

04.11.2024
Item No.3
Ct. No. 7
PG

W.P.A. 2134 of 2023

Partha Guha

Vs.

The Secretary, M.E. Department & Ors.

Mr. Saptanshu Basu, Sr. Adv.
Mr. Debdatta Sen
Ms. Suchismita Ghosh Chatterjee
Ms. Ledia Dasgupta.....For the Petitioner

Mr. Jayanta Samanta
Mr. Kushal Biswas

.....For the State

Mr. Srijan Nayak
Mr. Rituparna Maitra.....For the Balurghat Municipality

Mr. Sayan Sinha
Mr. Adil Naser
Mr. Nilanjan Bhattacharya...For the Bongaon Municipality

1. Mr. Basu, learned senior counsel submits that in terms of the earlier order dated September 17, 2024 of this Court, the deficit Court fees have been paid by the petitioner on September 25, 2024.
2. Mr. Samanta, learned advocate appearing for the State submits that insofar as the claim of the petitioner against Balurghat Municipality is concerned, he has received instructions from the concerned authority that the written recommendation shall be issued by the appropriate authority to the Chairman, Balurghat Municipality for release of the amount due and payable to the petitioner in

respect of the works mentioned in clause 3, paragraph-8 of the writ petition. Mr. Samanta submits such recommendation shall be issued within a week from date.

3. In the light of the submission made by Mr. Samanta, the Chief Engineer, Municipal Engineering Department, being the 2nd respondent is directed to issue the necessary recommendation in writing to the Chairman, Balurghat Municipality for the release of the amount due and payable to the petitioner in respect of the item of work mentioned under serial no. 3 at paragraph 8 of the writ petition on or before November 11, 2024. It will be open to the 2nd respondent to call for any report or papers from the concerned Executive Engineer for issuing the written recommendation.
4. Mr. Nayak, learned advocate appearing for the Balurghat Municipality submits that immediately upon receipt of such written recommendation, the Chairman, Balurghat Municipality shall release the amount due and payable to the writ petitioner.
5. The Chairman, Balurghat Municipality being the 7th respondent is directed to release the amount due and payable to the writ petitioner in respect of the aforesaid item of work within a period of two weeks from the

receipt of the said recommendation from the Chief Engineer.

6. Insofar as the claim of the writ petitioner with regard to Bongaon Municipality, the only objection of the State for issuing the written recommendation for payment of the amount due to the petitioner in respect of the works done by the petitioner, as submitted by Mr. Samanta, on instruction, is that the trial run could not be commissioned.
7. Bongaon Municipality has filed a report in the form of separate affidavits. It is evident from the said report that the payments have been withheld on account of non-commissioning of the water treatment plant as the raw water was not available. Neither the State nor the Municipality have pointed out any deficiency in service on the part of the petitioner. No allegation has also been levelled against the petitioner that they have not performed the work under the tender as per the specification.
8. Mr. Basu, learned senior counsel submits that the nature of the work contemplated under the tenders was for installation of water treatment plant.
9. At this juncture, Mr. Sinha, learned advocate appearing for the Bongaon Municipality submits that entire payment

cannot be released since the petitioner has not performed his obligation for maintaining the said water treatment plant for a period of five years from the date of installation of such water plant. He further submits that the security deposit can only be released after expiry of the aforesaid period of five years.

10. However, insofar as the amount withheld on the ground of trial run is concerned, it is evident from the records that the petitioner has installed the water treatment plant and the petitioner could not have been made responsible for alleged non commissioning of the plant on account of trial run due to non availability of raw water. This Court is, therefore, of the considered view that the said amount withheld on account of trial run should be released in favour of the petitioner forthwith.

11. Accordingly, this Court directs the Chief Engineer, Municipal Engineering Directorate being the 2nd respondent to issue the written recommendation to the Chairman, Bongaon Municipality on or before November 11, 2024. It will be open to the 2nd respondent to call for any report or papers from the concerned Executive Engineer for issuing the written recommendation.

12. Mr. Sinha, learned advocate appearing for the Bongaon Municipality prays for three weeks time to release the

payment from the date of receipt of the written recommendation.

13. As prayed for by Mr. Sinha, the Chairman, Bongaon Municipality, being the 4th respondent is directed to release the payment withheld on account of the trial run, as specifically mentioned under clause (a) of serial no.2 of paragraph 8 of the writ petition within a period of three weeks from the date of receipt of the written recommendation of the 2nd respondent.
14. Insofar as the amount claimed by the petitioner with regard to the supplementary bill for idle labour and periodic maintenance charge, as claimed by the petitioner, as indicated under clause (c) of serial no. 2 of paragraph 8 of the writ petition, the appropriate authority of the Bongaon Municipality shall file a short affidavit as to the points of objection with regard to release of the amount of the security deposit and supplementary bill. Let such affidavit be filed on or before November 11, 2024.
15. Insofar as Basirhat Municipality is concerned, the petitioner has indicated the amount withheld on the ground of trial run under clause (a) of serial no. 1 of paragraph 8 of the writ petition.
16. From the report in the form of an affidavit filed by Basirhat Municipality, it appears that the said amount was

withheld due to non-commissioning of the water treatment plant on account of non-availability of raw water.

17. Mr. Samanta, learned advocate appearing for the State, on instructions, submits that the same amount was withheld as the treatment plant could not be commissioned. Neither the Municipality in its report in the form of an affidavit nor Mr. Samanta, learned advocate appearing for the State could point out any deficiency in service on the part of the petitioner in the matter of installation of the water treatment plant as per the tender in question. The petitioner could not be made to suffer for non-availability of raw water as the petitioner has done his job of installation of the water treatment plant.

18. In view thereof, this Court directs the Chief Engineer, Municipal Engineering Department being the 2nd respondent to issue the written recommendation to the Chairman, Basirhat Municipality on or before November 11, 2024 for release of the amount withheld on account of trial run in favour of the petitioner. It will be open to the 2nd respondent to call for any report or document from the concerned Executive Engineer for issuing the written recommendation for release of payment.

19. Since the treatment plant could not commissioned and the petitioner has also claimed refund of the security deposit as well as payment of the supplementary bill for idle labour charges/bill for periodic maintenance, the respondents will be at liberty to file a short affidavit indicating the grounds of objection as against the aforesaid claim made by the petitioner in paragraph 8 of the writ petition in respect of the said amounts.
20. The Chairman of Basirhat Municipality is directed to release the amount withheld on account of trial run within a period of two weeks from the receipt of the written recommendation from the Chief Engineer, Municipal Engineering Department.
21. The affidavit in opposition to the report filed by the respondent no. 3 is taken on record.
22. List the matter on November 12, 2024.

(Hiranmay Bhattacharyya, J.)