IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 27966 of 2022

M/s. Malda Construction Company and Anr.
Vs.
Union of India & Ors.

With

W.P.A 28412 of 2022

M/s. Malda Construction Company and Anr.
Vs.
Union of India & Ors.

With

W.P.A 28415 of 2022

Subham Enterprise & Anr.
Vs.
Union of India & Ors.

With

W.P.A 28417 of 2022

Gouri Construction and Anr.
Vs.
Union of India & Ors.

With

W.P.A 28419 of 2022

Gouri Construction and Anr.
Vs.
Union of India & Ors.

For the petitioners	:	Mr. Subhabrata Datta, Adv. Mr. Debashis Sarkar, Adv.
For the respondent nos. 2-6	:	Mr. Sarwar Jahan, Adv. Mr. Maidul Islam Kayal, Adv. Mr. Shahzad Noor Thander, Adv. Mr. Asif Mehdi, Adv.
For the UOI	:	Ms. Ashima Roy Chowdhury, Adv. Mr. Ramen Bose, Adv.
Last Heard on	:	16.05.2023.
Delivered on	:	17.05.2023.

Moushumi Bhattacharya, J.

1. All five writ petitions involve similar facts and are against the same respondents, namely, Ghani Khan Choudhury Institute of Engineering and Technology and the Union of India through Secretary, Ministry of Human Resource Development, Department of Higher Education. There are minor factual differences including in the dates of the correspondence exchanged between the parties but the contentions can be dealt with in one judgment.

2. The five writ petitions are therefore being disposed of by this judgment.

3. The petitioners were declared the successful bidders in terms of a Notice Inviting Tender dated 27.1.2014 issued by the Institute for certain construction and development work. The work order was issued on 28.2.2014 by the competent authority. The petitioners were paid the first and second running account bills which were raised by the petitioners in accordance with the work order and memo submitted by the petitioners. The Completion Certificate for the work done and performed by the petitioner was also issued on 7.1.2015. The Certificate issued by the Superintending Engineer of the Institute is a Final Certificate of completion for the work of "Land development by earth filling on low land ditches..."of the Institute at Malda, Narayanpur, Main Campus.

4. The Certificate states that there are "no noticeable defects in the work". The petitioners thereafter requested for release of the final payment against the executed work. The request was made on 23.2.2015 and the petitioners raised the 3rd running account and final bill on the respondent in terms of the work order.

5. The present writ petition has been filed for a mandamus on the respondents particularly the respondent no. 3 being the Director, Ghani Khan Choudhury Institute of Engineering and Technology and NIT, to release the 3rd running account and final bill amounting to Rs. 43,23,760/- and the security deposit along with interest.

6. The objection raised on behalf of the respondent Institute is that the Institute was under the mentorship of NIT Durgapur and further that the Tender was floated by an incompetent authority through improper advertisement in newspapers having low circulation in the area.

7. These objections have been taken by the Institute for the first time in the Report filed by the Institute pursuant to a direction of the Court. The other objection to release of the amount claimed by the petitioners is of certain objection made by the Assistant Engineer (Civil) of the Institute appointed by NIT, Durgapur on 3.6.2016 in connection with the bills in question. According to the Institute, NIT, Durgapur did not release the payment towards the petitioners and returned the original file to the Institute.

8. It has also been submitted on behalf of the Institute that the Inspection Report on the accounts of the Institute for the period of 1.4.2014 to 31.3.2017 contains certain adverse observations and that the Director General of Audit (Central), Kolkata in the Audit Query of the Institute for 1.4.2019 – 31.3.2020 advised that long pending liabilities should be treated as lapsed.

9. The admitted factual position is that the petitioners successfully and satisfactorily completed their work which was the subject matter of the tender floated by the respondent Institute. This would be corroborated from the fact that the first and second running account bills that were raised by the petitioners were fully paid by the respondents. This would also appear from the Completion Certificate issued by the Superintending Engineer of the Institute on 7.1.2015 unequivocally stating that the work has been found to be carried out to specifications and completed satisfactorily and that there are no noticeable defects in the work.

10. Significantly, the Ministry of Human Resource Development, Government of India issued a letter to the Director, National Institute of

Technology (NIT), Durgapur, on 18.3.2015 observing that an amount of Rs. 82.20 crores has been released to NIT, Durgapur, for facilitating the Institute to carry out its development activities besides other recurring expenditure. The letter further records that NIT has transferred an amount of Rs. 67.20 crores to the Institute from 2009-10 to 2013-14. More important, the letter records that NIT, Durgapur is requested to immediately clear all pending bills which have been submitted by OSD of the Institute.

11. Since there is no contemporaneous complaint with regard to the petitioners' work or the work being incomplete, there can be no conceivable reason as to why the respondent Institute would withhold the petitioners' dues in respect of the third and final running account bill amounting to Rs. 43,23,760/- along with security deposits. Admittedly, the Institute was under the mentorship of NIT, Durgapur during the tender process; this is the stated position of the respondents. The letter of the Ministry of Human Resources also records that sufficient funds were released by the Ministry to NIT, Durgapur for undertaking the development work of the Institute and NIT was further requested to clear all the pending bills that were submitted by the Institute. The Institute has not denied the fact of having received the payment from NIT, Durgapur for the development work undertaken vide the tender process. The Institute has not given any justification with corroborating material or otherwise to deny the claim of the petitioners for the work done to the satisfaction of the Institute.

12. The objection now sought to be taken in respect of the tender being floated by an incompetent authority or through improper advertisement are

clearly after-thoughts since they do not find any corroboration from any material disclosed before the Court.

13. The point with regard to the observation made by the Director General of Audit is also a later defense since the Inspection Report has been made part of the pleadings of the Institute filed on 6.4.2023 following the direction of the Court. The observation made in the Report is of an alleged "irregular land fillings". This is compounded by the fact of the Institute admitting that the petitioners have successfully completed the work as stated in the Completion Certificate issued by the Institute on 7.1.2015. The Institute also admits that the final bills submitted by the petitioners were in turn submitted before the NIT, Durgapur for releasing the payment and that the Institute requested NIT to clear the pending bills on several dates including on 4.3.2015. Significantly, the Institute noted the liabilities along with other pending bills in 2015-16 annual accounts of the Institute.

14. The above facts indicate that the Institute has no real defense to the petitioners' claim and as an entity amenable to Article 226 of The Constitution of India, non-payment of the petitioners' bills despite the petitioners' completing the work to the satisfaction of the Institute amounts to arbitrary and unreasonable conduct. In this context, the decision of the Supreme Court in *Arun Kumar Agrawal v. Union of India; (2013) 7 SCC 1* is relevant. In that decision, the Supreme Court held that the CAG's Report is subject to parliamentary debates and that the Public Accounts Committee can accept the Ministry's objection to the CAG's Report and reject the Report. In *Surya Constructions v. State of Uttar Pradesh; (2019) 16 SCC 794*, the Supreme Court disagreed with the view of the High Court in rejecting the

writ petition on the ground of disputed question of facts. The Supreme Court proceeded to hold that the State has a duty to act fairly even in the realm of contract and the High Court can interfere under Article 226 of the Constitution in fit cases. The Supreme Court in that case directed the Uttar Pradesh Jal Nigam to make necessary payment to the petitioner within a fixed time period along with interest for the period of delay. The recent decision of *M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited; (2023) 2 SCC 703* reiterated that the State can be called upon its obligations of making payment unless there is a serious and genuine dispute raised by the State relating to its liability. The Supreme Court clarified that the dispute ordinarily would include the aggrieved party not fulfilling its obligations.

15. In the present case, the respondent Institute did not raise any dispute with regard to the work performed by the petitioners and documented that the work was done to the satisfaction of the Institute. The first and second running account bills were also made by the petitioners as testimony to this. All the objections raised are subsequent defenses and that too by way of a Report filed before the Court. The observation in the CAG's Report is of little consequence as stated in *Arun Kumar Agrawal.*

16. This Court accordingly finds that the writ petitioners have made out a case for grant of the relief prayed for. There has also been substantial delay in payment of the third and final running account bill which was raised in 2015 and the petitioners requested for the payment of the same in March, 2015. The petitioners are hence entitled to interest for the delay of 8 years in between.

17. WPA 27966 of 2022, WPA 28412 of 2022, WPA 28415 of 2022, WPA 28417 of 2022and WPA 28419 of 2022 are allowed for the above reasons and are disposed of with a direction on the respondents particularly the respondent no. 3 being the Director, Ghani Khan Choudhury Institute of Engineering Technology to release an amount of Rs. 43,23,760/- in WPA 27966 of 2022, Rs. 51,88,108/- in WPA 28412 of 2022, Rs. 43,74,500/- in WPA 28415 of 2022,Rs. 8,66,740/- in WPA 28417 of 2022 and Rs. 66,66,031/- in WPA 28419 of 2022 along with security deposits furnished by the petitioners and with interest at 6% per annum on each of the aforesaid amounts from the dates on which the third and final running account bills were raised to the dates of payment. The five individual payments should be made by the respondents to the petitioners within 10 weeks from the date of this judgment.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)