

11.10.2023
Item No.2
PG/KS
Ct. No.1

**FMA 385 of 2023
With
IA No.CAN 1 of 2022**

**The State of West Bengal & Ors.
Vs.
I Sustain Energy Pvt. Ltd., & Ors.**

Mr. T. M. Siddiqui
Mr. Suddhadev Adak
... for the Appellants

Mr. Jishnu Chowdhury
Mr. Souradeep Banerjee
Mr. A. Agarwala
Mr. Ms. P. Garain
... for the respondent no.1
Mr. Dipak Kumar Mukherjee
Mr. Rajib Mukherjee
Mr. S. Bhaduri
.....for the Bhatpara Municipality

1. This intra-Court appeal by the State is directed against an order dated 23rd November, 2022 in W.P.A. No.37 of 2021. The respondent/writ petitioner filed the writ petition expressing a grievance regarding non-disbursement of the amounts payable to the writ petitioner for having successfully completed the work allotted to it by order dated 12th March, 2015 pursuant to a tender invited by the respondent/municipality. The tender was for conversion of all Sodium Vapour/ Metal/CFL/GLS/Tube Light into LED. It is not in dispute that the writ petitioner has completed the work to the satisfaction of the

municipality. The part of the amount payable towards the work done was to the tune of Rs.2,18,23,927/-, which has already been paid to the respondent/writ petitioner. Since the remaining amount was not paid, the petitioner approached the Court and the learned Writ Court after taking into consideration all the facts, found that the claim of the writ petitioner was not in dispute and therefore, proceeded to issue the impugned direction.

2. The grievance of the appellants/State is that the project undertaken by the municipality is not a State project nor it is a project under the Green City Mission, which was put in place in 2015 and the learned Single Bench fell in error in coming to a conclusion that the project for which tender was awarded to the respondent/writ petitioner in the year 2017 was Green City Mission. Therefore, it is submitted that the direction could not have been issued to the State Government to disburse funds and it is the look out of the Municipality to pay the amount due and payable to the respondent/writ petitioner.
3. We have perused the order granting administrative approval for the scheme under the Green City Mission dated 31st July, 2017. From the said communication, it is seen that the

administrative approval is given in respect of 19 schemes for the respondent/municipality at an estimated amount of Rs.13,94,69,745/-, which has been granted by the Government and the work has to be executed by the respondent/municipality.

4. Admittedly, the work was allotted to the writ petitioner in the year 2015 and in all probabilities, the same could not have been covered in the schemes under the Green City Mission for which administrative approval was granted only in July, 2017.
5. Be that as it may, since the amount due and payable to the respondent/writ petitioner is not in dispute, the amount needs to be disbursed.
6. The learned advocate appearing for the respondent/municipality would submit that there is paucity of funds and the project was implemented only out of the amounts sanctioned by the Government. However, to substantiate the same, there is no document placed on record. However, on perusal of a reply given by the Chairperson of the Municipality to the Additional Secretary of the Urban Development and Municipal Affairs Department, Government of West Bengal dated 9th September, 2022, it is seen that the Chairperson of the Municipality has

stated that administrative approval and financial sanction has not been issued by the Urban Development and Municipal Affairs Department. If that be so, obviously, it goes without saying that the project could not have been implemented without the Government approval or sanction. However, the project has been implemented and completed and part of the amount payable to the writ petitioner has already been paid, which would go to show that the project is deemed to have been approved and more particularly, when the schemes have also been approved by the Board of Councillors of the Municipality. Since, the Municipality pleads paucity of funds, a solution has to be conceived in this matter so that the writ petitioner is paid the balance amount.

7. Considering the scheme of the West Bengal Municipal Act, 1993 and the various provisions therein especially Sections 71 and 72 of the Act, which deals with financial assistance from the State Government and loans respectively as also the powers of the State Government, as contained in Chapter 28 and more particularly, Sections 429B, 430 and 431, it is seen that there is a deep and pervasive Governmental control over the municipal administration.

8. Therefore, we are of the view that the Government should sanction the requisite funds as a loan to the municipality and the same can be recovered from the municipality in a phased manner or as the Government may desire.
9. In order to give effect to such a direction, reasonable time has to be given to the Government so that necessary funds are sanctioned to the municipality with a direction to effect payment to the respondent/writ petitioner and also placing conditions as to how the money, which is sanctioned is recovered from the municipal funds.
10. Accordingly, the order and directions issued by the learned Single Bench in the impugned order is slightly modified by directing the appropriate authority of the Government of West Bengal to sanction a sum of Rs.3,66,04,735/- to the respondent/municipality within a period of six weeks from the date of receipt of server copy of this order. On receipt of the funds, the municipality shall disburse the same to the respondent/writ petitioner and obtain a no dues certificate from the respondent/writ petitioner.
11. The State Government is at liberty to pass appropriate directions while releasing the funds as to how the funds may be recovered from the

municipality either in full or in instalments, as the Government may so desire.

12. With the aforesaid observations and/or modifications, made to the order passed by the learned Single Bench, the appeal stands disposed of.
13. In order to effectively implement the above directions, the municipality is directed to immediately address the Government based on this order and seek for necessary allotment of funds so that the order can be complied with within the time stipulated.
14. No costs.
15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)