

10.12.2024  
Item No.3  
KS  
Ct. No.7

**W.P.A. 2134 of 2023**

**Partha Guha  
Versus  
The Secretary, M.E. Department & Ors.**

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

Mr. Jayanta Samanta  
Mr. Kushal Biswas  
.....For the State

Mr. Bipin Ghosh  
.....For the Respondent Nos.2 & 4

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

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

**In Re.: Bongaon Municipality**

1. When this matter is taken up for hearing, Mr. Samanta, learned advocate appearing for the State submits that the Chairman, Bongaon Municipality has been requested vide Memo No.ME/1264/1A-100/15 Pt. III dated 11.11.2024 to release the withheld payment for trial run after an order for payment is passed by the Executive Engineer, North 24 – Parganas Division.
2. Mr. Samanta, learned advocate appearing for the State further submits that the Executive Engineer, North 24 Parganas

Division has also been requested to take suitable action towards making payment.

3. Mr. Samanta, learned advocate upon instruction, submits that the Executive Engineer shall pass the necessary orders for payment in course of a week.
4. Mr. Basu, learned senior counsel assisted by Mr. Sen, learned senior counsel submits that since the Chief Engineer, Municipal Engineering Directorate, who is the authority to certify as to whether the petitioner has performed the work under the tender has requested the municipal authority to release the payment, the Chairman of the Bongaon Municipality is obliged to release such payment.
5. Pursuant to the order dated 4<sup>th</sup> November, 2024, the Bongaon Municipality has filed an affidavit, which was affirmed on November 18, 2024. The petitioner has used an affidavit-in-reply to the said affidavit.
6. Mr. Sinha, learned advocate representing the Bongaon Municipality submits that though the Chief Engineer, Municipal Engineering Department issued a written recommendation for release of payment, but the Municipality cannot act on such written recommendation, since the experts of the Municipality has opined that the petitioner has not performed the work under the tender.

7. Mr. Sinha, learned advocate, on instructions, submits that no recommendation from the end of the Municipal Engineering Department has yet been received by the Municipality.
8. In support of such contention, Mr. Sinha, learned advocate sought to place reliance upon some documents, which were annexed to the said affidavit and after some argument, Mr. Sinha, learned advocate submits that the relevant materials have not been disclosed in the said affidavit.
9. In paragraph 7 of the said affidavit, it has been stated that the statements made in paragraphs 1 to 5 of the affidavit are true to the knowledge of the deponent. When this was pointed out to Mr. Sinha, learned advocate submits that the deponent, who is one of the councilor of the Bongaon Municipality do not have direct knowledge of the statements made in the said affidavit.
10. In the light of the said submission, Mr. Sinha, learned advocate prays for leave to withdraw the said affidavit with liberty to file a comprehensive affidavit as per the direction contained in the order dated 4<sup>th</sup> November, 2024.
11. In view of the submission of Mr. Sinha, it is recorded that the Bongaon Municipality shall not be permitted to place reliance upon the affidavit affirmed on November 18, 2024 but, the same shall be retained in the records of this case.

12. As prayed for by Mr. Sinha, learned advocate, the Bongaon Municipality is permitted to file an affidavit in terms of the order dated 4<sup>th</sup> November, 2024 on or before December 18, 2024 upon giving an advance copy of the same to the learned advocate for the petitioner.

**In Re.: Balurghat Municipality**

13. Mr. Samanta, learned advocate submits that the provisionally approved set of drawings for the site work is yet to be received by the Municipal Engineering Department from the petitioner.

14. Mr. Sen, learned senior counsel draws the attention of this Court to the document, which has been annexed in the affidavit-in-opposition affirmed on 8<sup>th</sup> December, 2024 to the report filed by the respondent no.8 in support of his contention that the approved set of drawings was submitted before the Executive Engineer, Malda Division and it was received by the office of the said authority on 6<sup>th</sup> December, 2023.

15. However, in order to avoid further complication, petitioner is directed to supply a photocopy of the aforesaid documents before the Executive Engineer, Malda Division within a week from date to enable the said authority to take steps in this regard.

**In Re.: Basirhat Municipality**

16. In spite of notice, none appears for the Basirhat Municipality.
17. Mr. Samanta, learned advocate appearing for the State submits that the Chairman, Basirhat Municipality has been requested to release the withheld payment for trial run vide memo dated 11.11.2024 after the order for payment is passed by the concerned Executive Engineer. He further submits that the Executive Engineer has also been requested to take necessary steps in that regard.
18. Mr. Samanta, learned advocate on instruction, submits that the Executive Engineer shall issue the necessary orders for passing the payment order within a week from date.
19. Petitioner is directed to communicate this order to the Chairman, Basirhat Municipality and file an affidavit-of-service on the next date fixed.
20. List this matter on 20<sup>th</sup> December, 2024.

**(HIRANMAY BHATTACHARYYA, J.)**