State" to make payment, if the work allotted is completed in accordance with the work order issued. The said authority ought not to wait for the claimant to approach the Court for disbursement of the dues.

On the contrary, it is the legal duty of the authority to disburse payment upon examination of the documents and records and see whether the work was conducted in accordance with the work order issued.

If the work is not completed in accordance with the work order, the same ought to be intimated to the claimant. The authority ought not to sit tight over the matter as the same relates to the livelihood of the claimant.

In view of the above, the writ petition is disposed of by directing the Bidhannagar Municipal Corporation to inspect the records available to check whether work was completed and payment made to the petitioners in accordance with the work order.

If it appears that any amount is due and pending, steps shall be taken for releasing the same in accordance with law.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)