

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

W.P.Nos.22713 & 24783 of 2020

COMMON ORDER :

The petitioners in both the matters are claiming payments due to them from the respondent-authorities. There is no dispute about the facts.

Sri Srinivas Rao Pappu, learned counsel for the petitioners points out that the final bills have been pending in both the cases since August, 2018. It is his contention that despite the work being completed and no dispute being raised about the bill or the quantum etc., the bills are delayed. He also points out that more than five adjournments were taken in this matter and till date, no counter has been filed nor have any instructions been given to the learned Government Pleader raising any serious dispute about the bill or the work. Therefore, he submits that this is a fit case in which this Court should rule against the inaction of the State and pass the appropriate orders.

Learned Government Pleader on the other hand submits that the final bills have been processed in both the cases and have been sent to the higher authorities for effecting payments. Apart from that, he submits that because the CFMS portal is not accepting the bills, they are unable to actually pay the amounts due to the petitioners.

After hearing the learned Government Pleader and the counsel for the petitioner, this Court notices that there is no serious dispute about the quantum/amounts involved in these cases. There is no dispute about the quality of the material supplied. No clear or categorical reason is forthcoming from the State for the delay. Admittedly, the bills were submitted in August, 2018, the writ petitions were filed in November, 2020 and orders are being dictated today on 30.04.2021. Till date, no cogent reasons for the failure to pay is given.

The petitioners who have supplied the material are entitled to receive the payment. The State which had the benefit of the material supplied is also bound by law to make the payment particularly in the absence of any tangible dispute. They have had the benefit of the goods supplied.

In addition, the petitioners have also claimed interest at 12% per annum on the amounts due.

As per the settled law on the subject, including the constitution Bench judgment in the case of **Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C.Roy**¹, a person deprived of use of his money is entitled to compensation whether it is called interest or otherwise.

Hence, there shall be a direction to the respondent Nos.1 to 4 to pay the bill amount of Rs.1,35,34,616/- in WP.No.24783 of 2020 and Rs.3,50,79,969/- in WP.No.22713 of 2020 with

¹ (1992) 1 SCC 508

interest at 12% from August, 2018 till the date of payment within four (4) weeks from the date of receipt of a copy of this order.

At this stage, the Government Pleader for Finance and Planning appeared and raised an objection stating that no interest is payable as per clause 69 of APDSS. The objection of the learned Government Pleader for Finance and Planning with regard to the APDSS and the prohibition of interest is also considered. The State which has failed in its duty to pay the bills in time cannot rely on a prohibitory clause and claim relief. If the bills are processed and paid within a reasonable time as anticipated by the contractor, a prohibition or a restriction clause can be pressed into service. But in the case on hand, this Court finds that from August, 2018 onwards, payment has not been effected. The work is completed three years ago. The applicability of APDSS is also doubtful to the present contracts. No prohibitory clause is there in the present contract prohibiting payment of interest. Lastly, the petitioner also claimed interest and made a demand for the same as per the Interest Act, 1978. Therefore, the objection of the learned Government Pleader for Finance and Planning is overruled and in view of the constitution Bench judgment in **G.C.Roy's** case (1 supra), interest is also awarded.

With the above directions, the writ petitions are allowed. No order as to costs.

As a sequel, the miscellaneous petitions, pending if any,
shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date : 30.04.2021
KLP