

WPA 2702 of 2025

Subhendu Banerjee

v.

The State of West Bengal & Ors.

21.01.26
SI-07
Ct.551
(Samar)

Mr. Somnath Roy Chowdhury
Ms. Sanjana Jha ... for the petitioner.

Ms. Pramiti Bandopadhyay
Mr. Akash Dutta ... for the State.

1. This writ petition has been filed seeking issuance of writ of mandamus directing the respondent authorities to pay a sum of Rs. 10,52,423 (Ten Lakh Fifty Two Thousand and Four Hundred Twenty Three) to the petitioner, along with applicable interest thereon.
2. It is the petitioner's case that the petitioner is an authorized distributor of medicine manufacturer, named, CYPER PHARMA of Solan, Himachal Pradesh. Upon being successful in a tender process pertaining to procurement of ALBENDAZOLE Tablets for National Deworming Programme of the State, the petitioner was issued an order for supply of ALBENDAZOLE Tablets by a letter dated December 27, 2022 by the respondents. The said order indicated that supply of the said tablets was required to be completed within January 22, 2023. It is the petitioner's case that although the petitioner received the said order on December 27, 2022, the list and details of the designated medical

stores to which the petitioner was to ultimately effect supply of the tablets was made over to the petitioner much later i.e. on January 11, 2023. The petitioner has asserted that since the petitioner was given the details of the medical stores whereat the petitioner was to effect supply of the said medicines only on January 11, 2023, therefore, the petitioner's time schedule for the purpose of effecting supply in terms of the said order dated December 27, 2022 should have begun only from January 11, 2023 and not prior thereto. It is the petitioner's case that the period should not be counted from the date of issuance of the order but from the date of furnishing of details of the medical stores.

3. The petitioner asserts that he ultimately completed supply of medicines to the designated stores on February 1, 2023 and thereafter, raised invoices on the respondent authorities requesting for payments in terms of the contract. The petitioner alleges that he was paid much less amount than what the petitioner was entitled to. It is the petitioner's case that as no reason was cited behind curtailed payment made to the petitioner, the petitioner assumed that penalty was imposed upon the petitioner for the alleged delay in effecting of supplies of medicines at the designated medical

stores.

4. Feeling aggrieved by such imposition of penalty, the petitioner approached the appellate authority in terms of Clause 23 of the notice inviting e-tender dated October 14, 2022 (in terms whereof the petitioner had participated in the tender process).
5. The said appeal of the petitioner remain undecided for long. Feeling aggrieved by such indecision, the petitioner approached this Court by filing a writ petition being WPA 12300 of 2024. The said writ petition was disposed of by an order dated May 3, 2024 thereby directing the respondent no. 2 therein i.e. the Mission Director, National Health Mission & Special Secretary,(H & FW) Government of West Bengal to *“decide the challenge preferred by the petitioner regarding the alleged nonpayment of his total dues as expeditiously as possible preferably within four weeks”* from the date of the order upon giving and opportunity of hearing to the petitioner.
6. The respondent no. 2 thereafter, heard the petitioner and passed an order on May 16, 2024 thereby holding that *“the amount of dues in respect of invoices of the petitioner, need to be re-assessed along with receiving date in POD (proof of delivery) of Courier”*. By the said order all the District Reserve Stores and District Purchasing Health Unites were

directed to verify all the documents regarding delivery report of consignment and to send a revised delivery report of consignment within one week from the date of communication of the said order. It was further directed that after getting the revised delivery report from all concerns the Director, Financial Management Group would re-assess the dues of the petitioner and if anything was found to be payable to the petitioner the same would be paid to him within a week thereafter.

7. Being aggrieved by the inaction of the respondents in making any payment despite such order, the petitioner has approached this court by filing the instant writ petition.
8. It is submitted by the learned advocate appearing for the petitioner that the appellate authority should have decided the petitioner's case on merits and should not have relegated the petitioner to the other authorities for a fresh decision. It is further submitted that no penalty could have been imposed upon the petitioner since the petitioner has supplied the medicines at the designated medical stores within the period of thirty days from the date when the petitioner was informed of the details of the designated medical stores.
9. Learned advocate appearing for the state

respondent's submits that the petitioner has not disclosed to this Court that prior to the filing of the writ petition, the petitioner has received further sums apart from the sum of Rs. 1,02,76,691/- that had been paid to the petitioner initially. It is submitted that the petitioner has been paid further sums in two tranches i.e. Rs. 1,29,187/- on December 29, 2023 and Rs. 1,30,582/- on July 22, 2024. In such regard a copy of the written instructions forwarded to the learned advocate for the respondent by the Programme Officer – II, National Health Mission & Joint Secretary to the Government of West Bengal has been handed up to Court. The same are taken on record.

10. It is further submitted that penalty has rightly been levied on the petitioner inasmuch as the petitioner failed the time schedule that was indicated in the tender documents. It is further submitted that the petitioner's contention that the petitioner could not effect supply of medicine in terms of the time indicated in the tender documents because the list and details of the designated medical stores were not furnished to the petitioner is without basis inasmuch as all the relevant details of the medical stores were available on the website of the Health Department of the Government of

West Bengal. It is further submitted that the petitioner's assertion that the petitioner completed effecting supply of medicines to the relevant designated medical stores on February 1, 2023 is factually incorrect inasmuch as such supply was completed only on February 10, 2023.

11. Learned advocate appearing for the petitioner refutes such contention of the learned advocate appearing for the respondent and submits that the petitioner was never informed about the facts that the details of the medical stores are available on the website of the Health Department of the Government of West Bengal.

12. Heard learned advocates appearing for the respective parties and considered the material on record.

13. It is evident from the documents on record, especially, the instruction dated January 20, 2026, (copy whereof has been handed up to Court and has also been supplied to the learned advocate appearing for the petitioner) that the entire sum as claimed has not been paid to the petitioner, since penalty has been levied on the petitioner for the alleged late supply of medicines by the petitioner to the designated medical stores.

14. It is noticed that Clause 23 of the notice

inviting tender contains a provision for appeal against the decision of the medical stores/procuring authorities insofar as imposition of penalty is concerned. It is also evident from the records that the petitioner had earlier also approached the appellate authority invoking the said Clause on the ground of improper/illegal imposition of penalty and upon failure of the said authority take timely decision, the petitioner had approached this Court by filing WPA 12300 of 2024, which was disposed of by a Co-ordinate Bench of this Court by directing the appellate authority to decide the challenge thrown by the petitioner to the non-payment of his dues.

15. From the rival contentions of the parties it is clear that there are at least two disputes. The first is with regard to the interpretation of the terms of the contract insofar as period during which supply of medicines was to be effected by the petitioner is concerned (i.e. the date from which time would begin to run for the petitioner to effect supply of the medicines to the designated medical stores is concerned). The second is as regards the aspect as to whether the details of the designated medical stores were in the knowledge of the petitioners or not. While the State respondents contend that the

details of the designated medical stores were available on the website, the petitioner expresses lack of knowledge thereof. It is the petitioner's contention that he was never informed about the same. Both the aforesaid disputes are interdependent and rather decision on the second point/latter point would facilitate decision on the earlier of the two points of dispute.

16. In such view of the matter, it would not be proper for this Court to enter into such factual disputes at the threshold when there is a provision for appeal in the contract itself. The case is one of imposition of penalty and there is no reason why the appellate provision in the contract should not be invoked by the petitioner.

17. Under such circumstances, this Court deems it fit to grant liberty to the petitioner to approach the appellate authority (in terms of clause 23 of the contract) i.e. the Mission Director, National Health Mission & Secretary to the Government of West Bengal, Department of Health and Family Welfare to seek redressal of his grievances.

18. The petitioner shall be at liberty to file appropriate appeal/representation before the said authority assailing the levying/imposition of penalty upon the petitioner within two weeks from date. If

such appeal/representation is filed before the said authority, the said authority shall consider and dispose of the same, in accordance with law, upon giving an opportunity of hearing to the petitioner within a period of four weeks thereafter.

19. It is clarified that this Court has not gone into the merit of the petitioner's case and all points are left open to be decided by the said authority, in accordance with law.

20. Needless to mention that the said authority shall pass a reasoned order and communicate the same to the petitioner within a week from passing thereof.

21. With the aforesaid observations, WPA 2702 of 2025 stands disposed of. No costs.

22. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)