

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

W.P.A 10928 of 2020
Sasti Pada Nandi
Vs.
The State of West Bengal & Ors.

With
W.P.A 6190 of 2022
Sasti Pada Nandi
Vs.
The State of West Bengal & Ors.

With
W.P.A 27047 of 2022
Sasti Pada Nandi
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Kallol Basu,
Mr. Partha Ghosh,
Mr. Nilanjan Pal,
Mr. Samik Sarkar,
Mr. Amal Kumar Dutta,
Ms. Simran Sureka,
Mr. Debashis Das.

For the Bankura Zilla Parishad : Mr. Debashis Saha.
(in WPA 27047 of 2022)

For the Bankura Zilla Parishad : Mr. Soumik Ganguli,
(in WPA 10928 of 2020 Ms. Sucheta Pal.
& WPA 6190 of 2022)

For the State-respondents : Mr. Lalit Mohan Mahata, Id. AGP,
Mr. Prasanta Behari Mahata.

Hearing concluded on: 12.07.2024
Judgment on: 23.07.2024

Shampa Sarkar, J.:-

1. These three writ petitions were heard analogously as the issues involved were connected and the parties were the same.

2. In WPA 10928 of 2020, the writ petitioner prayed for a writ of mandamus commanding the respondent authorities, namely, the Bankura Zilla Parishad and its men, agents and subordinates to hand over the toll booth sites for 22 numbers of roads, which were allotted to the petitioner in terms of the agreement and the work order dated December 16, 2019. Further prayer was made for a direction upon the authorities to support the petitioners in setting up the said toll collection booths. Police assistance was also prayed for in order to ensure smooth functioning of the booths, along with a prayer for compensation of Rs.20 lakhs for the harassment caused to the petitioner.

3. W.P.A 6190 of 2022 was filed for a mandamus upon the Bankura Zilla Parishad and its men and agents to alter the roads on which the booths were originally to be set up as per the work order, with a further prayer for support and assistance to operate the booths to be set up in the newly proposed sites as mentioned in the petitioner's representations dated November 30, 2021 and January 4, 2022. Such prayer for alternative roads was allegedly made due to changed circumstances. Deterioration in the condition of those 22 roads, objections by the forest department and the local administrations to setting up of the booths in the existing sites and reduction in the number of commercial vehicles engaged in the quarry of sand and other materials, led the petitioner to make a request for change of sites.

4. WPA 27047 of 2022 was filed with a prayer for quashing and or setting aside the demand notices dated November 9, 2022/ November 10, 2022, issued by the Bankura Zilla Parishad, with a further prayer upon the

Zilla Parishad to recalculate the annual payment to be made proportionately, from the date of commencement of actual operations. Prayer was also made for assistance in the smooth setting up and functioning of the toll booths.

5. The facts leading to the filing of the writ petitions, as per the petitioner's version, are enumerated below:-

(a) The petitioner as the proprietor of M/S S. Nandi, participated in the e-Tender process initiated by the Additional District Magistrate, Bankura and the Additional Executive officer, Bankura Zilla Parishad. The first notice inviting e-Tender vide memo no.3235/ZP/16, dated August 18, 2016, for collection of toll tax at 22 roads, under the Bankura Zilla Parishad, was cancelled. The petitioner had qualified as the highest bidder. Notice inviting e-Tender dated January 6, 2017, vide memo No.65/ZP/17, and a corrigendum dated February 9, 2017, for collection of toll tax in respect of those 22 roads was again published. The proprietorship firm of the petitioner participated in the second e-Tender process and qualified both in the technical and financial rounds. The respondent No.5, by order dated January 27, 2017, vide memo No.241/ ZP/ 17, directed the petitioner/firm to execute an agreement on a non-judicial stamp paper of Rs.10 and to deposit Rs.1,01,01,111/- in the form of a bank draft in favour of the Financial Controller and Accounts Officer, Bankura Zilla Parishad, i.e., the respondent No.6. Accordingly, the petitioner/firm deposited the said amount on February 10, 2017, through a demand draft, which was duly acknowledged by the said respondent.

(b) By the corrigendum dated February 9, 2017, an additional condition was imposed to the effect that 90% of the toll points should be operated by an electronic system and manual collection of tolls would not be permitted. CCTV cameras with functioning internet and power backup, were also required to be installed. Accordingly, the petitioner incurred huge investment of more than Rs.60 lakhs for the purpose. In spite of completion of all formalities, the Bankura Zilla Parishad refused to execute the agreement and also failed to issue the work order. The stamp paper had been supplied by the petitioner as per the instructions of the respondent. Several representations and requests were made by the petitioner for execution of the agreement and issuance of the work order, so that the operation of the toll booths could commence.

(c) In spite of repeated requests, as the said respondent continued to ignore the request made by the petitioner and delayed in issuing the work order, WP No.12375(W) of 2017, was filed by the petitioner. The petitioner prayed for a direction upon the Additional District Magistrate and Additional Executive Officer, Bankura Zilla Parishad to execute the agreement in favour of the petitioner. By order dated May 4, 2017, the court directed the Additional District Magistrate to execute the agreement after negotiation of the rates, within four weeks from the date of the order.

(d) In the said proceeding, the contention of the learned Advocate for the Zilla Parishad was that the rates which were quoted in the e-Tender by the Zilla Parishad, were contrary to the existing rate of toll

charge prescribed by the Panchayat and Rural Development Department. Thus, it was not possible for the Bankura Zilla Parishad to execute the agreement and issue the work order in view of the error in the rates.

(e) According to the learned Judge, the respondent No.5 would have an obligation to execute the agreement, as the petitioner had participated in the tendering process and emerged as the highest bidder. On the request of the respondent No.5, the petitioner had also deposited a sum of Rs.1,01,01,111/- by a bank draft. An internal communication between the Panchayat Department and the Bankura Zilla Parishad, to which the petitioner did not have any access, could not be an impediment towards grant of the work order to the petitioner, upon execution of the agreement.

(f) By a letter dated May 16, 2017, the respondent No.5 asked the petitioner to appear before him on May 24, 2017, for negotiation of the rates. The petitioner accordingly attended the meeting. The respondent No.5 brought the circular dated February 17, 2005, issued by the Panchayat and Rural Development Department, Government of West Bengal, to the petitioner's notice and attempted to impress upon the petitioner that the rates mentioned in the circular had to be followed by the Bankura Zilla Parishad. Thus, the petitioner offered to revise the rates for ten wheelers and other vehicles, etc.

(g) As the respondent No.5 failed to execute the agreement, a contempt application was filed being CPAN No.709 of 2017. During the pendency of the contempt application, by an email dated June 13,

2017, the respondent No.5 communicated an order dated May 24, 2017 informing the petitioner that the entire bid amount deposited by the petitioner, would be refunded and the tender would be cancelled. The petitioner filed another writ petition being W.P. No.16338(W) of 2017, challenging the letter dated May 24, 2017.

(h) By an order dated July 8, 2019, the writ petition being W.P. No. 16338(W) of 2017 was disposed of by another learned Judge with a direction upon the Bakura Zilla Parishad to execute the agreement, pursuant to the notice inviting tender dated January 6, 2017, and to issue the work order within a fortnight from July 8, 2019.

(i) In compliance with the order dated July 8, 2019, passed in WP No. 16338(W) of 2017, the Bakura Zilla Parishad executed the agreement on December 16, 2019. The petitioner was issued the work order to collect toll tax from 22 roads under the Bankura Zilla Parishad. Although execution of the agreement was completed, the Bankura Zilla Parishad failed to comply with clause 4 of the agreement. The Bankura Zilla Parishad failed to hand over the sites which had been allotted to the petitioner.

(j) By a letter dated December 18, 2019, the petitioner requested the respondent No.5 for a joint inspection and spot verification of the roads prior to installation of the toll booths. Despite several requests made by the petitioner for joint inspection of the sites, the Bankura Zilla Parishad failed to hand over clear and hindrance free toll sites. The interference by local authorities and other departments of the government, could not be prevented by the Zilla Parishad.

(k) In the meantime, Covid-19 hit the nation and the petitioner could not formally proceed with the work. The Gram Panchayats, Block Development Offices, PWD and the forest officers continued to resist installation of booths. On account of the inability on the part of the Bankura Zilla Parishad to hand over clear site upon removing all obstacles therefrom, the petitioner failed to collect the toll tax as per the work order dated December 16, 2019.

(l) Assailing the inaction on the part of the respondent No.5 in formally handing over the sites for setting up the toll booths, WPA 10928 of 2020 was filed. A learned Judge passed an order upon hearing the Zilla Parishad, by directing them to hand over all 22 roads. The writ petition was kept pending. Again, the petitioner filed WPA 6190 of 2022 for a direction upon the authorities to amend the list of roads and provide alternative roads/sites for collection of the toll tax in view of the problems which the petitioner was facing, namely, change of the sites of sand and mineral quarry leading to reduction of commercial vehicles, inability to collect tax due to reduction in number of vehicles, further reduction in the number of vehicles due to the damaged conditions of the roads, taking over of the roads by other departments of the state government etc. Although, the Bankura Zilla Parishad was intimated that the toll booth operation points at Kotulpur and at Bankadaha were also closed by the local police, no steps were taken.

(m) 44 toll points on 22 roads were to be constructed, but due to the hardships which had been mentioned in the various letters and representations, only six to seven toll tax collection points could be

made functional by the petitioner. On the other hand, the District Engineer, Bankura Zilla Parishad by a letter dated November 9, 2022 raised a demand from the petitioner of Rs.2,02,02,222/- as annual fees for collection of toll tax from 22 nos. of roads for the period between December 16, 2020 to December 15, 2021 and December 16, 2021 to December 15, 2022. The District Engineer mentioned that after the payment was made by the petitioner on February 10, 2017, for the bid period December 16, 2019 to December 15, 2020, no further payment had been received from the petitioner. The petitioner was directed to deposit the amount of Rs.2,02,02,222/-, within 7 days, by a bank draft. The petitioner responded to such demand by a letter dated November 18, 2022 and denied the liability to pay the amount as claimed.

(n) The petitioner contended that in lieu of 22 roads, only 8 roads could be operated and the petitioner could not collect adequate revenue from such roads. Thus, the petitioner urged the Zilla Parishad to recalculate the amount payable from the date of commencement of actual operation, proportionately with the number of booths which had become operational. As the authorities did not recalculate the amount demanded for the period December 16, 2020 to December 15, 2021 and December 16, 2021 to December 15, 2022, the petitioner filed WP 27047 of 2022.

6. Mr. Kallol Basu, learned Advocate for the petitioner submitted that from the very beginning the Zilla Parishad, had failed to discharge their obligations. As per the terms of the agreement and the work order dated

December 16, 2019, the Zilla Parishad was bound to handover the toll sites/gates/roads free from all encumbrances. In the beginning, the Zilla Parishad raised the plea of erroneous rates, which was rejected by the High Court. Upon the direction of the High Court, the agreement was executed. Mr. Basu further contended that although on the direction of a learned Judge dated February 23, 2021, all the 22 roads had been handed over sometime in March 2021, the said process of handing over the sites was an empty formality. Due to objections and resistance by the local authorities, the police, PWD, Forest Department and the local people, the toll booths could neither be installed nor be made operational. Accordingly, the petitioner had issued several letters asking for amendment of the list of roads by substituting the same with suitable alternatives. Reliance was placed on the letters written to various authorities, including the Sabhadhipati of the Bankura Zilla Parishad, the Kotulpur Police Station and the Block Development Officers of Bishnupur and Kotulpur.

7. It was further submitted that on a number of occasions, the petitioner had intimated the authorities that unless the sites were handed over free from all encumbrances, operation could not commence. A corresponding duty had been cast upon the authorities to make further inspection and ensure that the roads which had been forcefully handed over in order to show compliance of the order of the High Court were free from all encumbrances.

8. According to Mr. Basu, handing over of the sites was actually a paper transaction rather than discharge of the obligation under clause 4 of the agreement. The authorities were also not justified in claiming toll tax for the

period when all the sites had not been handed over to the petitioner and also for such period when the petitioner was unable to commence the work for reasons beyond his control. The period of the lock-down during the COVID-19 pandemic should have also been excluded.

9. Learned Advocate urged this Court to consider that the petitioner had an unequal bargaining power and that the bona fide of the petitioner had been demonstrated when the petitioner deposited the annual fee for the first year on the basis of the demand made by the Respondent No.5. Although, the said amount had been paid on February 10, 2017, the work order had been issued only in December 2019, and that too, on the direction of the court. The authorities had enjoyed the amount which was deposited by the petitioner, without handing over clear sites. These issues had not been factored in while raising the demand. It was next contended that the proposed roads were not functional. The booths could not be installed on the damaged roads. Vehicles had stopped plying. Instead of addressing the problems and agreeing to the proposal of the petitioner for alternative locations, by making necessary amendment to the list of roads annexed to the contract, the authorities made an unjust demand for payment of Rs.2,02,02,222/-. Referring to the report filed by the Bankura Zilla Parishad in which an inspection report prepared by the Senior Deputy Secretary, Panchayat and Rural Development Department, Government of West Bengal, had been annexed, Mr. Basu contended that the head of the inspection team recorded that the District Engineer, Bankura Zilla Parishad had failed to submit any evidence to contradict the claim of the petitioner that specific locations for construction of the booths had not been handed

over by the Zilla Parishad. The said officer also noted that various toll tax structures had been found closed and notices had been received from the PWD in that regard. The facts which emerged during the inspection by a Senior Officer of the Panchayat and Rural Development Department, Government of West Bengal, according to Mr. Basu, carried a lot of weightage. The report was a proof of the fact that all the booths on the 22 roads could not be made operational. The Zilla Parishad had failed to show exactly when and in what manner the roads had been handed over. Whether the roads could be used by the petitioner for operationalization of the toll tax booths, remained unanswered. Mr. Basu drew the attention of the Court to the expenses incurred by the petitioner in making the booths operational.

10. According to Mr. Basu, the calculation made by the Zilla Parishad on the direction of the Court, was faulty. The documents relied upon by the petitioner would show that all the booths on the 22 roads could not be installed due to failure of the authority to grant free access to the roads, by removing all the encumbrances and obstacles therefrom. The petitioner's request to amend the work order, had gone unnoticed by the respondents and the respondents had completely turned a deaf ear to such request, in spite of being well aware that the roads on which the booths were to be constructed, were neither suitable nor ready for use. Only the fees for those booths which could be made operational, could be charged by the Bankura Zilla Parishad. The amounts which had already been paid in 2017, and by order of this court, must be adjusted. The petitioner in fact was entitled to some refund, upon considering the amount invested by the petitioner and the losses incurred.

11. Mr. Basu relied on the following decisions:-

1. ***Jay Vee Rice and General Mills vs. State of Haryana and Others***, reported in **(2010) 10 SCC 687**.
2. ***New Okhla Industrial Development Authority vs. Kendriya Karamchari Sahkari Grih Nirman Samiti***, reported in **(2006) 9 SCC 524**.
3. ***Real Estate Agencies vs. State of Goa and Others***, reported **(2012) 12 SCC 170**.
4. ***Popatrao Vyankatrao Patil vs. State of Maharashtra and others***, reported **(2020) 19 SCC 241**.

12. Mr. Saha and Mr. Ganguly, learned Advocates for the Bankura Zilla Parishad submitted that WPA 10928 of 2020 and WPA 6190 of 2022 had become infructuous. The sites were already made over to the petitioner, pursuant to the order of another learned Judge. The grievance of the petitioner in the WP No.10928 of 2020, had been redressed. The said writ petition should be dismissed as infructuous. With regard to WPA 6190 of 2022, the learned Advocates submitted that as the sites were handed over in terms of the lease agreement and as per the list of the roads annexed to the said lease agreement, the question of alteration of sites did not arise. The parties were bound by the deed of lease which had been executed on December 16, 2019.

13. Referring to the supplementary affidavit filed by the petitioner, the learned Advocates submitted that the petitioner had admitted in paragraph 5 thereof, that a letter had been issued by the respondents dated March 23, 2021, to their learned advocate with an intimation that the order of the learned Judge passed in WPA 10928 of 2020 dated February 23, 2021, had been complied with and the 44 toll sites on 22 roads had been made over to

the petitioner. The said letter has been annexed to the supplementary affidavit filed by the petitioner at page 36 thereof.

14. Reference was also made to a letter written by the petitioner dated February 23, 2021, to the respondent No.5, from which it was evident that the petitioner had acknowledged that pursuant to the order of the High Court, 22 roads for installation of toll booths had been handed over and the petitioner was in the process of completing the installations, by making necessary arrangements. The petitioner also made a request that the name of one of such roads should be rectified. By the said letter, the petitioner informed that the operation of the toll booths could not commence due to lack of cooperation from the police and the concerned block development officers, as the elections were going on. It was assured that upon completion of the election, the toll collection would commence in a routine manner. Assistance of the respondent No.5 was also sought for. Several photographs were annexed to the supplementary affidavit filed by the petitioner, depicting the process of handing over of the sites.

15. Reference was also made to a letter of the District Engineer, Bankura Zilla Parishad, which had been annexed to the supplementary affidavit. The said letter was a second reminder issued by the authority to the petitioner, calling upon the petitioner to pay up the amount of Rs.2,02,02,222 as annual fees for collection of toll tax on 22 roads for the period between December 16, 2020 and December 15, 2021 and December, 16,2021 and December 15, 2022. Mr. Saha also referred to the letter written by the PWD dated December 6, 2022, asking the petitioner to remove the toll booths constructed within the jurisdiction of the Bishnupur division.

16. According to the learned Advocates for the Bankura Zilla Parishad, the Zilla Parishad had been consistent in their demand for the annual fee upon handing over of the sites. Reference was made to the terms and conditions of the agreement entered into between the parties. The agreement provided that the lease would stand terminated and the security deposit money would be forfeited, if the tender amount for any particular year was not deposited in advance with the Bankura Zilla Parishad.

17. The Bankura Zilla Parishad also reserved its right to terminate the contract any time during the pendency of the said contract, without assigning any reason, by issuing 15 days' notice. It was further provided that the Zilla Parishad would not compensate any amount in the lease rent for temporary suspension in the collection of toll tax, which may have been caused by natural calamity, bandh, strike, etc., and the petitioner would be responsible for any untoward incident which may occur during the collection of toll tax. Referring to the notice inviting tender, it was submitted that before submission of the tender documents, the tenderer was required to acquaint himself with the ground reality by making a physical visit to the sites and by assessing the situation and conditions prevailing. Once the tender documents were submitted, it would be deemed that the tenderer had acquainted himself with the viability, feasibility and availability of the roads for installation of the toll booths and collection of toll tax. The petitioner was not permitted to raise any dispute with regard to the feasibility, hooliganism, bad road conditions, reduction in the number of commercial vehicles plying on the roads, in view of clause 18 of the lease deed.

18. Reference was further made to a letter dated November 18, 2020, issued by the respondent No.5, pursuant to the representations made by the petitioner. From the contents of the said letter it appears that a meeting was held on October 14, 2020, in the office of the Zilla Parishad on the issues and concerns raised by the petitioner. According to the authority, the work order clearly indicated that the petitioner was required to discuss the issues with the local administration before commencing the work. The letter indicated that although, the work order was issued in December 2019, the work had not commenced. Even during the pandemic, inter-state and inter-district movements of vehicles had commenced after a point, but the petitioner had failed to collect the toll fees. In terms of clauses 17 and 18 of the agreement, it was the liability and the responsibility of the petitioner to ensure that the toll booths were constructed properly, effectively and made functional. All local issues were to be handled by the petitioner and not by the Zilla Parishad. Time and again, the petitioner was informed by various letters that the question of providing new sites on other roads, upon cancellation of the earlier list of roads on which the toll booths were supposed to be installed as per the work order, was not permissible. The lease agreement was a concluded contract.

19. Reliance was placed on a letter dated February 19, 2022, written by the petitioner to the respondent No.5, by which the petitioner had intimated the respondent No.5 that despite handing over of the site for construction of the toll booths by the Bankura Zilla Parishad, the local police authorities and the block development officer at Kotulpur block did not render any assistance when the local people of Kotulpur area had forcefully closed the

toll tax collection centres. Thus, according to the learned Advocates for the Bankura Zilla Parishad, as per the petitioner's own admission, the sites were handed over after the direction of the High Court.

20. Learned Advocates also placed reliance on the maxim caveat emptor and submitted that it was the bounden duty of the petitioner as per the terms and conditions of the tender, to make necessary enquiry and ascertain all relevant factors before submitting the bids. The High Court was not equipped to decide either the correctness or the fairness of any of the clauses in the agreement entered into between the parties. Even if the petitioner had committed an error of judgment by participating in the tender process, the same would not be a ground for the High Court to interfere and grant relief to the petitioner by waiving the annual fees payable by the petitioner and also by amending the terms of the contract. It was a risk taken by the petitioner, which was incidental to any commercial transaction, and the petitioner was bound to conform to the terms and conditions of the contract.

21. Mr. Saha relied on following decisions:-

1. ***Commissioner of Customs (Preventive) vs. Aafloat Textiles India Private Limited and Others***, reported in **(2009) 11 SCC 18**.
2. ***Joshi Technologies International Inc. vs. Union of India and Others***, reported in **(2015) 7 SCC 728**.
3. ***Har Shankar and Others vs. The Dy. Excise and Taxation Commr. And Others***, reported in **(1975) 1 SCC 737**.
4. ***Kerala State Electricity Board and Anr. vs. Kurien E. Kalathil and Others***, reported in **(2000) 6 SCC 293**.

22. Mr. Mahato, learned Advocate appearing for the state respondents submits that the PWD had issued notices to the petitioner for removal of the

toll tax booths which were wrongly constructed on the roads under the PWD's Bishnupur Division. The petitioner had committed an error in identifying the spots, although the Zilla Parishad had handed over the correct sites in terms of the order of the High Court.

24. The extent of interference by this court and the nature of relief that can be granted are the moot questions. Mr. Basu's submission was that the sites had not been handed over even after the order of the High Court. Reliance was placed by Mr. Basu on the inspection report prepared by the Senior Deputy Secretary, Panchayat and Rural Development Department. However, such submission is contrary to the records and the letters written by the petitioner to the respondent No. 5 and other authorities. Although the inspection report which had been annexed to the report filed by the Bankura Zilla Parishad, indicates that apart from a letter dated November 18, 2022, written by the petitioner, the District Engineer had failed to submit evidence to contradict the petitioner's allegation that the sites had not been handed over, the letters written by the petitioner speak otherwise. The authority had also recorded that the petitioner had failed to satisfy with cogent evidence that the sites had not been handed over. The report reveals the ground reality as seen by the inspection team. Out of 22 numbers of roads, toll tax booths were found operational on the roads at serial numbers 5, 6, 7, 13, 14, and 18 of the list. The relevant findings are quoted below:-

“Findings:-

- Out of 22 numbers of roads, toll tax booths are found operational at roads at Sl. No. ,5, 6, 7, 13, 14 & 18 of the said list, mentioned above i.e. Onda to Chabra road, Muktapur to Kalisen Road, Tapoban to Bheduasole under Onda P.S. & Katjuridanga to Gourangadihi, Junbedia more to Mankanali under Bankura-I P.S., Parasia Ghat to Bamunari More under Kotulpur P.S.

- In respect of other roads, as per the above mentioned lists, representative of petitioner has alleged that no specific location for construction of toll booths were handed over by Zilla Parishad, Bankura.
- District Engineer, Bankura Zilla Parishad has failed to submit any evidence to contradict the claim of the representative of the petitioner, except a letter addressed to the District Engineer, Bankura Zilla Parishad by authorized signatory M/S S. Nandi in his letterhead Dt. 18.11.2022 vide Ref. No. - SN/ZP/BNK/Toll/II/2022-23. It is pointed out by him written in Para 2 of the letter.

Para 2 of the letter that - "As per our letter dated 23.03.2021, spot verification and hand over of the 22 nos. locations for mobilizing the activities for toll booth installations was executed." It is further pointed out in Para 4 of the letter written that - "As per your insistence to comply with Hon'ble high Court order dated 23.02.2021 we had accepted those points." (Enclosed)

- Representative of petitioner has failed to satisfy with reason behind the contradiction between his allegation & the written communication noted above.
- During inspection at the roads at Sl. No. 19 & 20 of the above said list i.e. Kotulpur Garuhattala to Pannasia Kankabati, Chotopagla, Amdoi, Chaw Chand Panna road and Bhagalpur to Kotulpur Road under Kotulpur P.S. toll booth structures, are found closed. As per the representative of petitioner, it has been closed as per PWD Notice which District Engineer, Bankura Zilla Parishad admits too.
- No further fact is revealed except claim and counter claim from the side of representative of petitioner & the District Engineer, Bankura Zilla Parishad.
- Inspection concluded on 17.01.2023 at 4:40 P.M. Original copies of report is handed over to District Engineer, Bankura Zilla Parishad for submission before Hon'ble High Court through Ld State Advocate."

25. The authority came to the following findings: - (a) Apart from the letter written by the petitioner admitting the handing over of the sites, the District Engineer could not produce evidence to show that the sites had been handed over. (b) The representative of the petitioner could not explain why he had raised the claim that the sites had not been handed over, although he had accepted the handing over of the sites in his letter. Thus, the case built by Mr. Basu, based on the said report, is somewhat demolished. The

writ court cannot hold that the sites had not been handed over after the direction was passed by the High Court in WPA 10928 of 2020, in view of the letters of the petitioner which are part of the records.

26. The relevant portions of the letter dated November 18, 2022 are quoted below:-

“Apropos of the mentioned letter we would humbly try to bring your attention to some points as follows:-

As per our letter dated 23/03/21, spot verification and handover of the 22nos. location for mobilizing the activities for toll booth installations was executed.

You are aware that many activities are necessary for such type of toll fees collection mentioned in tender notice like, Installation of booth, Electricity connection through WBSEDCL, Installation of electronic systems, Deployment of skilled manpower etc. for smooth operation in each and every points.

As per your insistence, to comply with Hon'ble high Court order dated 23/02/2021 we had accepted those points. But we regret that, during execution time for installation of booths we have faced tremendous challenges from various quarters e.g., local Administrations, members of Panchayat Samiti, Block representatives, have disrupted individually or collectively, our installation process multiple times and compelled us to stop operations in many toll booth points. This caused huge losses of vital expensive time for us and impacted our collection. In some cases, we had to shift our booths from one place to another, numbers of times.”

27. The relevant portions of the letter of the petitioner dated February 23, 2021 are also quoted below:-

“As per the captioned order of the Hon'ble High Court Calcutta dated 23.02.2021, Bankura Zilla Parishad has already handed over 22 no Roads Toll Booth points to the undersigned and we are completing necessary installation and arrangements therein. It has also been observed during spot verification that 1-2 Road & Block name may be rectify which wrongly mention in Road List (ANNEXURE-B) of Bankura Zilla Parishad.

But, we have not been able to commence operation of these 22 Toll Booths due to non availability of co-ordination from the police and concerned Block Development Officers since the electoral procedures are ongoing for forth coming WBLA Elections.

After completion of the election procedure by 01.04.2021 within Bankura District. We will commence Toll Tax Collection routine from

02.04.2021 and till then your benevolent assistance is highly requested.”

28. Inability to commence work due to local issues, administrative hassles, blockage by the local miscreants and objections of the gram panchayat and Block Development Officers, were to be handled by the petitioner in terms of the contract. It is the firm contention of the Bankura Zilla Parishad that the terms and conditions of the notice-inviting tender required the petitioner to visit the site and ascertain the availability, accessibility, viability and feasibility of the work. Thus, when the petitioner participated in the tender, it would be deemed that the petitioner had done the required enquiry and was satisfied that the conditions of the roads were such that the petitioner would be in a position to execute the work in terms of the work order. The relevant clause of the notice-inviting tender is quoted below:-

“Before submission of tender, the tenderer shall have to acquaint by actual visit to the roads as regards prevailing conditions and tenderer submitting tender shall be deemed to have done so.”

29. The agreement provides that it was the duty of the petitioner to ensure smooth functioning of the toll booths and all local issues, hindrances, obstacles were to be removed and handled by the petitioner by seeking cooperation from the local authorities. Records reveal that meetings had been held time and again and the petitioner was assured assistance. Apart from the letters written by the petitioner, there is nothing on record to show that the obstructions and hindrances had actually taken place after the sites had been handed over. The conditions of the road and the reduction in the vehicular traffic, which allegedly resulted in reduction in the collection of tolls, thereby causing financial hardship to the petitioner, are disputed

questions of fact, which this writ court cannot go into. Details of estimated number of vehicles that were expected to ply as per the petitioner's calculation, when the petitioner participated in the tender, is not available in the pleadings. Thus, the factum of consequent reduction in the number of vehicles as pointed out in the letters and representations, cannot also be ascertained from the records. Amendment of the list of roads, also cannot be directed by the court. It was within the domain of the Bankura Zilla Parishad to publish the NIT for the job of collection of toll tax on the roads which were mentioned in the said work order and in the tender notice. The court cannot compel the authority to amend such list. The writ court cannot assess the correctness of the statements of the petitioner in the absence of any evidence on record. Thus, the issues raised in WPA 10928 of 2020 and WPA 6190 of 2022 are answered, against the petitioner.

30. It was the duty of the petitioner to participate in the tendering process with his eyes and ears open. Prior to such participation, he was also required to assess the viability of the project sought to be undertaken by him. The presumption is that the petitioner had entered into the contract and had participated in the tender process with full knowledge and satisfaction of the conditions at the sites. It was a risk taken by the petitioner. The first round of the tendering process was cancelled due to some technical errors, although the petitioner was the successful bidder. In the second round as well, the petitioner was the successful bidder. The delay in execution of the deed between 2017 and 2019 was not on account of non-availability of the sites or problems at the ground level, but due to the difference in the rates mentioned by the Zilla Parishad and the rates

prescribed by the government. The High Court directed the authority to enter into the contract and execute the agreement on the rates quoted in the tender document, by ignoring the rates of the government. The court held that the inter-departmental communication which was not made known to the petitioner, was not binding on the petitioner. The petitioner had altered his position by not only participating in the tender process but also by paying on the amount of Rs.1,01,01,111/- (Rs. One crore, One lakh, One thousand, One hundred and eleven) as annual fees way back in February 2017. Thus, the lease agreement was a concluded contract. The relevant clauses of the agreement are quoted below:-

“4. That upon the execution of these presents and the security as aforesaid, Bankura Zilla Parishad on behalf of the Government, shall hand over the toll gates/ sites of the roads.

5. The Lease shall stand be terminated and the security deposit money shall be forfeited if the tender amount for any particular years not deposited in advance to Bankura Zilla Parishad, as per notice; and the Lessees shall make over vacant toll gate and peaceful possession of the toll gates etc. will be made by the lessee to Bankura Zilla Parishad on receipt of instruction to that effect.

6. The Bankura Zilla Parishad reserves its right to terminate contract at any time during its pending without assigning any reason to the lease by issuing 15 days notice to the lessee whatsoever. On receipt of orders in this behalf the lessee shall vacate and peaceful possession of the toll gates/sites etc., to Bankura Zilla Parishad forthwith.

7. The lessee shall duly faithfully observe the provision of the Indian Tolls Act, 1951 and as amended up to date.

8. On the termination of the Lease the Lessee shall suitably and peacefully make over the toll gates/sites to Bankura Zilla Parishad.

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17. The 1st party will not compensate any amount in the lease rent due to the temporary suspension of collection of toll caused through any natural calamity/Bandh/strike etc.

18. The 2nd party shall be responsible for any untoward incident occurred at the time of collection of Toll.”

32. W.P.A 10928 of 2020 was filed by the petitioner with a prayer for handing over the 22 roads. The petitioner had not raised any question with regard to the viability, feasibility and impossibility to execute the work. The petitioner prayed for a writ of mandamus upon the authority to hand over the sites of those 22 roads which were a part of the contract. After the sites were handed over, the petitioner complained that due to resistance by the local people, interference by the department of the government, reduction in the number of vehicle, the work could not be done. Thereafter, the petitioner challenged the demand notices by which annual fees for the subsequent years, which were unpaid, had been claimed. The petitioner raised a plea that although the sites were handed over, such action was an empty formality as the work could not commence due to reasons beyond the control of the petitioner. These issues are matters of trial on evidence as the petitioner’s own letters indicate that the sites had been handed over.

33. As per the lease deed, the petitioner was required to handle any obstacle or problem on his own, at the local level. Moreover, the extent of problems allegedly created by the local authorities or the local hooligans and the alleged reduction in the number of vehicles, are statements which have not been substantiated by evidence. One or two letters to the B.D.O. Kotulpur, to the police station and multiple letters praying for amendment of the list of roads, are not adequate evidence for this court to hold that the authority had failed to handover free and clear sites to the petitioner.

34. It was entirely within the domain of the Zilla Parishad to decide whether such concessions or amendments could be permitted at the request of the petitioner and clearly the Zilla Parishad had not paid any heed to the requests.

35. The lease agreement was a concluded contract. The authority reserved the right to terminate the contract with 15 days notice. The contract could be terminated and the security deposit could be forfeited if the petitioner failed to pay the fees in advance. It was provided in the contract that the authority would hand over the site. The records reveal that after several rounds of litigation, all the 22 roads were handed over to the petitioner within February/March 2021. The petitioner had acknowledged the same. The petitioner's contention is that the clearance for installation of the toll booths was not available at the site, due to several problems, which have been discussed in the foregoing paragraphs of this judgment. The terms and conditions of the lease agreement provide that it was the duty of the petitioner to remove obstacles by negotiating with the local authority, so that the petitioner would be in a position to construct the toll booths and collect the toll tax as per the work order.

36. Under such circumstances, a writ court cannot interfere either with the stipulations in the contract or interpret the same in any other manner than what has been provided for. The document has to be construed as it reads. There are no ambiguities in the clauses. The other issues, which the petitioner has pointed out, raise disputed questions of fact, which cannot be gone into by the writ court.

37. In the decision of ***Kerala State Electricity Board v. Kurien E. Kalathil***, reported in **(2000) 6 SCC 293**, the Hon'ble Apex Court held as follows:-

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

38. In the matter of ***Har Shankar v. Excise & Taxation Commr.***, reported in **(1975) 1 SCC 737**, the Hon'ble Apex Court held as follows:-

16. Those interested in running the country liquor vends offered their bids voluntarily in the auctions held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government,

under which they became entitled to sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of all trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.

17. In *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120] the appellant who was removed from the managership of certain evacuee properties filed a petition in the Kerala High Court under Article 226 of the Constitution praying for a writ of mandamus against the Deputy Custodian and others. This Court held that the appellant's appointment was contractual in its nature and the duties or obligations arising out of contract could not be enforced by the machinery of a writ under Article 226.

39. The problems pointed out by the petitioner and the genuineness of those involve disputed questions of fact and cannot be decided except by leading evidence. The only factor which this court can take note of is that, the 22 roads were not handed over till February/March 2021. Till the order of Her Lordship dated February 23, 2021, only 9 roads were admittedly handed over. Thus, the demand notices are quashed. The petitioner had paid Rs.1,01,01,111/- (Rs. One Crore, One lakh, One Thousand, One Hundred and Eleven) in 2017, which was the annual fees for the first year for all 22 roads. The execution of the deed took place in December 19, 2019. Thus, this amount should be adjusted proportionately. The annual fees for the period between December 16, 2019 and November 15, 2020, should be adjusted against those 9 roads/spots which had been handed over earlier.

The remainder shall be adjusted against the demand for the subsequent periods. The fees payable should be from November 16, 2020, to the present, by giving adjustment of the amount which had already been paid by the petitioner for the first year and also pursuant to the order of this court. The claim should be proportionate to the number of locations/roads that were handed over at the relevant periods. 22 roads were handed over only in February/March 2021, pursuant to order of court as per the records.

40. The relevant portion of the order of the Hon'ble Single Judge is quoted below:-

“In compliance of the order dated 9th February, 2021 the District Engineer, Bankura Zilla Parishad has affirmed an affidavit wherein it has been mentioned that out of the 22 Toll Tax booths more or less 9 spots were identified to the petitioner. The petitioner duly started installing the booths in the 5 spots. As the petitioner had some local difficulty in commencing with the smooth functioning of five spots, Bankura Zilla Parishad directed the concerned Gram Panchyat Samity and Block Development Officer to provide assistance to the petitioner.

In view of the above, the Bankura Zilla Parishad is directed to hand over all the 22 toll sites to the petitioner within 26th March, 2021.”

41. Whether concessions for the COVID period should be permitted, is again within the domain of the authority.

42. The District Magistrate as the Executive Officer of the Bankura Zilla Parishad, is directed to revisit the entire issue by recalculating the demand in terms of the observations of this court and issue a demand notice within a period of four weeks from date of communication of this order upon hearing the petitioner, the respondent No.5 and the District Engineer of the Bankura Zilla Parishad. A reasoned order shall be passed and communicated. The Bankura Zilla Parishad has already submitted a

calculation pursuant to the order of this court. Such calculation takes care of the proportionality in the amounts to be paid in respect of the sites handed over in phases. The calculation shall be used as a reference point but a fresh demand will be made upto the present, upon taking in the consideration all other issues and also whether concessions can be given in view of the hindrances highlighted and the intervention of the Covid pandemic. Demand, shall be raised with the break up. Investment made by the petitioner was a part of the agreement. No direction for refund can be made. The said prayer is not a part of the writ petitions. No coercive steps shall be taken by the authority till such decision.

43. The writ petition is disposed of.

44. There will be no order as to costs.

45. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)