IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

W.P.A. No. 22289 of 2018

Imran Enterprise & Anr.

VS

The State of West Bengal & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Sarajit Sen,

Mr. Tapas Singha Roy,

---------- for the petitioners.

Mr. Arindam Chattopadhyay,

Ms. Lipika Chatterjee,

-------- for the State.

Mr. Tapas Kr. Mondal

-------- for the Zilla Parishad.

Hearing concluded on : 01.04.2024

Judgment On : 12.04.2024

M.V. Muralidaran, J.:

Heard Mr. Sarajit Sen, learned counsel for the petitioners; Mr. Arindam Chattopadhyay, learned counsel for the respondent State and Mr. Tapas Kr. Mondal, learned counsel for the respondent Zilla Parishad.

2. This writ petition has been filed by the petitioners for issuance of a writ of mandamus directing the respondents to pay the petitioners the amount due under the final bills (Annexure-P/2) as prepared by the respondent authority with interest at the prevailing bank rate till the actual payment is made.

3. The case of the petitioners is that on 7.12.2009 two work orders, namely RIDF-XIII under Scheme 209-10 AWC under GP Bodhakhali Khatian No.369, land area 3 Satak under Block Namkhana, AWC No.11, S.L.No.13 two construction of ICD Centre at different location in different blocks of south 24-Parganas District under RIDF-XIII, Scheme 2009-10, AWC under G.P. Narayanpur, Mouza - Narayanpur, J.L.No.47, Dag No.02, Khatian No.02, land area 3 Satak under Block Namkhana were issued in favour of the petitioners. The petitioners have satisfactorily completed

the works on 5.10.2010 and 15.10.2020respectively. On 15.10.2010, a joint measurement of the works were done and recorded in the measurement books and the respondent Engineer has also prepared two separate final bills for those two works. Despite the Assistant Engineer signed those two final bills and despite the request made by the petitioners, the respondent authorities have failed to pay the bill amounts. In this regard, on 10.8.2018, the petitioners have sent a lawyer notice requesting the respondents to pay those two final bills. Despite the receipt of the lawyer notice, the respondents have not settled the amount. Hence, the writ petition.

4. It is the admitted case of both sides that pending writ petition, the bill amounts were paid to the petitioners on 9.4.2020. Now the petitioners are pressing for interest on the bill amounts till the date the payment is made.

5. The respondents by filing affidavit-in-opposition contended that as per the request of the Zilla Parishad, South 24-Parganas, the petitioner had submitted photocopies of said work done on 14.3.2020 and on the same day, the inspection report was submitted by the Junior Engineer and thereafter on 16.3.2020, the Assistant Engineer counter-

signed the said report. According to the respondents, on 8.4.2020, the Zilla Parishad, South 24-Parganas had released the entire bill amount after deducting the security money. The Zilla Parishad, South 24-Parganas has no latches for payment of delay to the petitioner. The payment was delayed due to two reasons one is incomplete bill with documents and another is non-available of fund. As per Clause 19 of the tender notice, it is clear that payment will be made as per availability of the fund and the fund is not available at the relevant time.

6. The learned counsel for the petitioners submitted that being satisfied with the bills, the Assistant Engineer signed and forwarded the bills for payment and the petitioners cannot be put to suffer non-payment of the bills immediately after completion of the works. According to the learned counsel, the fund under ICDS scheme for the said work must have been made available. However, the respondent authorities intentionally delayed the payment of bill only to earn interest over the available fund at the cost of the petitioners losing interest over the final bill amount.

7. The learned counsel further submitted that there was no obligation on the part of the petitioners to submit the alleged photocopies

of the work done pursuant to the respondents' request. Therefore, the same cannot be a ground or reason of delayed payment of the bills. In fact, the works having been completed on 5.10.2010 and 15.10.2010 respectively and the bills having been prepared on 14.12.20212. However, the respondent authorities deliberately delayed even to ask for the alleged photocopies in March, 2020 only to delay and defer the payment of bills. The reasons for delay in payment canvassed by the respondent authorities are afterthoughts.

8. The learned counsel for the petitioners submitted that there is no delay on the part of the petitioners and, hence, for the delayed payment of bills, the respondent authorities are bound to pay interest.

9. On the contrary, the learned counsel for the respondent State submitted that the State authorities is paying to the Zilla Parishad and the Zilla Parishad alone has given the work order to the petitioners. Therefore, they have no role to pay in the present writ petition.

10. The learned counsel for the respondent Zilla Parishad submitted that there is no clause in the tender notice that the successful tenderer is

entitled for interest on the bill amount. According to the learned counsel, the payment will be made as per the availability of fund.

11. At this juncture, by placing reliance upon the decision of the Hon'ble Supreme Court in the case of South Eastern Coalfields Limited v. State of M.P. and others, reported in (2003) 8 SCC 648, the learned counsel for the petitioners submitted that the interest is payable in equity in certain circumstances and the interest is payable even in the absence of any agreement.

12. On a perusal of the tender notice, admittedly, there is no clause for delay in payment of bill. It is the admitted case of the respondents that the petitioners have completed the works on 5.10.2010 and 15.10.2010 respectively and the bills having been prepared by the Engineer concerned on 14.12.2012 after a joint measurement conducted by the officials concerned.

13. The contention of the respondents is that the payment was delayed due to two reasons, one is incomplete bill with documents and another is non-available of fund. Nothing has been produced by the respondents to show that the petitioners had submitted incomplete bills.

Without fund being available, the tender even could not be floated for the work. Therefore, the aforesaid two grounds raised by the respondents is only for the purpose of defending the writ petition and thus the same cannot be countenanced.

14. It appears that despite the two bills prepared and signed by the competent authorities of the respondent, the same was not paid to the petitioner immediately or within a reasonable time. Despite the petitioners visited the office of the respondents and requested them to make payment for the work done, the respondent authorities have neglected to settle the bills for one reason or the other. The record reveals that on 2.8.2017, the petitioners made a written request to the District Engineer, South 24-Parganas Zilla Parishad requesting to arrange for payment of the amounts of two bills, which also yielded no result till the filing of the present writ petition.

15. In the case on hand, the fund under ICDS scheme for the work done by the petitioners must have been made available. However, the respondent authorities intentionally delayed the payment of bill. Therefore, the claim of the petitioners that the respondent authorities are bound to pay interest on the delayed payment merit consideration.

16. In *South Eastern Coalfields Limited*, supra, the Hon'ble Supreme Court held as under:

> *"21.Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see Chitty on Contracts, 1999 Ed., Vol. II, Part 38-248, at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.*
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> *22.We may refer to the decision of this Court in Executive Engineer, Dhenkani Minor Irrigation Division v. N.C.Budharaj, (2001) 2 SCC 721 wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J., has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right*

to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.

….

24. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which is a constituent part of the price of the mineral for the period for which it remained unpaid. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a travesty of justice to hold that though the Coalfields must pay the amount of interest to the State but the consumers/purchasers in whose hands the money was

> *actually withheld be exonerated from liability to pay the interest."*

17. In the case on hand, as stated supra, pending writ petition the respondents have paid the bill amount to the petitioners on 9.4.2020. The writ petition was filed in the year 2018. The works in question were completed by the petitioners' way back in the year 2010 itself and the same is not disputed by the respondents. Having completed the works in the year 2010, settling the bill amount pending writ petition in the year 2020 will attract interest in the interest of justice.

18. It is trite that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by way of interest even in the absence of any agreement.

19. It is reiterated that although the final bills for the two works were prepared by the Sub Assistant Engineer, the same was signed by the Assistant Engineer on 14.3.2016. Despite preparation and signing by the competent authorities, those two bills were not settled to the petitioner. The respondent authority after completion and satisfactory execution of work had accepted the said work and the same being utilized for the purpose it was constructed. Having accepted the works done by

the petitioners and enjoying the same, as per the provisions of the Indian Contract Act, the respondent authorities are bound to pay the bills of value of those works to the petitioner within a reasonable time. After filing of the writ petition, on 9.4.2020, the petitioners have received the final bill amount. However, the respondent Zilla Parishad has not paid the interest from the date of final bill till the final settlement of the bill on 9.4.2020. The non-payment of the final bill amounts to the petitioner within a reasonable time is absolutely unfair and unreasonable and, thus, violative of Article 14 of the Constitution of India. Therefore, this Court is of the view that the petitioners are entitled to get interest on the delayed payment at the simple rate of 9% per annum.

20. In the result,

(i) The writ petition is allowed.

(ii) The respondent authorities are directed to pay interest at the rate of 9% per annum on the bill amounts which shall be calculated from the date of preparation of the final bills till the date of actual payment made to the petitioners pending writ petition.

(iii) The interest shall be calculated and paid to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) The security deposit amount, if not already paid to the petitioners, the same shall also be paid to the petitioners within the same period of twelve weeks.

(v) No costs.

(M.V. Muralidaran, J.)