13.08.2024
Court No.09
Item no.05
CP

WPA No. 7712 of 2024

Lokenath Builders Private Limited & Anr.
Vs.
Rail Vikas Nigam Limited,
Kolkata Project Implementation Unit & Ors.

Mr. Puspal Chakraborty
Ms. Srijita Nath
...for the petitioners.

Mr. Avishek Guha
Ms. Enakshi Saha
.....for the respondent no.4.

Mr. Shankar Ranjan Sen

....for the Rail Vikas Nigam Ltd.

1. The writ petition has been filed alleging that the Rail Vikas Nigam Limited, Kolkata Project Implementation Unit, (hereinafter referred to as 'RVNL'), had intentionally withheld Rs.9,92,703/- towards retention charges although the RVNL was directed by the High Court to release the said amount. The petitioners claim release of the amount by RVNL along with interest @ 18% p.a. On the last occasion, this court was informed that as per the agreement between the petitioners and Gammon Engineers and Contractors Pvt. Ltd. (hereinafter referred to as 'Gammon'), the sub-contractor was to be paid by RVNL, as the principal employer.

2. Mr. Guha, learned advocate appearing for Gammon submits that the petitioners had not returned certain materials and Gammon had the authority to set off the cost of such material from the retention money. There was also an issue with regard to non-payment of GST charges.
3. This court had decided to explore the possibility of the petitioners securing that amount and directing RVNL to release Rs.9,92,703/-. However, the court had specifically recorded that in the absence of RVNL, orders could not be passed on the complaint of the petitioners.
4. Today, RVNL has appeared. RVNL has referred to its order passed on July 7, 2023, wherein it was recorded that the petitioners could not supply any document which would indicate that RVNL was liable to pay any money towards the unpaid amount. The unpaid amount was to be paid by Gammon. Gammon submitted that Rs.39, 24, 666/- was its principal liability, out of which Rs.9,92,703/- was towards retention money. Although the said money was principally payable, Gammon informed RVNL that there were disputes with regard to GST payment etc. and the retention money should not be released.
5. Under such circumstances, RVNL disposed of the matter by releasing Rs.29,31,963/- in favour of the petitioner as agreed to and advised by Gammon.

RVNL directed the parties to settle the matter amicably with regard to GST payment and labour charges etc. The money payable by RVNL to Gammon, was released directly to the petitioners.

6. Mr. Chakraborty, learned advocate appearing for the petitioners, submits that the compliance by the railway authorities was not in consonance with the order passed by this court. This court had directed that payment should be released to the petitioners. As Gammon had admitted that Rs.39, 24, 666/- was principally payable to the petitioners, RVNL should have released the said amount as well. It is next contended that RVNL is State under Article 12 of the Constitution of India and a writ petition seeking mandamus upon RVNL to disburse the entire amount would be maintainable. The contention of Mr. Chakraborty is that RVNL as the principal employer was liable to pay the entire amount of Rs.39, 24, 666/- to the petitioners and Gammon had actually admitted such liability.

7. Mr. Guha, learned advocate appearing for Gammon, submits that the correspondence between the parties would indicate that RVNL had released the money payable to Gammon directly to the petitioners, at their request, as a compliance of the order of His Lordship. Money for the work done and materials supplied were released directly by the principal employer to the sub-contractor on the

basis of the discussions, deliberations and meetings which were held pursuant to the direction of this court.

8. According to Mr. Guha the meetings, discussions and deliberations and the involvement of the RVNL were only to obey the direction of the court, but such gesture of either Gammon or RVNL would not be proof of the fact that the sub-contractor had any privity of contract with RVNL.

9. Mr. Sen, learned advocate appearing on behalf of the RVNL, submits that the order was passed by His Lordship in their absence. His Lordship had directed that the representation of the petitioners be considered in accordance with law and if any money was payable, the matter should be looked into. Accordingly, RVNL called both the parties, had several meetings and exchanged communications. RVNL asked the parties to settle the dispute amicably. RVNL released the money payable to the contractor directly in favour of the sub-contractor, but while doing so had specifically recorded that the said arrangement was made at the request of Gammon and the amount was released. Gammon had asked RVNL not to release the retention money of Rs.9,92,703/- as there were specific disputes with regard to GST and other charges, payable by the petitioners.

10. It appears from the order of His Lordship that there was no mandate on RVNL to release any amount. His Lordship had directed consideration of the representation of the petitioners. Upon deliberation and discussions with the respective parties, RVNL released the amount payable by RVNL to Gammon directly to the petitioners. However, the petitioners have not been able to show any clause in the contract between Gammon and the petitioners that the payment receivable by the petitioners from Gammon would be released by RVNL. Records show that the retention money of Rs.9,92,703/- was to be kept on hold at the request of both the parties. A communication which is at page 181 of the writ petition dated December 26, 2023 records the stand taken by the petitioner which is quoted below:-

> "After receiving of the above mentioned letter the same was forwarded through email dated 19.12.2023 to M/s Lokenath Builder Pvt. Ltd. (The Petitioner) for their confirmation and copy to you. In reply M/s Lokenath Builder Pvt. Ltd. has expressed their acceptance to receive the amount of Rs.29,31,963.00. But, they have also stated that; GST is my responsibility; Our GST payment is updated till September 2023. As per certified bills of GECPL we have paid GST and updated GSTR1 & 3B. GECPL uploaded the bills, if there is any inconsistency here, please GECPL refer the same to us and we will pay it immediately. GECPL let us know what documents are required from us and we want the GST matter to be solved and GECPL paid our remaining dues within 7 days. Printed copy of mail is attached with this letter for your ready reference."

11. Under such circumstances, the dispute which arises between the petitioner and Gammon are private disputes. Both are private parties. There is a privity of contract between the petitioners and Gammon. Another letter written by the petitioners indicates that the petitioners had also agreed to deduction of GST and prayed for release of Rs.6,96,398/-.
12. Under such circumstances, this court finds that no mandamus can be issued against RVNL.
13. It also appears that His Lordship had passed direction upon the RVNL by referring to a comfort letter. The records reveal that the comfort letter had been withdrawn. The dispute which has now arisen between the two private parties amongst whom the privity of contract exists, cannot be the subject matter of a writ petition.
14. With regard to release of the retention money and all other disputes, the petitioner is granted liberty to approach the appropriate forum.
15. The writ petition is disposed of.
16. There shall be no order as to costs.
17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)