19.03.2026
SL No.3-4
Court No.12
(gc/cp)

COT 3 of 2026
CAN 1 of 2026
CAN 2 of 2026

The State of West Bengal & Ors.
Vs.
Sports Authority of India & Anr.

With

MAT 1029 of 2025
CAN 1 of 2025
CAN 2 of 2025
CAN 3 of 2025

Sports Authority of India & Anr.
Vs.
The State of West Bengal & Ors.

Mr. D.N. Ray, Sr. Adv.,
Mr. Sourav Halder

.....for the S.A.I.

Mr. Amal Kr. Sen, Ld. A.A.G.,
Mr. Lal Mohan Basu

...for the State
in MAT 1029 of 2025.

Mr. Biswajit Deb, Sr. Adv.,
Mr. Sayan Dev Kumar,
Ms. Priyakshi Banerjee,
Mr. Sourav Ghosh,
Ms. Priyanka Ghosh,

...for the Respondent No.2
In COT 3 of 2026 &
...for the Respondent No.5
In MAT 1029 of 2025.

Mr. Lalit Mohan Mahata, A.G.P.
Mr. Prasanta Behari Mahata

...for the State
In COT 3 of 2026.

1. MAT 1029 of 2025 and COT 3 of 2026 arise out of the same judgment and order. By consent of the parties, the appeal and the cross-objection are taken up together and disposed of by this common order.

<u>Re: MAT 1029 of 2025</u>

2. CAN 2 of 2025 in MAT 1029 of 2025 is an application for condonation of delay of 83 days in filing the appeal.
3. The appellants are aggrieved by an order dated March 25, 2025 passed in WPA 21370 of 2024. Considering the explanations offered in paragraphs 4 and 5 of the application, we are of the view that the delay in filing the appeal has been sufficiently explained. We condone the delay and regularize the appeal.
4. Accordingly, CAN 2 of 2025 is allowed and disposed of.
5. CAN 1 of 2025 in MAT 1029 of 2025 is an application for impleadment of the Chief Commissioner of Customs as a party respondent in the appeal. The Customs authority was not a party to the original writ proceeding. In the writ proceeding, the writ petitioner did not have any claim against the Customs authority. The writ was filed for a direction upon the PWD/tenderer for release of admitted dues, security money deposit and the earnest money deposit, after the defect liability was over.

6. Under such circumstances, when the Chief Commissioner of Customs was not a party to the writ proceeding, we do not want to enlarge the scope of the appeal by impleading the said authority as a party.

7. Accordingly, the application being CAN 1 of 2025 is dismissed.

8. MAT 1029 of 2025 is an appeal from a judgment and order dated March 25, 2025 passed in WPA 21370 of 2024. By the impugned judgment, the learned Single Judge directed the PWD to release the admitted dues of the petitioner to the tune of Rs.75,69,446/- along with simple interest @ 7% p.a. calculated on and from the date of successful completion of work till the date of actual payment. It is further directed that the earnest money deposit and the security deposit shall also be released along with simple interest @ 7% p.a. calculated on and from the due date till the date of actual payment. The aforesaid sum was also directed to be released within a period of four months. It was provided in the judgment that, in the event the payment was not made within the time limit stipulated in the judgment, the writ petitioner would be entitled to receive the due along with simple interest of 2% p.a., that is, 7+2 = 9%.

9. Mr. Ray, learned Senior Advocate appears on behalf of the Sports Authority of India (SAI), who was the respondent no.5 in the writ petition, and the appellant before us. We have perused the decision of Her Lordship and we find that the dues of the writ petitioner were admitted by the Public Works Directorate (PWD). The writ petitioner had a contract with the PWD. PWD did not pay the admitted dues of the petitioner on the ground that SAI had not released payment to the PWD. The PWD claimed to be entitled to the customs duty exemption. The Executive Engineer, PWD had submitted a report before Her Lordship, *inter alia*, stating that the liability to obtain the customs duty exemption certificate was cast upon SAI.

10. We find that, in view of the urgency in relaying the synthetic athletic track at the premises of SAI, the writ petitioner had to import materials from other countries for which the writ petitioner paid the customs duty, in order to avoid payment of demurrage charges and for timely conclusion of the offered work. A proper utilization certificate was issued by the Executive Engineer along with the completion-cum-performance certificate. According to the learned Senior Advocate for SAI, some observations of the the learned Single Judge adversely affects the interest of SAI. SAI submits that it

did not have any liability to obtain the customs duty exemption certificate. Her Lordship considered the rival contentions of the parties and held that there was no privity of contract between the SAI and the writ petitioner. The writ petitioner executed a contract with the PWD pursuant to a notice inviting tender issued by the PWD. Her Lordship was of the view that the internal dispute between SAI and PWD should not affect the right of the writ petitioner. PWD had filed a cross-objection which can be heard independently. In the absence of a direction upon SAI to release the payment in favour of the writ petitioner, we are not inclined to expand the scope of the appeal and decide the rival issues between PWD and SAI. Paragraphs 29 and 30 of the decision of Her Lordship are quoted below, which would indicate that no directions were passed on SAI.

> *"29. PWD is contractually bound to pay the dues of the petitioner as the same has been admitted. At a time when getting works done by contractors in a time bound manner is becoming a challenge and there are instances galore when re-tender is required to be conducted to finish and complete the tendered work resulting in financial loss to the State, it amounts to absolute breach of trust if the State authority withholds payment of a contractor who performed the work satisfactorily. On the contrary, the State ought to have released timely payment so as to encourage contractors to*

perform diligently or else the standard of the contractors participating in open bidding process is bound to fall and the citizens of the State will be the ultimate sufferers.

30. In view of the above, PWD is directed to release to the petitioner the admitted dues of Rs.75,69,446/- along with simple interest @ 7% p.a. calculated on and from the date of successful completion of work till the date of actual payment. The earnest money deposit and the security deposit shall also be released along with simple interest @ 7% p.a. calculated on and from the due date till the date of actual payment. The aforesaid sum shall be released at the earliest but positively within a period of four months hereof."

11. If any observation in the judgment impugned before us affects any proceeding taken out by SAI at any stage, the observations of Her Lordship will not operate as res judicata or a binding precedent.

12. The rights and liabilities of SAI and PWD against each other are left open to be decided in an appropriate proceeding.

13. The appeal and connected application are disposed of.

Re: COT 3 of 2026

14. CAN 1 of 2026 in COT 3 of 2026 is an application for condonation of delay in preferring the cross-objection. We are of the view that the limitation would run from the date of receipt of notice of appeal. However, in this

case, we are unable to ascertain the date of receipt of notice. In any event, by abundant caution, the cross-objection has been filed along with a prayer for condonation of delay. The application is allowed and delay, if any, is condoned.

15. Accordingly, CAN 1 of 2026 is disposed of.

16. We have considered the submissions of the learned advocates for the respective parties. We are in agreement with Mr. Mahata, learned advocate for the State, to the extent that paragraph 5 of the notice inviting tender clearly mentioned that interest will not be paid on security deposit. Thus, 7% interest on refund of security deposit could not have been granted in the writ petition as the same was contractually barred. The direction to that extent is set aside. Enforcement of the contractual terms in a writ proceeding must be strictly in terms of the contract.

17. Mr. Mahata submits that the payment to the contractor was made along with the customs duty, but the money received upon obtaining exemption from customs duty was to be credited to the account of the PWD. The Sports Authority of India (SAI) failed to obtain the exemption from the appropriate authority and as such, additional expenditure had to be incurred

from the exchequer of the PWD, for payment to the contractor.

18. Mr. Ray, learned advocate for the SAI, on the other hand submits that it was the duty of the PWD to obtain the customs duty exemption certificate and on account of delay on the part of the PWD the customs duty exemption was denied.

19. The writ petition was filed alleging that the PWD had not paid the admitted dues of the writ petitioner, had not refunded the earnest money as also the security deposit, although the defect liability clause was over sometime in 2018.

20. It is an admitted fact that the work was completed successfully. The completion certificate was granted by the PWD being satisfied with the work done. The observation of the authority was 'Very good'. Her Lordship was of the view that the dispute between SAI and PWD with regard to the failure to obtain exemption of customs duty, which resulted in non-payment to the writ petitioner could not be an acceptable explanation. The agency/writ petitioner had a privity of contract with PWD and the PWD had admitted that Rs.75,69,446/- was the admitted balance due and payable to the petitioner as on March 31, 2019. The report of the executive engineer clearly indicated the executive

engineer's stand. The petitioner was selected by PWD for doing the work in accordance with the tender floated. It was the primary duty of the PWD to pay the contractor after the work was completed satisfactorily. Even if the PWD has allegations against SAI for not paying the balance amount, the writ petition/contractor could not be kept in a limbo for years together by using Clause 5 of the tender notice which has been relied upon by Mr. Mahata, as an embargo.

21. Mr. Mahata submits that the payment was to be made as and when the fund would be available from the concerned source, i.e. SAI. No claim for delay in payment could be entertained as per the said clause. The retention money towards performance security amounting to 10% of the value of the work could be deducted from the running bill of the tenderer as per prevailing order. Clause 5 talks about payment of running bills. The last and final bill was raised and became due admittedly as per the report of the PWD on March 31, 2019. After, the contract lived its tenure and expired, such clause cannot be taken advantage of, to deny the admitted dues and to refund the earnest money and security deposit.

22. Mr. Mahata's next contention is that, PWD has overpaid the agency. This is not correct. The agency

imported the materials as per the requirement of the tender conditions to expedite the work and to avoid payment of demurrage on account of delay. The agency paid the customs duty. Thus, the agency has not been overpaid. Rather, the money due is for the works executed.

23. It is a separate question altogether that, it may be a possibility that if exemption from customs duty is received, the money could go to the PWD, as PWD had paid that amount to the contractor as a part of the running bills. Such contention need not be answered in the appeal. PWD may raise any claim from the source authority in an appropriate proceeding, as per own terms and conditons/agreement/arrangement with SAI.

24. Moreover, Her Lordship had clarified the position that, the privity of contract was between the PWD and the writ petitioner and the writ petitioner was entitled to payment as per the contractual terms. The contractual terms also provided for payment along with customs duty. The rates have been specified.

25. Under such circumstances, we do not find any perversity in the order impugned before us.

26. The observations in paragraph 16 of the order impugned are not the directions of Her Lordship and we do not express any view, as we have already granted

liberty to both the parties to take appropriate steps as permissible in law, against each other over the issue of customs duty exemption.

27. Under such circumstances, the order impugned is modified to the extent that the PWD is directed to release to the writ petitioner, respondent no. 2 herein, the admitted dues of Rs.75, 69, 446/- along with simple interest @ Rs.7% p.a. from the date when the same became due, i.e., March 31, 2019, till the date of the payment. The payment must be made within April 13, 2026. .

28. The earnest money deposit along with 7% interest calculated on and from the date it became due, i.e. after the defect liability period was over, till the date of actual payment, will be paid to the writ petition within April 13, 2026. The security deposit will be refunded without any interest within April 13, 2026. In the event of failure to pay within April 13, 2026, as directed hereinabove, additional simple interest of 2% p.a. shall be payable from April 14, 2026, till the date of actual payment on the admitted dues, earnest money deposit and security deposit. In this case interest on security deposit will be paid for non-compliance of the order of court.

29. Accordingly, COT 3 of 2026 is disposed of.

30. The connected application being CAN 2 of 2026 is also disposed of.

31. There shall be no order as to costs.

32. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)