

THE HIGH COURT OF MEGHALAYA

WP(C). No. 237/2015

Smti. Monjuara Begum,
W/o: Shri. Abdus Shukur Sarkar,
R/o: New Bhaitbari,
P.O: New Bhaitbari, P.S.Phulbari,
District : West Garo Hills,
Meghalaya.

... Petitioner

-Versus-

1. State of Meghalaya
Represented by the Principal Secretary
to the Govt. of Meghalaya,
Community & Rural Development Department,
Meghalaya, Shillong.
2. The Under Secretary to the
Govt. of Meghalaya,
Community & Rural Development Department,
Meghalaya, Shillong.
3. The Deputy Commissioner and
District Programme Coordinator, MGNREGS,
Meghalaya, West Garo Hills District,
Tura.
4. The Project Director, DRDA &
Additional District Programme Coordinator,
MGNREGS, Meghalaya,
West Garo Hills, Tura.
5. The Block Development Officer and
Programme Officer, MGNREGS, Selsella,
C&RD Block, Selsella,
West Garo Hills, Meghalaya.

....Respondents

**BEFORE
THE HON'BLE MR JUSTICE S.R.SEN**

For the petitioner : Mr. A.H.Hazarika, Adv.
Mr. S.K.Hussain, Adv.

For the respondents : Ms. N.G.Shylla, GA

Date of hearing : 30.06.2016

Date of Judgment : 30 .06.2016

JUDGMENT AND ORDER (ORAL)

Heard Mr. A.H.Hazarika, learned counsel for the petitioner
as well as Ms. N.G.Shylla, learned GA.

2. The petitioner's case in a nutshell is that:

*"1. That the brief matrix of the case is that the Petitioner is the proprietor of **"M/s. Megha Enterprise"**, Govt. Approved Supplier, since the year 2005, and since then the firm has been functioning as a Supplier of various materials to different Govt. Department and others.*

2. That the Project Director, DRDA cum Additional District Programme Co-ordinator, MGNREGS, Tura, issued a Notice Inviting Tender for supplying Hardware Materials to various Village Employment Council (V.E.C), under Selsella C&RD Block, and the Petitioner's firm was selected along with 4(Four) other firms dated 07-04-2011, however, subsequently, on the basis of Public Complaint, 4 (Four) other firms were cancelled and re-allotted to the firm of the Petitioner vide Order dated 21-02-2012.

3. That the B.D.O./P.O, MGNREGS, Selsella C&RD Block, issued a Work Order dated 25-04-2012, and in pursuance of the Work Order, the Secretary V.E.Cs, placed a Material Supply Order Slip to the Firm of the petitioner, during the year 2012-13 and accordingly the Petitioner's firm had supplied the Hardware Materials to 59 (Fifty nine) V.E.Cs, under Selsella C&RD Block, amounting to Rs. 63, 97, 764/- (Rupees Sixty Three Lakhs

Ninety Seven Thousand Seven Hundred Sixty Four) only, and after supplying the materials submitted the Bill which was duly authenticated by the Secretary of the respective V.E.Cs and also Technical Officer of Gram Sevak Circle respectively for an amount of Rs. 63, 97,764/- (Rupees Sixty Three Lakhs Ninety Seven Thousand Seven Hundred Sixty Four) only which is still pending and the outstanding bill for supplying the said materials has not been sanctioned by the competent authority till date. It is also stated that the Deputy Commissioner and District Programme Co-ordinator, MGNREGS, Tura, approved the rate shown against each of the items including transportation, loading and unloading to all the notified centres vide Order dated 20-06-2011.

4. That the humble Petitioner further begs to state that when the outstanding bill of the Petitioner's firm has not been paid, the Petitioner was compelled to address a Letter to the Principal Secretary to the Govt. of Meghalaya, C&RD Department, I/c MGNREGA, Shillong dated 26-07-2015 and also addressed another letter to the Deputy Commissioner and District Programme Co-ordinator, Tura dated 10-10-2014, even after receiving the said letter, the State respondent has not taken any initiative to clear the outstanding bill amounting to Rs.63,97,764/- (Rupees Sixty Lakhs Ninety Seven Thousand Seven Hundred Sixty Four) only, which violate the Fundamental right of the Petitioner guaranteed under Article 14, 19 (g) and 21 of the Constitution of India.

5. That the State Respondent initially took a plea that there is a complaint against the firm of the Petitioner for not supplying the hardware materials to various V.E.Cs Centre and in this respect an Enquiry was conducted by ADC/SDO (C), Dadenggre, and as directed the Petitioner appeared before the Enquiry Officer on 17-04-2015 and placed all the relevant documents as sought for and also taken oral evidence of all the Secretaries of 59 (Fifty nine) V.E.Cs, but nothing has been found wrong against the Petitioner.

6. That the Enquiry Officer, submitted the Enquiry Report to the Deputy Commissioner and District Programme Co-ordinator, Tura, dated 09-05-2015, and the operative part of the Enquiry Report, it is stated therein that **"Thereafter the M/S Megha Enterprise had submitted the Clearance Certificate in original of 59 (Fifty Nine) V.E.Cs, accordingly which have been verified by me and found correct and genuine. As per report and Clearance**

Certificate from the V.E.C, payment in respect of outstanding bill may be considered.” However, the aforesaid outstanding bill for supplying hardware materials to 59 (Fifty nine) V.E.Cs amounting to Rs. 63,97,764/- (Rupees Sixty Three Lakhs Ninety Seven Thousand Seven Hundred Sixty Four) only, has not been paid to the Petitioner’s firm till date. The Petitioner after exhausted all the alternative remedy, filed this Writ Petition with a prayer for issuance of appropriate direction to the concerned authority to clear the outstanding bill to the Petitioner.”

3. Mr. A.H.Hazarika, learned counsel on behalf of the petitioner submits that the petitioner was entrusted to supply hardware materials to the Village Employment Council vide order dated 07-04-2011 and accordingly, the petitioner supplied the materials but till date he has not received the payment for the said supply. So he prays that necessary direction may be passed. Learned counsel also submits that a representation dated 30-05-2013 had been made in that regard before the Deputy Commissioner, West Garo Hills and representation dated 26-07-2015 to the Principal Secretary, C&RD Department, Govt. of Meghalaya, but the same has not been disposed of till date.

4. On the other hand, Ms. N.G.Shylla, learned GA at the outset submits that the instant writ petition is not maintainable and if there is any breach of contract between the parties, that needs to be adjudicated by an appropriate forum and not by way of Article 226 of the Constitution of India. To support her submission, learned GA relied on the judgment passed by Hon’ble Supreme Court reported in **(2002) 1 SCC 216** paras 3 and 7. Learned GA

also submitted that the petitioner has not supplied all the materials as ordered by the Project Director, DRDA & Addl. District Programme Coordinator MGNREGS, Meghalaya, West Garo Hills, Tura. Thus, an enquiry had been conducted and payment could not be made.

5. After hearing the submissions advanced by the learned counsels for the parties at the Bar the crux issue which evolved is:

(i) Whether the work order falls within the parameter of contract?

(ii) Whether breach of any contract can be adjudicated by a writ Court?

6. A contract is an agreement between two or more persons without any coercion or force and always for lawful purpose and a contract is always to be transparent without any malpractice.

General procedure is followed to give any work order and as per the NIT, tenders are called from different parties and thereafter on scrutiny whoever is found fit and is the lowest bidder and is ready and capable to supply good materials having sound financial background, he or she may be awarded for the said contract for which the tender is called for. In the instant case, on perusal of the work order at annexure -4, it is found that the work order was issued in favour of the petitioner on 7th April, 2011 and there is no denial that the petitioner did not accept the work order. Thus, in my view it is a contract. Now since I have come to the conclusion

that it is a contract, the question is whether this writ Court can adjudicate or address the writ petition; the answer is definitely no.

7. Hon'ble Supreme Court in the case **of State of Bihar and Ors vrs Jain Plastics and Chemicals Ltd. reported in (2002) 1 SCC 216**, paras 3 and 7 clearly mentions that:

“3. Settled law – writ is not the remedy for enforcing contractual obligations. It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs.”

8. On perusal of the judgment of the Hon'ble Supreme Court quoted above, it is understood and clear that if there is any breach in a contractual agreement, the same needs to be decided by a competent civil court. Thus, I am not inclined to interfere with this instant writ petition.

9. Accordingly, the writ petition hereby stands dismissed and disposed of. However, before I part with the case record, I direct the respondents No. 1 and 3 to look into the representations dated 30-05-2013 and 26-07-2015 and to dispose of the representations within a month from the date of receipt of the judgment. Parties are to bear their own costs. Matter stands disposed of.

JUDGE

S.Rynjah