

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.249 of 2023**

Hindustan Steelworks Construction Limited

.....Petitioner(s);

Versus

The State of Tripura and others

.....Respondent(s).

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|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner(s) | : Mr. Ajit Kumar, Sr. Advocate,<br>Mr. K.K. Pal, Advocate.                                                                              |
| For Respondent(s) | : Mr. S.S. Dey, Advocate General,<br>Mr. Debalay Bhattacharya, G.A.,<br>Ms. A. Chakraborty, Advocate,<br>Mr. Soumyadeep Saha, Advocate. |

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH  
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**Order**

**31/07/2023**

Heard Mr. Ajit Kumar, learned senior counsel for the petitioner assisted by Mr. K.K. Pal, learned counsel and Mr. S.S. Dey, learned Advocate General for the respondents-State.

2. Petitioner has approached this Court once again after passing of the reasoned order dated 07.01.2023 [Annexure-25] by the Empowered Officer, Tripura RRDA, pursuant to the observations made by this Court earlier in WP(C) No.1007/2022 dated 29.11.2022. The perusal of the reasoned order shows that there are factual issues involved in the matter. Clause 24 in the General Conditions of Contract contains a dispute redressal system. Clause 8.0 of the tripartite agreement between the petitioner, the Union of India and the State of Tripura contains an arbitration clause. As per the said clause, the disputes between the parties can be referred to the Secretary, Ministry of Rural Development, Government of India in the event of non-settlement of the

difference or dispute within 60(sixty) days by the Monitoring and Supervision Committee.

3. Mr. S.S. Dey, learned Advocate General for the respondents-State, has taken objection to the maintainability of the writ petition.

4. Learned senior counsel for the petitioner has, however, referred to not only the observations of the audit report, but previous instances when the parties have been relegated to approach the Empowered Committee or to the competent Civil Court for adjudication of the dispute.

5. A perusal of the reasoned order and the pleadings of the writ petition along with the annexures reveal that the dispute raised herein involves adjudication on disputed issues of facts and the construction of terms of the agreement between the parties. Petitioner has also impleaded the contractors as private respondents to whom the work was allotted by the petitioner after entering into the tripartite agreement with the State of Tripura and Union of India. The relevant extract of the reasoned order is also quoted here to indicate the complex nature of the dispute between the parties.

“This fresh order is being passed in terms of and in compliance of Hon’ble High Court’s direction containing dated 29.11.2022 first in WP(C)1007 of 2022.

In this connection it is stated that –

1. Tripura Rural Roads Development Agency had revealed from the documents furnished by HSC Ltd. Vide letter No. HSCL/Tripura/PMGSY/F-25(XXIV)/2016/895 dt. 11.11.2016 that overpayment for an amount of Rs.313.87 lakh (Rupees three hundred thirteen point eight seven lakh) only had been made to M/s Dilip Kumar Kar, Contractor by HSC Ltd. for 4 (four) PMGSY works against the Agreement No. GM/HSCL/Tripura/PMGSY/NIT-52/2011 dt. 28.02.2011. The matter was informed to HSCL vide letter No. F.4(47)/TR/PMGSY/Pt-XIII/2004/3026-31 dt. 27.7.2017. Copy of the said letter is enclosed at Annexure-A.
2. On detailed enquiry, it had been observed that (i) HSCL, Project Implementing Agency (PIU), had released excess payment of Rs.1,11,08, 295/- (Rupees one crore eleven lakh eight thousand two hundred and ninety five) only, for the work sanctioned under Phase- V(a)[Package No. TR-04-61] without execution of work and Rs.25,67,068/- (Rupees twenty five lakh sixty seven thousand and sixty eight) only, for the work sanctioned under Phase- IX [Package No. TR-04-206] to their agencies by recording false measurement (ii) constructional defects in two RCC box culverts at Ch: 1.370 km & Ch: 5.485 km constructed under Phase-V(a) bearing

Package No- TR-04-61; two box culvert at Ch: 0.196 km & Ch: 1.084 km constructed under Phase-IX bearing Package No. TR-04-206 and approximately 15 meters stretch of the road (from Ch:2.237 km onwards-left side) constructed under Package No. TR-04- 206; (iii) Shoulder of almost entire road constructed under both packages is covered by jungle and (iv) blockage of almost entire road side drain constructed under both packages. The matter was intimated to HSCL vide letter No.F. 1(6)/Part-XV/TR/PMGSY/2004/5007-10 dt. 25.5.2018. Copy of the said letter is enclosed at Annexure-B.

3. From the financial year 2016-17, Ministry of Rural Development (MoRD), GoI had introduced e-payment system in OMMAS (R&F module) for the work under PMGSY for making necessary payment to the agency on the basis of bill raised by PIU. During scrutiny of current bills amount of last payment made by PIU / official documents, it had come to the notice of TRRDA that payment without execution / inflater measurement of works for an amount of Rs 10.85 Crore against 10 (ten) works was made by HSC Ltd. to their agencies which was communicated vide letter No.F.4.(47)/TR/PMGSY/2006/5733 dt 28.6.2018. Copy of the said letter is enclosed at Annexure-C.
4. On detailed enquiry, it had been observed that (i) HSC Ltd. implementing agency had released excess payment of 198.05 lakh (Rupees one hundred ninety eight lakh five thousand) only to the agencies against the agreement for the work of "Upgradation of Jalabassa to Bhandarima (Part-II) road including construction of 3(three) long span RCC Bridges (at Ch: 17.078 km, Ch: 17.909 km and Ch:19.22 km) sanctioned under Phase-V in the year 2007-08" without execution or by inflated measurement / unspecified work in RCC piles of the proposed 3(three) long span bridges and (ii) length/ depth of the constructed Piles of the proposed RCC bridge at Ch. 17.078 km of the road is less than length / depth required as per sanctioned DPR (iii) quality of concreting work of the constructed Piles of the proposed RCC bridge at Ch. 17.078 km of the road was unspecified. It was communicated to HSCL vide letter No.F.4(47)/TR/ CE/ PMGSY/2004/09-12 dt. 09.01.2019. Copy of the said letter is enclosed at Annexure-D.
5. Vide this office letter No.F.4(47)/TR/PMGSY/2006/2470-76 dt. 03.7.2019, HSCL was requested to deposit excess payment of Rs.464.91 lakh (Rupees four hundred sixty four point nine one lakh) made to their agency without execution of "Manikpur to Hazirai road". Copy of the said letter is enclosed at Annexure-E
6. Further, on detailed enquiry, it had been observed that HSCL had released excess payment of 1,32,77,152.00 (Rupees one crore thirty two lakh seventy-seven-thousand one hundred and fifty two) only to their agencies for implementation of the "Up-gradation of road from Bairathal to Jagannathpur (Part-II) (Link No-T03) under Kumarghat block". It was communicated to HSCL vide letter No.F.4(105)/TR/CE/ PMGSY/2018/11873-77 dt. 16.03.2020. Copy of the said letter is enclosed at Annexure-F.
7. In addition, there was another road "Kashirampur to Dharam Para" Package No.TR-03-70 under Dasda block (L031) where excess payment to the tune of 1,44,02,293.00 (Rupees one crore forty four lakh two thousand two hundred and ninety three) only was made to agency by HSC Ltd without executing or by inflated measurement.

No construction activities were carried out beyond Ch. 2.20 km (approx) though the work had been declared as physically completed by HSCL during March 2013 for full sanctioned length of 4.38 km and the same was uploaded on OMMAS. Thereafter, the completed road had been shown as "Ongoing" during December 2017 and the completed length had been reduced on OMMAS without permission of TRRDA.

8. The matter of very poor performance of HSC Ltd. in implementation of PMGSY work in Tripura had also been communicated to the Secretary, Rural Development, Ministry of Rural Development, GoI. vide letter No.F.4(47)/TR/PMGSY/2006/9967-68 dt. 29.9.2018 for his kind intervention which was also endorsed to the Chairman-cum- Managing Director, NBCC (India) Ltd. Vide letter No.F.4 (47)/TR/PMGSY /2006/10230 dt. 06.10.2018. Copy of both the letter are enclosed at Annexure-G.

In above facts clearly reveals the reason and justifies the calculation of which is as follows:

|                                                                     |                 |
|---------------------------------------------------------------------|-----------------|
| "Expenditure incurred by HSC Ltd. including Maintenance works       | Rs.722.60crore. |
| Excess payment made by HSC Ltd. without execution of works          | Rs. 24.75 crore |
| Eligible expenditure for agency fees as per tripartite agreement is | Rs.697.85 crore |
| Thus, agency fees will be (10% of expenditure)                      | Rs. 69.78 crore |
| TRRDA had already released agency fees to HSCL                      | Rs. 69.78 crore |
| Hence, no agency fees pending with the TRRDA"                       |                 |

However, it appears that you have conveniently withdrawn these facts in your writ petition W.P. (C) No-1007 of 2022.

Accordingly, it is reiterated that no agency fees is pending or due to be paid to you on any account.

In fact the above mentioned fact would reveal that you are liable to pay back a sum of 24.75 crore (Rupees twenty four crore and seventy five lakh) only being the excess payment made by you to your agencies without execution of work or by inflated measurement."

6. Having considered the submissions of learned counsel for the parties and in view of the nature of the factual dispute involved herein, including those with private contractors/agencies who have also been joined as party and against whom the petitioner HSCL may have independent cause of action to agitate, we are not inclined to entertain the writ petition under Article 226 of the Constitution of India, as not only clause 8.0 of the Tripartite agreement, but Clause 24 of the General Conditions of Contract provide for Alternative Dispute Resolution (ADR) mechanism.

7. Accordingly, the writ petition is dismissed. Petitioner may have liberty to approach the appropriate forum.

8. Pending application(s), if any, also stands disposed of.

(T. AMARNATH GOUD), J (APARESH KUMAR SINGH), CJ