

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 529 of 2018 with
WP(C) No. 530 of 2018

Date of Order: 29.11.2019

Shri. Daskhem Doome
Shri. Donbert Pyrbot

Vs. State of Meghalaya & Ors.
Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. R. Colney, GA for R 1-3.

- i) Whether approved for reporting in Law journals etc. Yes/No
- ii) Whether approved for publication in press: Yes/No

Oral:

1. As these two writ petitions are similar with identical facts they are being disposed of by this common order.

2. The case of the petitioners is that they are successful tenderers for a project pertaining to the New Shillong Township Water Supply Scheme for the execution of the following works:

- (i) Mild Steel Raw Water Rising Main him vide Letter dated 16.12.2016 bearing reference number No.CE/PHE/TB-107/2012-13/Pt/64; and

- (ii) Raw Water Intake Structure, Pump house & Approach Steel Bridge, Raw Water Intermediate RCC Sump & Pump House vide Letter dated 16.12.2016 bearing reference number No.CE/PHE/TB-107/2012-13/Pt/61.

3. The petitioners being successful tenderers then accordingly furnished the Contract Performance Security as follows:

Petitioner in W.P. (C) No. 529 of 2018 (Shri. Daskhem Doone)			
WORK	CONTRACT VALUE	CONTRACT PERFORMANCE SECURITY AMOUNT	CONTRACT PERFORMANCE SECURITY AMOUNT PAID
Laying of Mild Steel Raw Water Rising Main	Rs. 3,40,34,000/-	Rs. 6,81,000/-	16.01.2017
Construction of Raw Water Intake Structure, Pump House and Approach Steel Bridge,. Raw Water Intermediate RCC Sump and Pump House	Rs. 7,90,39,000/-	Rs. 15,81,000/-	16.01.2017

Petitioner in W.P. (C) No. 530 of 2018 (Shri. Donbert Pyrbot)			
WORK	CONTRACT VALUE	CONTRACT PERFORMANCE SECURITY AMOUNT	CONTRACT PERFORMANCE SECURITY AMOUNT PAID
Construction of RCC Impounding Dam	Rs. 20,37,97,000/-	Rs. 40,76,000/-	16.01.2017
Raw Water Intake Structure, Pump House and Approach Steel Bridge,. Raw Water Intermediate RCC Sump and Pump House	Rs. 7,90,39,000/-	Rs. 15,81,000/-	16.01.2017
Laying of Mild Steel Raw Water Pumping Main	Rs. 3,40,34,000/-	Rs. 6,81,000/-	16.01.2017

4. The grievance of the petitioners is that even after having been awarded with the work and having furnished the Contract Performance Guarantee since 16.01.2017, the State respondents have till date failed to issue formal work orders in relation to the aforesaid Contract Works. As such, they are before this Court by way of this instant writ petition.

5. Dr. N. Mozika, learned Sr. counsel assisted by Mr. M.L. Nongpiur, learned counsel for the petitioner submits that the petitioners were secure in the hope that after being awarded the work, in a short point of time, the formal work order would be issued, to enable them to commence work on the project. But, however even after a considerable period of time, the same was not forthcoming, compelling them to come before this Court with a prayer that the respondents be directed to issue the formal work order to the petitioners. He contends that the action of the respondents, in not issuing the formal work orders and further discontinuance of the project without any valid reason is arbitrary, and as such, the impugned actions are amenable to judicial review under Article 226 of the Constitution of India. He further submits that, even though the respondent ostensibly discontinued the project, due to reasons beyond their control, their Contract Performance Security amount which was furnished as far back as on 16.01.2017 is still being withheld. He lastly submits that, though elements of a contract are present, which might make the dispute come within the domain of private law, due to their arbitrary actions, the respondents cannot escape the liability and are liable to be directed to honor the same and to issue work orders. An alternative prayer and submission is also made by the Learned counsel over and above the pleadings, for refund of the Contract Performance Guarantee along with interest for the period that the said amount has been kept in the custody of the respondents.

6. Mr. B. Bhattacharjee, learned AAG assisted by Ms. R. Colney, learned GA for the respondent No. 1 to 3 in reply to the submissions made by the learned counsel for the petitioners, firstly, submits that no vested right has been created in favour of the petitioners, as apart from them being successful tenderers, no formal work orders have been issued to warrant enforcement. He asserts that, even if formal work orders had been issued, the petitioner would still not have

any enforceable rights, as the cancellation of the project work was due to reasons which are not attributable to the respondents and but because of a policy change in the implementation of this project amongst others. In this context, learned counsel draws the attention of this Court to Annexure-3 of the affidavit-in-opposition filed by the respondent No. 1 to 3, wherein a letter dated 6th June, 2017, was communicated to the respondent No. 1 to 3 informing about the discontinuation of block grant as Special Plan Assistance (SPA), Special Central Assistance (SCA), Special Plan Fund (SPF), etc. He further submits, that with regard to the issue of refund of the Contract Performance Guarantee amount, the petitioners have till date not approached the respondents for the same. According to the learned counsel, in view of the pendency of the writ petition, nothing has progressed in this regard. He therefore submits that no case has been made out by the petitioners and that the jurisdiction of this Court under Article 226 of the Constitution of India would not normally grant relief of specific performance of contract and that the remedy if any would lie in the realm of private law and prays that the writ petition be dismissed.

7. I have heard learned counsels for the parties considered their submissions and examined the materials on record. The only point in issue in the instant petition is whether the writ petitioners possess any vested right by virtue of being successful tenderers and whether on this basis any enforceable right is created to command the respondent to issue formal work orders.

8. In this regard, the judgment as cited by the learned AAG i.e. the case of ***Sri Ram Builders vs. State of Madhya Pradesh reported in (2014) 14 SCC 102***, more than adequately answers this question and also has laid down the law in respect of such matters. In the said judgment, the Hon'ble Supreme Court had examined among others, the principle for exercise of judicial review in such matters and also held that the controversy which is similar to the present case involving a breach of contract by an instrumentality of the State did not warrant exercise of powers of judicial review, under Article 226 of the Constitution.

9. In the context, of the judgment so cited, the relief so claimed in the present writ petition will not be maintainable before a writ court, and

appropriate relief of damages or specific performance would lie before the Civil Courts.

10. An aspect, which deserves consideration though no specific prayer has been made in the writ petition for refund, is the Contract Performance Security deposit of which is still lying with the respondents. On the cancellation of contract on the discontinuance of the scheme as far back as 2017, it had actually become incumbent upon the respondents, in fact, on their own accord, to immediately refund the Contract Performance Guarantee even without the writ petitioners claiming the same, inasmuch as, it is their property. A period of over 3(three) years has elapsed since the deposit of this Contract Performance Guarantee which rightfully belongs to the writ petitioners. Though no specific prayer has been made with regard to the security amount, in the interest of justice, it is directed that the respondents refund the same within a period of eight weeks from today. However, liberty is also given to the writ petitioners to seek compensation in the form of interest, against the Contract Performance Guarantee amount, which has been lying with the respondents at the time of refund.

11. Needless to say the writ petitioner is also free to avail of alternate remedy for damages, compensation, specific performance or any other reliefs.

12. With the above noted directions, the writ petition is accordingly disposed of.

Judge

Meghalaya
29.11.2019
"D.Thabab-PS"