

D/L. 3.
February 20, 2024.
MNS.

WPA No. 17408 of 2023

Mr. Hare Krishna Das
Vs.
State of West Bengal and others

Mr. Masudur Rahaman Paik

... for the petitioner.

Mr. Suman Ghosh,
Ms. Jamuna Saha

...for the State.

Mr. Suman Basu

...for the respondent no. 4.

1. The respondent no. 4 files a report in Court today, which is kept on record.
2. It is submitted that the work done by the petitioner was for the Panchayat and Rural Development Department, Government of West Bengal. The work, it is claimed in the affidavit-in-opposition of respondent no. 5, is not under the administrative jurisdiction of the Public Works Department (PWD) but was assigned by the P & RD Department to the Hooghly Highway Division No.II of PWD for execution.
3. It is argued that the respondents are entitled to deduct the amounts under several heads as

disclosed in the report, such as performance security, 10% of amount of L.D., 10% of amount for which work was not completed etc. from the amount payable to the petitioner.

4. It is contended that the amount to be so deducted exceeds the amount which is payable to the petitioner for work done by the petitioner.
5. As such, the writ petition is frivolous and ought to be dismissed.
6. Learned counsel for the respondent no. 5 submits that in terms of the provisions of the Standard Bidding document, alternative remedy is available before the petitioner in case of any dispute having arisen.
7. Learned counsel places specific reliance on Clause 24 of the said document, which envisages that if any dispute or difference of any kind arises in connection with or arising out of the contract, it shall, in the first instance, be referred for settlement to the competent authority with a time-line as stipulated therein. Even thereafter, a hierarchy of officials have been provided as subsequent forums for challenge against the decision of the first authority.
8. It is argued that instead of exhausting the said remedy, the petitioner has directly approached

the writ court, for which the writ court ought not to entertain the writ petition.

9. It is further argued that the petitioner was guilty of stalling the work. The initial period granted was for nine months. However, despite getting several opportunities, the petitioner failed to complete the work within the stipulated period.

10. Learned counsel for the respondent no. 5 places reliance at length on the pleadings of and the annexures to the affidavit-in-opposition in that regard.

11. It is also argued that the memo raised initially by the Assistant Engineer was only a first and final bill of the work done by the petitioner-agency. The same did not tantamount to a certificate after carrying out all necessary deductions to which the respondents are entitled under the contract between the parties.

12. Upon hearing learned counsel for the parties, it transpires that the memo raised by the Executive Engineer, that is, the respondent no. 5, who was in charge of the work done by the petitioner clearly indicates the amount due to the petitioner.

13. A perusal of the relevant clauses of the Standard Bidding Document shows that

“Engineer” has been defined to be the person named, who is responsible for supervising the execution of the works and administering the contract.

14. In the present case, it is evident from the facts and circumstances of the case that the respondent no. 5 was the Engineer who supervised the execution of the works and administered the contract.

15. Hence, the expression “Engineer” as used in Clause 53 of the document must mean the respondent no. 5. Clause 53.1(i) stipulates that if the contract is terminated because of a fundamental breach of contract by the contractor, the engineer shall issue a certificate for the value of the work done, less liquidated damages, less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the contract data.

16. In the case of the petitioner, even as per the averments of the respondents, the termination of the petitioner’s contract due to his alleged breach of contract took place prior to the issuance of the memo annexed at page 66 of the writ petition, which was authored by the respondent no. 5 to show the dues of the

petitioner, obviously for work completed by him. Thus, the chronology indicates that the respondent no. 5, even after the termination of the contract, raised the memo indicating the amount due to the present petitioner to be Rs.8,11,574/- for work done by him.

17. After having issued such memo, the respondents cannot resile from such position subsequently and claim in their reports and affidavit-in-opposition, filed in connection with the writ petition post facto, certain dues allegedly having accrued to the respondents from the petitioner. Such post facto exercise cannot be accepted, since the bill raised by the respondent no. 5 in the month of November, 2020 was post termination of the contract and the respondents have already forfeited the bank guarantee of the petitioner as penal measure for non-performance of the contract by the petitioner in its entirety.

18. Be that as it may, such penal action already taken by the respondents, coupled with the memo raised subsequent to the termination of the contract, clearly shows an admission on the part of the respondent authorities as to the actual dues of the petitioner being Rs.8,11,574/- for work previously done by the petitioner.

19. In such view of the matter, the respondents cannot now claim further deductions from the amount payable to the petitioner.

20. Accordingly, WPA No. 17408 of 2023 is allowed on contest, thereby directing the respondent no. 4 to disburse the amount of Rs.8,11,574/- to the petitioner for work already done by the petitioner. Such disbursal shall be made within a month from date.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)