

M/L 5  
06.02.2023  
Court. No. 19  
GB

W.P.A. 27563 of 2022

Mir Abu Zar  
VS  
The State of West Bengal & Ors.

*Mr. D.N. Chatterjee,*  
*Mr. R.K. Biswas,*  
*Mr. S.C. Saha*

*...for the Petitioner.*

*Mr. Rajarshi Basu,*  
*Mr. K.M. Hossain*

*...for the State.*

Affidavit-of-service filed in Court today, be kept with the record.

Despite service none appears on behalf of the respondent nos.4 and 6. This Court is not inclined to pass any mandatory directions as per the prayers of the petitioner. The matter is referred back to the Block Development Officer, Bardhaman-I Development Block who is the Executive Officer of the concerned Zilla Parishad to determine whether the petitioner deserves to be paid the entire amount as claimed. The writ petition is thus, taken up in the absence of the said respondents.

The petitioner submits that the development of the play ground of Bhita Institution was completed with the soil procured from a distance of three kilometers. A private soil testing laboratory engaged by the petitioner and the Upa-Pradhan of the Rayam-II gram panchayat, certified that the soil was of good quality. The Sabhapati of the Bardhaman-I

panchayat samity did not raise further objections subsequently and part payment was also made.

The learned advocate for the State respondents submits that two notices were issued by the Sabahapati, Bardhaman-I panchayat samity to the petitioner and the petitioner was asked to get the soil tested by an engineer of the panchayat samity. The petitioner did not follow such instruction. Instead, the petitioner got the soil tested at a private laboratory and obtained a certificate from the Upa-Pradhan. The petitioner did not follow the instructions of the authorities and as such the petitioner was not entitled to any payment. It is the specific contention of the State respondents that the payment was made in respect of two works which were completed but the other six works were not done as per the specification and as per the quality to be maintained in terms of the tender notice.

Having heard the controversies raised before the Court, the Court is of the view that there are disputed questions of facts which cannot be decided by the writ court.

Under such circumstances, the writ petition is disposed of with a direction upon the Block Development Officer, Bardhaman-I Development Block to treat the writ petition as a representation and dispose of the same in accordance with law. An inspection shall be made with regard to the work allegedly done by the petitioner. Such inspection shall be held in the presence of the petitioner, the Sabhapati, Bardhaman-I panchayat samity and also a qualified engineer employed in the panchayat samity. The

quality of the soil shall be tested by an engineer attached to the concerned department. The soil testing report shall be handed over to the petitioner. The other conditions of the works completed and the quality of the work done shall also be ascertained. Thereafter, upon granting an opportunity to the petitioner to respond such report, a hearing shall be given to the petitioner, and a reasoned order shall be passed and communicated to all concerned.

If it appears on inspection of the works completed and upon perusal of the soil testing report that the petitioner deserves to be paid the amount allegedly claimed, the said amount shall be released in accordance with law. Necessary order shall be issued. If it appears that inferior quality of soil was used or if it appears that the work was not completed as per the requirement under the tender notice, a reasoned order shall be passed and communicated to all concerned.

The entire exercise shall be completed within a period of eight weeks from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**