

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

Present :- Hon'ble Justice Amrita Sinha

WPA 585 of 2023

**M/S Roxy Enterprises
Vs.
The State of West Bengal & Ors.**

For the writ petitioner	:-	Mr. Narendra Nath Das, Adv. Mr. Pragyadip Roy Basunia, Adv. Mr. Jagesh Chandra Roy, Adv. Ms. Tanushri Roy, Adv. Mr. Madhab Kumar Roy, Adv.
For the State	:-	Mr. Hirak Barman, Adv. Mr. Momenur Rahman, Adv.
For the Zilla Parishad	:-	Mr. Bikramaditya Ghosh, Adv.
Heard on	:-	30.01.2024 & 31.01.2024
Judgment on	:-	02.02.2024

Amrita Sinha, J.:-

The writ petition arises out of a dispute which arose on account of non completion of work in terms of the work order issued in favour of the petitioner by the Alipurduar Zilla Parishad.

In response to a notice inviting pre qualification- cum- tender (two cover system) published by the Alipurduar Zilla Parishad, the petitioner submitted its bid in respect of the work of repair of road from Salkumarhat near Dijarajghat to Bhandani temple via Bangdaki Forest under Salkumar II

GP of Alipurduar I PS within Alipurduar Zilla Parishad. Time period for completion of the work was mentioned as 120 days.

The terms and conditions mentioned in the subject notice laid down that the successful tenderer will have to execute an agreement on a Non Judicial Stamp paper worth Rs. 100/-. Time and cost over-run will not be permitted. In case of any work not being completed by the contractor within the stipulated time frame, necessary penal measure in the tune of deduction of an amount as decided by the Artha- Sanstha- Unnayan- O- Parikalpana Sthayee Samity of Alipurduar Zilla Parishad will be imposed. Running payment of work will be made to the agency as per availability of fund and as per norms.

The bid submitted by the petitioner, being the lowest, was accepted and a letter of acceptance dated 14th February, 2020 was issued by the Executive Engineer (P & RD), Alipurduar Zilla Parishad in favour of the petitioner. The petitioner was to complete the formalities within seven working days from the date of issue of the letter before issue of work order. An agreement of requisite Non Judicial Stamp paper worth Rs. 100/- was to be executed along with other formalities to be completed.

The Executive Engineer (P & RD), Alipurduar Zilla Parishad issued work order in favour of the petitioner vide memo dated 3rd March, 2020. The petitioner was requested to take up the work within seven days from the date of issue of the letter in right earnest in consultation with the engineer and complete the same in all respect within stipulated time. Payment was to

be made by the respective head of account by the appropriate authority of the Zilla Parishad.

The petitioner has averred in the writ petition that the petitioner received the site partially after inauguration by the authorities on 16th March, 2020 but the work could not start due to the lockdown imposed by the Government. Letter was issued by the petitioner for handing over of the site on 13th May, 2020 and the petitioner received the site in an incomplete mode on 18th May, 2020. The work was done by the petitioner on oral direction by the authority on account of the lockdown and the extension thereof from time to time. Due to the restricted mode of performing the work on account of the pandemic situation, the petitioner was unable to complete the work within the stipulated time period. Running account bill in respect of the portion of the work that was concluded was raised by the petitioner in December, 2020. Part payment of the running accounts bill was made and the petitioner requested for payment of the balance amount of the running account bill.

A portion of the work to be performed by the petitioner fell within the forest authority. The same being a reserved forest area prior permission/ approval from the forest authority was required to be taken. A tussle cropped up between the forest authority and the Zilla Parishad due to which the Zilla Parishad directed the petitioner to stop proceeding with the work for settling the dispute with the forest department. A considerable period of time was consumed for settlement of the dispute.

As the petitioner failed to conclude the work, the Assistant Engineer of the Zilla Parishad vide communication dated 17th March, 2021 requested the petitioner to resume the said work within five days. Direction for resumption of work was issued by the Executive Engineer of the Zilla Parishad once again on 26th November, 2021. Despite repeated communications made to the petitioner to resume work, the same was not resumed on the ground of non clearance of the balance due in respect of the work already done by the petitioner.

By communication dated 5th May, 2022 a show cause notice was issued to the petitioner by the Executive Engineer of the Zilla Parishad clearly mentioning that despite repeated requests, the work has not been resumed. It was presumed that the petitioner will not be able to complete the work before the monsoon season. The petitioner was directed to show cause within three days as to why the contract will not be terminated.

By communication dated 3rd January, 2023 the Executive Engineer of the Zilla Parishad intimated the petitioner that as the petitioner failed to complete the work as per the agreement laid down in the tender clauses and considering the importance of public interest proposal for termination was recommended upon penalty of deducting the Security deposit of the work, forfeiture of Additional Performance Security and earnest money deposit by terminating the agreement of the petitioner and debarring the petitioner from any type of Government work by the concerned Government sector/ department.

The petitioner is aggrieved by the same. Submission of the petitioner is that the Executive Engineer of the Zilla Parishad is not the competent authority to issue the order of termination, neither is the said officer authorized to debar the petitioner from any type of Government work. The running account bills submitted by the petitioner are yet to be cleared. The Zilla Parishad ought to have appreciated that it was not possible for the petitioner to conclude the work within the stipulated time period in view of the lockdown imposed by the Government because of the pandemic situation. Construction over the land which belonged to the forest department could not be done in the absence of proper permission from the forest authority. In view of the dispute and differences between the Zilla Parishad and the forest authority, there has been delay in conclusion of the work.

The petitioner has relied upon the Standard Bid Document applicable for tender works of the Government. It has been submitted that the Force Majeure clause was not taken into consideration. The Zilla Parishad ought to have rescheduled the period for completion of the work instead of terminating the contract.

The pending running account bill ought to have been cleared by the Zilla Parishad in accordance with the clauses mentioned in the Standard Bid Document. For terminating the contract, there are specific provisions in the Standard Bid Document. There is a suspension committee, debarment committee who are authorized to take a decision with regard to suspension/

debarment of a contractor. The order of debarment by the Executive Engineer of the Zilla Parishad is bad in law.

There is also specific provision for imposing penalty upon the contractor. The said procedures laid down in the Standard Bid Document have not been complied with prior to issuing the termination and debarment notice.

Reliance has been placed on the provision of Section 171 of the West Bengal Panchayat Act, 1973 in support of the submission that the act on the part of the respondent Executive Engineer, Zilla Parishad in terminating the contract is bad in law and liable to be set aside.

It has been submitted that realising the error on their part, the Zilla Parishad has issued fresh tender notice for conclusion of the balance work which could not be completed by the petitioner and has kept the portion of the forest area out of the tender.

Prayer has been made to set aside the termination and the debarment notice including imposition of penalty. Prayer has also been made directing the respondent authorities not to proceed further with the fresh tender that has been issued.

The Assistant Engineer, Alipurduar Zilla Parishad has filed affidavit in opposition and opposed the claim of the petitioner. It has been submitted that the petitioner failed to conclude the work in terms of the work order issued. Repeated opportunities were granted to the petitioner to conclude

the work after the lockdown imposed by the Government was lifted. Even after normalization of the situation after Covid, the petitioner failed to proceed with the work. On the contrary the petitioner raised bill in respect of the work that was performed and the respondent authority disbursed the said bill of the petitioner.

The respondent authority denies the dispute between the Zilla Parishad and the forest department. It has been submitted that in public interest the work in question was required to be concluded and, accordingly, fresh tender was called for. Show cause notice was issued to the petitioner. As no cause was shown by the petitioner for leaving the work in the middle without concluding the same, as such, there was no other option left to the authority but to terminate the work order.

An issue has been raised with regard to the maintainability of the writ petition before this Court. It has been submitted that the cause of action arises out of a contractual dispute which ought not to be entertained by this Court. There are disputed questions of fact with regard to the work performed by the petitioner which cannot be resolved in the writ proceeding. It has been contended that formal contract has also not been executed between the parties.

With regard to the submission made by the petitioner relying on the model Standard Bid Document it has been contended that as formal agreement or contract has not yet been executed between the parties,

accordingly, the petitioner cannot place reliance on the clauses mentioned in the model document.

Prayer has been made for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties. On a perusal of the documents annexed to the writ petition it appears that the work order was issued a couple of days prior to the imposition of the lockdown. The period within which the work ought to have been completed is 120 days and the cost awarded for such work is Rs. 70,35,419/-. On imposition of lockdown it was not possible for the petitioner to continue the work. As per the work order dated 3rd March, 2020 the work was to be started within seven days, that is, by 10th March, 2020 the work should have been started by the petitioner. The lockdown was imposed in the last week of March, 2020.

After the lockdown was eased the petitioner should have resumed the construction work so as to conclude the same within the prescribed time period or to seek extension of time for conclusion of the same. The first RA bill was raised by the petitioner in the end of 2020 and payment was received in February, 2021. Further payment was also received by the petitioner in March, 2022. The petitioner was issued repeated notices by the Zilla Parishad with request to resume work but the petitioner expressed financial crunch in restarting the incomplete work. Lastly, a show cause notice was issued in May, 2022 directing the petitioner to show cause as to why the work order will not be terminated. As no satisfactory cause was

shown, the Zilla Parishad terminated the work order and issued debarment notice.

Though it appears from the documents annexed to the writ petition that a formal contract ought to have been signed and executed by and between the parties but there is nothing on record to suggest that the same was done. Without execution of the formal contract the petitioner cannot press for implementation of the clauses in the model document.

There is a dispute with regard to the quantum of work performed by the petitioner. There may be various reasons for the petitioner for which the work could not be concluded after the pandemic situation. The petitioner alleges that on account of non clearance of the running account bill, the petitioner did not have the ready finance to proceed with the work. The dispute allegedly between the forest department and the Zilla Parishad also cannot be ascertained in the present proceeding.

It has been submitted by the Zilla Parishad that fresh contract was issued for completion of the remaining portion of the work which has presently been concluded. The Zilla Parishad asserts that the payment for the portion of the work performed by the petitioner has been made.

In such a situation the prayer of the petitioner directing the authority not to proceed with the fresh tender, appears to have become infructuous. The fresh tender has already been acted upon by the respective parties.

As regards the prayer challenging the termination and the debarment order, the same cannot be adjudicated conclusively in the present proceeding as there are several questions of fact which cannot be answered on the basis of the documents on record. Evidence is required to be adduced to adjudicate the legality of the imposition of penalty including termination and debarment. Dispute arising out of a contract where several factual aspects are required to be ascertained cannot be decided in the writ proceeding.

In view of the above, no relief can be granted to the petitioner in the instant case. The writ petition fails and is hereby dismissed.

Dismissal of the writ petition will, however, not stand in the way of the petitioner from approaching the competent forum for relief, if permissible in law.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)