



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32201 of 2024

Dibya Ranjan Chand

....

Petitioner

Mr.Dillip Kumar Ray, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr.Debashis Tripathy, Addl. Government Advocate

Mr.Abhimanyu Parida

(for opposite party No.6)

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

10.12.2025

Order No.

- 05.
1. The instant writ petition at the behest of a contractor, who was awarded with a contract for construction of additional office building under Basudevpur Municipality after having adjudged as a lower bidder.
 2. The petitioner claimed to have executed the work to the satisfaction of the authority and handed over the same for beneficial use without any demand from any corner. While the petitioner was executing the work, the RA bills were submitted which were released from time to time, after recording the satisfaction on the quality and the quantity of work, which he undertook. The work was completed on 26.10.2024 and the possession was handed over to the authority on 24.11.2024. The petitioner submitted the final bill amounting to Rs.27.00 lakhs



(approximately) which is withheld by the authority without assigning any reason in support thereof. The representations were made by the petitioner, yet there was no response from their end which compelled the petitioner to file the instant writ petition seeking a mandamus upon the opposite party No.6, Executive Officer, Basudevvpur Municipality in terms of an agreement executed by and between the parties.

3. The writ petition was filed in the month of December, 2024 and was admitted on 11.02.2025 when a direction was passed upon the petitioner to apprise the Court as to whether he has completed the work within the time allotted in this regard.

3.1. The notices were issued upon the opposite parties, which, in fact, has been served and the Municipality as well as the State are represented.

4. On 08.05.2025, the direction was passed by the Court to file counter affidavit, but despite such direction having passed, no counter affidavit is filed till date. However, an additional affidavit is filed in the instant writ petition by the petitioner disclosing a document concerning the performance report of a contractor, i.e. the petitioner and a letter dated 28.02.2025 issued by the opposite party No.6, Executive Officer, Basudevvpur Municipality.

5. Learned counsel for the petitioner submits that after successful completion of the work entrusted upon him in terms of the agreement having entered in this regard, it is unjustified and



unreasonable on the part of the authorities to withhold the payment of an amount relatable to the work having done by the petitioner. It is fervently submitted that once the performance report is issued by opposite party No.6, Executive Officer, Basudevpur Municipality with the remark that the works have been completed in good and orderly manner, the silence in releasing the money tantamount to unjust enrichment on the legitimate dues of the petitioner, and, therefore, a direction may be passed upon the authorities to release the said amount.

5.1. On the other hand, learned counsel appearing for the opposite party No.6-Municipality submits that the petitioner did not complete the work as assigned to him in terms of the said agreement, and, therefore, the authorities have not released the amount as claimed by the petitioner. He vociferously submits that if the work is not done or completed by the petitioner, there is no obligation on the part of the Municipality to release the said amount.

5.2. In reply, it is submitted by the petitioner that the security amount was released by the authorities, which implies that the work had been completed, and, therefore, the stand of the Municipality is untenable.

6. On the backdrop of the aforesaid facts and the submissions advanced before us, the point involved in the instant writ petition is whether the authorities can withhold the payment of the bill submitted by the petitioner upon satisfactory completion of the work as entrusted to him in terms of the



agreement so entered into by and between the parties. The fact narrated hereinabove leads no ambiguity to the effect that the petitioner after having adjudged as the lowest bidder was awarded a contract for construction of additional building and the bills during the currency of the said work were paid by the authorities from time to time. This leads to an inescapable inference that the amount of work for which the RA bills were submitted were found by the authorities to be satisfactory and in consonance with the sanction plan. It is only after the completion of the work, the final bill is withheld and despite an opportunity having given to the Municipality to file counter affidavit, no such affidavit is filed, but a submission is made at the bar obviously upon an instruction having given from the concerned responsible officer that the petitioner has devoted in completing the work. The moment the petitioner has made a categorical averment in the writ petition that he has completed the work to the satisfaction of the authority, such statement must be dealt with by the authorities in the counter affidavit and having not done so, the Court can safely proceed by applying the doctrine of non-traverse.

6.1. We would have simply proceeded by applying the said doctrine of non-traverse, but we cannot lose sight of the fact including the documents subsequently filed by the petitioner by way of an affidavit which in our opinion would throw light on the above aspect.



6.2. Annexure-10 to the writ petition relates to performance report in Form-G, *vide* No.3170, dated 26.10.2024 upon the contractor, i.e. the table containing various columns. The last of such column relates to a “remark” by the Executive Officer, Basudevpur Municipality (opposite party No.6) herein, on performance. The “remark” reveals that such performance is “good”, meaning thereby the petitioner has constructed the said additional building in terms of the sanction plan and to the satisfaction of the authorities. There is no correspondence exchanged between the parties during 26.10.2024 and 28.02.2025 touching upon the quality of the construction or the construction having made in conformity with the sanction plan, yet the bill remained unpaid without assigning any reason for the same.

6.3. The letter dated 28.02.2025 issued by the Executive Officer, Basudevpur Municipality (opposite party No.6) dislodges the stand taken by the counsel for the Municipality that the petitioner has failed to complete the construction work. The said letter permeates a sense into us that the work was completed on 26.10.2024 and the possession of the newly constructed additional building was taken over on 24.11.2024. It also percolates a sense that a plea of material deviation from the sanction plan and the specification is taken for the first time during the currency of the writ petition. There is a vast distinction between incomplete construction and a deviation from the sanction plan. The former connotes that the contractor is negligent in not performing the duties as entrusted upon him in terms of the agreement, but the latter relates to the constructions



having undertaken but not strictly in conformity with the sanction plan or the specification issued by the authority(s). As indicated hereinabove, after the issuance of performance report on 26.10.2024, the date which is subsequently rectified by the same authority as the date of completion of the entire construction work eradicate the stand of the Municipality taken before us that the work has not been completed by the petitioner.

6.4. Even for an argument sake, we take the stand of the Municipality that there is a “material deviation” from their sanction plan, no such discussion and/or details have been assigned by the authorities except using the aforesaid expression in the said letter dated 28.02.2025. The material deviation can only be ascertained upon making a thorough inspection before handing over the possession and it is expected that such inspection would be done in presence of the contractor, so that the defects could be permitted to be rectified. It does not appear that any joint inspection was ever conducted by the authorities nor any correspondence is made to the petitioner disclosing any “material deviation”, and, therefore, such stand during the pendency of the instant writ petition is afterthought and have been designedly made to deprive the just and legal claim of the petitioner. Apart from the above, the same authority issued the performance report where the entire work is found to be “good”, and, therefore, there is a strong presumption that the authorities have taken such ground in order to deny the legitimate claim of the petitioner.



6.5. We hasten to add that both the documents, i.e., the performance report as well as the letter dated 28.02.2025 is issued by the same officer, i.e., opposite party No.6, but appears to be mutually destructive and inconsistent in nature. An authority cannot prevaricate its stand with an intent to deny the just and legal claim of the contractor taking shelter under the unsubstantiated ground, and, therefore, there is no impediment on the part of the Writ Court in issuing a direction for release of the said payment.

7. We, therefore, dispose of the writ petition directing the opposite party No.6, Executive Officer, Basudevpur Municipality to release the payment amounting to Rs.27.00 lakhs (approximately), which remained unpaid within four weeks from the date of communication of this order.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

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