

FORM NO. J (2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 27139 OF 2024

PAL REGENCY & ANR.

Vs.

THE STATE OF WEST BENGAL & ORS.

FOR THE APPELALNTS : **MS. SANGHAMITRA NANDY, ADVOCATE**

FOR THE STATE : **MR. BIJOY BRATA DAS, ADVOCATE**

HEARD ON : MARCH 27, 2025.

JUDGMENT ON : MARCH 27, 2025

THE COURT:

1. The petitioners pray for release of a sum of Rs. 19,87,936/- together with security deposit and interest upon setting aside the order dated 21.10.2024 passed by the Secretary, Urban Development and Municipal Affairs Department (hereafter "the said Secretary").
2. Ms. Sanghamitra Nandy, learned Advocate for the petitioners submits that the petitioners were initially allotted a work order bearing Memo No. 6-20(B)/356 dated 06.03.2017 whereby the petitioners were supposed to carry out certain works namely, "Upkeeping & Beautification of Left Bank of Eastern Drainage Channel, Salt Lake City (Part-A, from Ch. 100.00Mtr to Ch.1150.00Mtr) in connection with Upkeeping & Beautification of Left Bank of Eastern Drainage Channel, Salt Lake City (Reach-I, From Ch.100.00Mtr to 2200.00Mtr.)."

3. Ms. Nandy further contends that the petitioners were subsequently required to execute certain additional works apart from the work mentioned in the said work order dated 06.03.2017 and that such additional work was granted post-facto approval by the Special Engineer, Salt Lake Reclamation & Development Circle, U.D. Department (hereafter “Special Engineer SLRDC”) on 08.03.2018 on the recommendation of the Executive Engineer, Urban Development Department, Salt Lake, Bidhannagar Municipal Service Division (hereafter the “Execution Engineer BMS Division”). For such purpose attention of the Court is invited to Annexures P3 and P4 at pages 25 and 26 of the writ petition. It is further submitted that the petitioners submitted the Bills for the works done but the same were not paid in full. The petitioners, therefore, approached this Court by filing WPA 11329 of 2024 which was disposed of by an order dated 15.07.2024 directing as follows :-

“2. The writ petition is disposed of directing the Principal Secretary, Urban Development Municipal Affairs Department, Government of West Bengal to dispose of the representation of the petitioners dated October 21, 2022 in accordance with law. If the authority finds that either partial payment or full payment as claimed in the said representation should be made, such payment shall be released within three months from the date of communication of this order. If the authorities are of the view that payment cannot be made to the petitioners, then reasons for not allowing such payment shall also be intimated within three months from the date of communication of this order. The question of delay shall not be a ground for rejection of the claim, if the authority

is satisfied that the claim is either fully or partially valid. The authority responsible for supervision of the work and the petitioners shall be heard. The order should be communicated within a week from such decision.”

4. Pursuant to the said order, the petitioners were given a hearing by the said Secretary on 23.08.2024 and the said Secretary ultimately decided that the petitioners were entitled to a sum of Rs.77,00,311.17/- . It was observed by the said Secretary that out of the said sum of Rs.77,00,311.17/-, a sum of Rs.71,97,000.00/- had already been paid to the petitioners and as such direction was given to make payment of the balance amount of Rs.5,03,311.17/- to the petitioners.
5. Ms. Nandy submits that the work done by the petitioners on the basis of the initial work order dated 06.03.2017 and the subsequent additional work for which post-facto approval was granted on 08.03.2018, entitles the petitioners to claim an amount of Rs.91,84,936.29/-. In this connection, Ms. Nandy relies on the Financial Implication Statement submitted by the petitioners to the Executive Engineer (page 24 of the writ petition) where the total value of the work done (including the supplementary and substitute supplementary works done) has been stated to be Rs.91,84,936.29/-. She prays for reliefs in terms of the prayers made in the writ petition.
6. Mr. Bijoy Brata Dey, learned Advocate appearing for the respondent State authorities bases his argument on the impugned reasoned order dated 21.10.2024 and invites the attention of this Court to paragraph (ii) at the internal page 3 of the said order (page 46 of the writ-petition). There the said Secretary has recorded that the working agency (i.e. the petitioners) had submitted a proposal for

supplementary tender for some additional works and that the same was sanctioned by the then Special Engineer on 08.03.2018. It is also mentioned there that the amount of Rs. 91,84,936.29/- that had been sanctioned was beyond the tendered value of the work i.e. Rs. 77,00,311.17/-, but was within the sanctioned limit. Mr. Dey lays stress on the last sentence of para (ii) which reads thus:- “No prior approval is given for such supplementary work”. Mr Dey further takes the Court through the work order dated 06.03.2017 issued by the Executive Engineer, BMS Division (at page 17 of the writ petition) and highlights that the said work order mandated that “No excess or additional work should be taken up without prior written approval from the competent authority.”

7. Mr. Dey further contends that as the additional work was done by the petitioners without taking any prior approval therefor, the petitioners would not be entitled to get any amount for such work at all. Attention of this Court is further drawn to paragraph 4 of the said order (page 48 of the writ-petition) wherein it has been recorded that the Superintending Engineer was the competent authority to approve and sanction the excess/additional work.
8. Mr. Dey emphasizes on paragraph (iii) of the impugned order at page 49 of the writ-petition to submit that there was no approval of the State Government for the additional work alleged to have been done by the petitioners. He submits that work done without approval cannot be taken note of by the respondent authorities and no payment for such additional work can be made to the petitioners. He prays for dismissal of the writ petition.
9. While replying to such contention of the respondent, Ms. Nandy the learned Advocate for the petitioners draws the attention of the Court to paragraph 6 of the impugned order (page 48 of the writ-petition)

to submit that it has also been observed by the same authority that the tender for additional work was sanctioned by the then Special Engineer SLRDC on 08.03.2018 amounting to Rs.91,84,936.29/- which was beyond the tender value of the work i.e. Rs.77,00,311.17/- but within the administratively sanctioned amount. It is, therefore, submitted on behalf of the petitioners that if the value of the work done by the petitioners is within the sanctioned amount and the same has been granted post-facto approval by the Special Engineer SLRDC on the recommendation for the Executive Engineer BMS Division who issued the work order dated 06.03.2017, there was no reason for the petitioners to assume that there would be any hindrance in the petitioners' getting the amount for which the additional work was done. It is also pointed out that in the same paragraph it has been further recorded that "The executed work had been recorded in the Measurement Books and final bill had been prepared accordingly duly certified by the then Junior Engineer, the then Assistant Engineer and the then Executive Engineer of BMS Division." It is submitted that in such view of the matter the respondents have accepted that additional work has indeed been done and there is no dispute as regards the same.

10. Upon hearing the learned Advocates for the respective parties and considering the material-on-record, it appears that the reason for the rejection of the petitioners' claim by the said Secretary is the absence of prior approval for the excess/additional work done by the petitioners. It does not appear from the order impugned that there is any dispute as regards the quantum of work done by the petitioners.
11. In the present case, the Executive Engineer, BMS Division has issued the first work order dated 06.03.2017. The same authority has

also recommended for acceptance the supplementary tenders for additional works (pages 25 and 26 of the writ petition). The original work order/letter dated 06.03.2017 further evinces that the tender for the works mentioned therein had been accepted by the Special Engineer SLRDC. It appears from the documents annexed at pages 25 and 26 of the writ petition that the same authority has granted post facto approval to the additional works. In such view of the matter, it would be unjust to punish the the petitioners herein by not paying them their dues for doing additional works on the ground that the same were done without obtaining prior approval.

12. This Court has noticed that the work order/letter dated 06.03.2017 stipulates that “No excess or additional work should be taken up without prior written approval from the competent authority.” In my opinion such stipulation stands substantially fulfilled once the Special Engineer SLRDC (i.e. the authority which had accepted the original tender) granted post facto approval to the additional works on recommendation of the Executive Engineer BMS Division (i.e. the authority who has issued the work order/letter dated 06.03.2017).
13. It is now very well settled that authorities which answer the definition of a ‘State’ in terms of Article 12 of the Constitution of India, have to act fairly and that being so they should not deprive any person of such person’s genuine entitlement on mere technicalities.
14. Notwithstanding the aforesaid, this Court is not minded to issue a writ of Mandamus commanding the respondents to make payment to the petitioners in terms of the prayers. Justice would be sub-served if the matter is sent back to the said Secretary for a fresh consideration. The said Secretary has observed at page 3 of his order that the petitioners were unable to provide the “vetted

estimate for additional work, work order for such additional work in support” of the petitioners’ claim. The matter therefore deserves reconsideration by the same authority. The petitioners shall be entitled to produce all documents in support of their claim before the said Secretary.

15. This Court has had the occasion to peruse copies of the Financial Implications Statement being annexure P/3 at page 24 of the writ petition which bears the recommendation of the Executive Engineer, BMS Division and the substitute supplementary tender and 1st supplementary tender at pages 25 and 26 of the writ petition which evince that post facto approval had been granted for the said tenders. The said Secretary shall also consider whether or not the documents viz. Financial Implication Statement (Annexure P/3), substitute supplementary tender and 1st supplementary tender fulfill the requirements of vetted estimate for additional work and work order for such additional work. In case the said Secretary holds that the said documents are not sufficient, the said Secretary shall assign reasons for such conclusion.
16. Furthermore by the order dated July 15, 2024 passed in WPA 11329 of 2024, this Court had been pleased to direct the Principal Secretary, Urban Development Municipal Affairs Department, Government of West Bengal to dispose of the petitioners’ representation dated October 21, 2022 in accordance with law. A copy of the said representation dated 21.10.2022 appearing at pages 36 to 38 of the writ petition evinces that the writ petitioners had also requested for release of security deposit. The “reasoned order” dated 21.10.2024 impugned in the writ petition is again conspicuously silent on such score as well. The said Secretary must take a decision on this aspect also.

17. In such view of the matter, the said order dated 21.10.2024 impugned in the writ petition is hereby set aside. The matter is remitted back to the said Secretary for taking a fresh decision in the matter as regards the entitlement of the petitioners on the score of the additional work rendered by the petitioners as well as the issue of release of security deposit. Since this Court has observed that the petitioners are not at fault for non grant of prior approval (in the wake of the fact that post facto approval had been granted by the Special Engineer SLRDC upon the recommendation of the Executive Engineer), the Secretary who passed the impugned reasoned order shall not annul the petitioners' claim on that ground.
18. The said Secretary shall be obliged to give a hearing to the petitioners as well as the authorities heard by the said Secretary in the first round, before taking any decision in the matter. In the event it is found that the petitioners are entitled to the amounts claimed by them, the petitioners must be paid the sums due to the petitioners forthwith in accordance with law. The entire exercise shall be completed within a period of four weeks from the date of communication of the order.
19. The writ-petition being **WPA 27139 of 2024** is accordingly **disposed of**. No costs.

(OM NARAYAN RAI, J.)