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WPO/1262/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S RAJ ASSOCIATES AND ORS
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 28th August, 2023.

Appearance:
Mr. Debdutta Basu, Adv.
. . .for the petitioners.

Ms. Tuli Sinha, Adv.
. . .for the State.

Ms. Deblina Chattaraj, Adv.
. . .for the respondent corporation.

The Court: Learned counsel for the petitioner contends that the petitioner is a contractor who have done several works for the respondent authorities. It is contended that the first petitioner, which is a construction company, has as its proprietor the second petitioner. It is argued that despite having raised bills for several works done by the petitioners, the respondent authorities dilly-dallied in making such payment. In fact, the payments were made much after the bills were raised. A part of the bills, it is submitted, was paid after the writ petition was filed.

It is further contended that although different payments were made at different points of time by the respondents, it was unclear as to which of the payments pertained to which of the bills raised by the petitioners. Learned counsel argues that several representations had to be made by the petitioners relating to the different work orders issued to the petitioners and undertaken by them, but the payments were made much later. As such, the petitioners at present press for grant of interest on the belated payments.

Learned counsel appearing for the respondent authorities places reliance on the annexures to the writ petition to try and indicate that the petitioners have come with the mala fide intention of misleading the Court with unclean hands and as such are not entitled to any of the reliefs sought.

Learned counsel for the respondents places reliance on the tax invoices raised by the petitioners dated October 3, 2018 and February 1, 2019, which indicate that double billing was done by the petitioner for many of the works.

By way of example, it is pointed out by learned counsel for the respondents that in the bill dated October 3, 2018, which was supposed to be the 3rd RA bill, the 1st, 2nd and 3rd RAs were shown. However, in the 4th RA and Final bill dated February 1, 2019, along with the 4th RA, the 1st to 3rd RAs were again repeated.

Although it is candidly admitted that payments on such bills have already been made long back on a bona fide mistake by the respondents, the said bills ex facie indicate the mala fides of the petitioner.

Learned counsel also places reliance on a report prepared by the respondents as per previous direction of Court. Due to certain difficulties, the report could not be affirmed. Since a prior copy has been served on the petitioner, a photocopy of the said report is taken on record and kept on record, granting leave to the respondents to affirm and file the original of the same by August 30, 2023.

By placing reliance on the said report, learned counsel for the respondents submits that almost all the payments sought by the petitioners were made long back, by June 2021.

Only one portion of the payments, pertaining to the 4th RA and Final bill, was made on June 16, 2023, that is, about a week prior to the writ petition being affirmed and filed.

However, in the writ petition, nothing in that regard was disclosed by the petitioners, who sought for a relief regarding release of the entire principal amount as well as interest. Hence, the petitioners having come with unclean hands, it is argued that the present writ petition ought to be dismissed on such score alone.

Seeking to explain away the allegations raised by the respondents, learned counsel for the petitioners, in reply, places reliance on the last pages of the 3rd RA Bill and the 4th RA and Final bills which were placed by the respondents. Pointing out to the notes below the bills, it is argued that each of the said bills clearly deduct the previous RA amounts to arrive at the final amount payable on the said bills. For example in the 3rd RA Bill, the petitioners have deducted the 1st and 2nd RA amounts and in the 4th RA bill, the 1st, 2nd and 3rd RA amounts were deducted. In order to adhere the usual practice adopted by the petitioners in performing its workds for the respondent authorities, the said bills were raised in such manner.

Next addressing the issue of suppression of the fact that the entire principal amount had already been paid to the petitioners prior to the filing of the writ, learned counsel for the petitioners submits that the representations themselves, which have been annexed to the writ petition, show that the petitioners were uncertain as to which of the payments made earlier by the respondents pertain to which of the bills specifically.

It is submitted that mere disclosure by the respondents at the relevant juncture would definitely have cleared the air on such count.

That apart, learned counsel for the petitioners submits that nothing in the allegations raised by the respondents can alleviate the delay committed by the respondents in making the payments.

In order to clarify the stand of the respondents, learned counsel for the respondents argues that the alleged delay in making the payments were not deliberate on the part of the respondents but only due to procedural wrangle which took place since each of the bills had to be processed before disbursing the payments.

It is seen from the records that the petitioners cannot be faulted on the 1st count of alleged mala fides argued by the respondents since the 3rd and 4th RA and Final bills which have been relied on by the respondents clearly indicate that the earlier RA amounts were deducted in each of those.

The question which remains regarding mala fides is whether the petitioners came with clean hands, having not disclosed the previous payments made with regard to the principal amount of security deposit.

The petitioners have handed over a chart in Court today indicating the relevant dates of the bills, which were paid late, and the dates of payment for each of the said bills, arguing that the said delay should be compensated by the respondents by payment of interest.

The respondents have obviously refuted such contentions on grounds as indicated above, placing reliance on the processing required before disbursal of dues.

However, inasmuch as the alleged mala fides of the petitioners is concerned, the same could be somewhat mitigated in view of the language of the petitioners' representations. The petitioners in their repeated representations, made at least one year prior to the filing of the writ petition, sought clarifications regarding the payments. It was recorded in the said representations that as per mandatory terms and conditions of tender, payment is to be made as soon as the work would be completed, that is, within six months and security deposit would be paid after six months from the date of completion of the work as per the terms and conditions of the work order. It was also mentioned in the said representations that the material records would speak for itself that the entire job was completed and the dates of completion of the job was indicated in the representations.

However, it was for the respondents at least to respond to the said representations by citing the payments which had already been made by them in respect of each of the bills, giving details as to the exact amounts paid against the specific bills in question. Having not done so, the respondents cannot raise the plea at this juncture that the petitioners have come with unclean hands.

In so far as the late payments are concerned, no act on the part of the petitioners justifies the delayed payments made by the respondent authorities. There is nothing on record to controvert the petitioners' allegation that in terms of the tender conditions, the payment was to be made within six months after the completion of the work.

In the present case, even taking the best case in favour of the respondents, the respondents ought to have disbursed the amounts after the bills were raised. Since the respondents obviously kept records of the works done and never took any objection as to the quantity or quality of the work done by the petitioners, it does not lie in the mouth of the petitioners to withhold payment for quite a long time after the bills being raised, on any pretext whatsoever.

Processing could not be a sufficient justification for the delay in each of the cases of non-payment. The chart indicates the exact periods of delay for each of the bills in question. With regard to Tender no. WBTC/JMD/NIT-174/2017-2018, regarding the 3rd RA Bill and 4th RA and Final bill dated October 3, 2018 and February 1, 2019 respectively, the payments were made respectively on June 7, 2021 and June 16, 2023. With regard to the 1st RA and Final bill pertaining to Tender no. P-214/01/2018-2019, the payment was made on June 7, 2021 whereas the bill was raised on June 19, 2019. In respect of bill type 1st RA and Final bill with regard to Tender no. P-215/01/2018/2019, the bill was raised on May 2019 and the payment was made on June 4, 2021.

The Chart is reproduced below:

SI No.	Tender No.	Bill Type	Bill Date	Bill Amount	Payment Status	Payment Date
1	WBTC/JMD/NIT-174/2017-2018	3rd R.A. Bill	03.10.2018	18,82,415.00	Paid	07.06.2021
2.		4th R.A. & Final Bill	01.02.2019	11,40,280.00	Paid	16.06.2023
3.	P-214/01/2018-2019	1st R.A. & Final Bill	19.06.2019	2,91,607.00	Paid	07.06.2021
4.	P-215/01/2018/2019	1st R.A & Final Bill	20.05.2019	5,46,623.00	Paid	04.06.2021

As such, the petitioners are entitled to interest on the period of delay between each of the bill dates and the corresponding dates of payments respectively.

Accordingly, WPO 1262 of 2023 is disposed of by directing the respondent no. 4, that is, the Managing Director of the West Bengal Transport Corporation Limited to pay interest to the petitioners at the rate of 6% per annum on the respective amounts as indicated hereinabove. The entire amount of interest shall be paid to the petitioners within September 30, 2023.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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