

17.04.2025
01
Ct.No.7.
akd

WPA 3255 of 2024

Nandalal Saha
Vs.
Raiganj Muinicipality & Ors.

Mr. Subrata Dutta. (Appeared on 17.04.2025)
Mr. Gautam Kr. Thakur.
...for the Petitioner (appeared on 11.04.2025)

Mr. Lalit Mohan Mahata, Ld. AGP,
Ms. Ziaul Haque.
...for the State.

Mr. S. Bandopadhyay.
Ms. Deboleena Ghosh,
Mr. A. Nag.
...for the Municipality.

1. This matter has been placed before the Court for clarification on the issue as to whether the State can entirely absolve itself of liability in the present case.

2. Heard the learned Advocates for the respective parties.

3. Following the proposition laid down in the decision of the Hon'ble Special Bench rendered in case of *Binod Kumar Toppo vs. State of West Bengal & Ors*, reported in *2011 (3) CalHN 299*, the order dictated in open Court on 11.04.2025 but not transcribed is hereby recalled, and the writ petition is disposed of with the following order:

4. In the present case, a contractor, after executing the work assigned to him by the Municipality, has been

persistently approaching various authorities, including this Court, seeking payment for the work executed.

5. To better understand the issue involved in the present writ petition, it is necessary to set out the key facts. The Raiganj Municipality issued a Notice Inviting Tender for the construction of a road within its territorial jurisdiction. In response, the petitioner submitted his bid and was declared the successful tenderer. Consequently, the work was awarded to him through the issuance of a formal work order. The petitioner duly executed the work in accordance with the specifications outlined in the said work order and subsequently submitted the final bill amounting to Rs. 79,56,000/- (Rupees seventy-nine lakh fifty-six thousand only). However, despite completion of the work, the Municipality has failed to honour the bill and release payment in favour of the petitioner.

6. Meanwhile, there was a change in the constitution of the Municipal Board. The newly constituted Board raised an allegation that the erstwhile Chairman had awarded the work in violation of the legal provisions and without following the prescribed procedure. As a result, a criminal proceeding was initiated against the said former Chairman.

7. However, upon conclusion of the trial, the erstwhile Chairman was acquitted by a competent court on 30th April, 2024. Despite this acquittal and the

admitted completion of the work, no payment has yet been made to the petitioner.

8. Being aggrieved by such inaction, the petitioner was constrained to file a writ petition before this Hon'ble Court, being WPA 17176 of 2023. The said writ petition was disposed of by a Co-ordinate Bench of this Court by an order dated 25th September, 2023, directing the Principal Secretary, Department of Urban Development and Municipal Affairs, to take a decision in the matter after granting an opportunity of hearing to both the petitioner and a representative of the Municipality.

9. Pursuant to the said order, the Principal Secretary passed a reasoned order dated 18th December, 2023, holding that the Raiganj Municipality is solely liable to clear the petitioner's dues for the work executed, since the work had been undertaken without prior approval of the State Government. It was further observed that the State Government cannot be held responsible for releasing funds in respect of a project that lacked both administrative approval and financial sanction.

10. Notably, there was no dispute raised as to the petitioner's entitlement to the amount claimed in the final bill. The Principal Secretary also recorded in the said order that the work order in favour of the petitioner was issued on 24th November, 2015, the

work was completed in early 2016, and a completion certificate was duly issued by Raiganj Municipality.

11. It is submitted on behalf of the petitioner that he had invested a substantial sum for the execution of the said project by availing a loan from a financial institution, secured through an equitable mortgage created on his residential property. Due to his inability to repay the loan installments, proceedings under the SARFAESI Act have been initiated against him. Furthermore, the petitioner is presently suffering from a terminal illness, namely cancer. In light of these compelling circumstances, the petitioner prays for an appropriate direction upon the concerned Municipality to release the payment due to the petitioner at the earliest.

12. Ms. Ghosh, learned Advocate appearing on behalf of the Municipality, submits that although the criminal case resulted in an acquittal, an appeal has been preferred challenging the judgment and order of acquittal. She further submits that the petitioner may pursue recovery of the claimed amount by instituting a civil suit. Quite apart from that, she submits that the State cannot completely deny its liability in this matter.

13. Heard the learned Advocates appearing for the parties. Perused the materials on record.

14. It is an admitted fact that the petitioner duly completed the work, and a completion certificate was issued by the Municipality. Pursuant to this, the

Executive Engineer of the Dakshin Dinajpur Division directed an inquiry, and it is noteworthy that no authority, including the Municipality, has raised any allegation regarding the quality or quantity of the work executed. A perusal of the memorandum dated 16.05.2019, issued by the Executive Engineer (Page 241 of the writ petition), indicates that an enquiry was conducted by the office of the Executive Engineer, Municipal Engineering Directorate, Uttar Dinajpur Division, Government of West Bengal. The enquiry revealed that all the works except those listed under Serial Nos. 241, 256, 261, and 266, were carried out between the years 2013 and 2016. The work under Serial No. 200 was executed in 2007. Based on physical inspection, all the aforementioned works were found to exist on site.

15. It is pertinent to note that even if the pending criminal appeal were to be allowed, resulting in the conviction of the erstwhile Chairman, such an outcome would not justify the withholding of the petitioner's dues—particularly when the petitioner had no involvement in the alleged irregularities. A dispute between the State and the Municipality should not result in hardship to an individual who has acted in good faith and fulfilled his contractual obligations. It is unreasonable to expect a tenderer, while responding to a Notice Inviting Tender, to ascertain whether the Municipality had completed all requisite formalities,

including obtaining prior approval from the State Government. Furthermore, there has been no allegation of misconduct or mala fides against the petitioner by the Municipality before any forum.

16. In view of the undisputed facts that the petitioner has completed the work in accordance with the work order and that the Municipality has benefited from the said work, I do not find any justification for the action of withholding the payment. The petitioner has invested a substantial amount of money for execution of the projects, and denial of payment despite completion of work is wholly unjust and unfair.

17. In the order challenged in this writ petition, the Principal Secretary (the respondent no. 7) noted that, prior to the commencement of the projects, the Municipality was required to submit a Detailed Project Report (DPR) properly vetted by the Competent Authority, with updated GST details and a copy of the Board of Councilors' resolution, in order to obtain Administrative Approval and Financial Sanction. However, several years after the completion of the works, the Municipality approached the Department for the release of funds. The Principal Secretary declined to grant post facto approval, and in light of these circumstances, held that the Municipality is liable to clear the dues to the petitioner, as the works were executed by the Municipality on its own initiative without the prior approval of the State Government.

18. In a welfare State, the Government is expected to play a parental role towards its citizens, particularly in matters concerning welfare, protection, and infrastructure development. This principle is rooted in the doctrine of *parens patriae*, meaning “parent of the nation.” Admittedly, a Municipality functions as a parastatal body, acting on behalf of the State in a delegated capacity. There can be no dispute that the benefits of the works, which were completed without any objection regarding quality or process, are presently being enjoyed by the citizens of the State. Therefore, the State cannot completely absolve itself of liability in this matter. Accordingly, I am unable to concur with the conclusion drawn by the Principal Secretary in the impugned order that, since prior approval was not obtained, the State bears no responsibility. The State cannot take a stance that allows a tenderer to suffer due to the fault or omission of the Municipality. In view of the above, the order under challenge in this writ petition is set aside.

19. However, it is admitted that the primary responsibility for making the payment lies with the Municipality. As noted earlier, the petitioner had raised a bill amounting to ₹79,56,000/- (Rupees seventy-nine lakh fifty-six thousand only). Accordingly, the writ petition is disposed of with a direction upon the Municipality to release the outstanding dues in favour of the petitioner within a period of two months from the

date of receipt of a copy of this order. The Principal Secretary shall ensure that the verified amount is disbursed within the time frame specified above.

20. It is, however, clarified that prior to making such payment, the respondents shall be at liberty to verify whether the outstanding amount indeed stands at ₹79,56,000/- (Rupees seventy-nine lakh fifty-six thousand only).

21. With this observation and order, the writ petition is disposed of.

22. There will be no order as to costs.

(Partha Sarathi Chatterjee, J.)