
(2019) 10 MAN CK 0009
In the Manipur High Court
Case No : Writ Petition (c) No. 275 Of 2016

Haobam Tiken Singh

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Citation : (2019) 10 MAN CK 0009

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : Amarjit Naorem, L. Brajakumar, S. Nepolean, K. Rabei

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. The petitioner has filed the above writ petition seeking Writ of Certiorarified Mandamus to quash part of the impugned order dated 14.8.2015 passed by the third respondent and to direct the respondents to pay/release the outstanding bill amount of Rs.32,34,133/- or in the alternative, to direct the respondents, particularly, respondent Nos.2 and 3 to refund the goods and materials (of the same or similar specification) supplied by the petitioner to the respondents in pursuance of the various supply orders awarded by the respondent State to the petitioner.

2. The petitioner Haobam Tiken Singh is a Special Attorney of the executants viz., (1) M/s.Meitei Electrical Motor Works; (2) M/s.Universal Iron and Steel Works; (3) M/s.J.S.Electrical Equipment and Construction; (4) M/s.Somrojit Iron and Steel Works; (5) M/s.Alex Iron and Steel Works; (6) M/s.Ratan Electrical Goods Manufacturing Industry; (7) M/s.W Kalpana Tin Carpentry and Electrical and Engineering Works, who have been carrying on business of execution of contract works and supply of goods/materials with the Electricity Department. By virtue of special power of attorney dated 17.01.2014, the petitioner is representing on behalf of the above executants to represent them for causing to

make payment of outstanding dues arising out of the execution of the contractual works and supply of materials to Electricity Department, Government of Manipur pertaining to Work/Supply orders which are subject to this writ petition.

3. The Electricity Department, Government of Manipur awarded supply orders/ work orders to the executants on different dates for supply of various items of goods including PVC cable, GOAB Cross-arm, D.O. Fuse, chain pully block, block clamp, change over, L.T. stay wire, H.T. stay wire, Kit Kat, bracking Set, cutting electrode, tin coated fuse wire, bolts and nuts, manila rope, nylon rope tong tester, AL Thimber etc. The said supplies were made during the years 1997, 2003, 2004, 2005, 2006, 2007 etc. to the satisfaction/specification of the authority concerned and all the supply orders which have been duly executed and which are subject matter of the present writ petition pertain to the office of the Executive Engineer, Senapati Division Electricity Department, for which all assets and liabilities have been transferred to the respondents 3 and 4.

4. After the completion of the supply and execution of the works, the authority of the Electricity Department entered the same in their respective measurement books and also in terms of the contract, submitted their respective bills to the Government for early payment of the bills. However, the respondent Government kept the liabilities of the petitioner along with others pending and un-cleared for the last many years. Thus, a sum of Rs.32,34,133/- is liable to be paid by the Electricity Department. In the liability statement called for by the third respondent, the fourth respondent included the amounts payable to the petitioner.

5. On 24.01.2014, the petitioner issued a legal notice demanding a sum of Rs.32,34,133/- by showing the name of the Division, name of the work/supply item, work order/supply order against their respective numbers and the name of firm. For early payments, the petitioner has also submitted bills and the same have been verified by the Division concerned. Since, the Electricity Department failed to pay the amount, the petitioner filed W.P.(C) No. 112 of 2014. By an order dated 21.02.2014, the said writ petition was disposed of under the terms and conditions provided in the Full Bench judgment dated 29.9.2008 passed in W.P.(C) No.2277 of 2008.

6. By a letter dated 04.07.2014, the third respondent has been requested in connection with W.P.(C) No.112 of 2014 to intimate necessary verification and process for payment whenever required and respondent No.4 had also intimated to the Executive Director (Legal), MSPDCL that the claim amount is genuine as per the outstanding bills and liability list 2014. Since the respondent authorities failed to obey the order of the Court passed in W.P.(C) No.112 of 2014 and also failed to make payment of the outstanding bills, the petitioner filed Contempt Case (Civil) No.35 of 2015. During pendency of the Contempt, Petition, the impugned order came to be passed and hence, the Contempt Petition was closed. Assailing the impugned order, the petitioner is before this Court and filed the above writ petition.

7. The learned counsel for the petitioner submitted that pursuant to the supply orders awarded, they have supplied goods to the Electricity Department and the receipt of the goods have been entered in the respective measurement books. He would submit that the fourth respondent vide a letter dated 20.07.2009 submitted liability statement under plan and non-plan of his Division wherein the due amounts to be paid to the petitioner has been included. In spite of repeated demands and also a lawyer notice dated 24.01.2014, the respondent authorities have failed to clear the outstanding bill amount. The failure of the respondent authorities in not clearing the bill amount caused much hardship to the petitioner.

8. The learned counsel further submitted that since the respondent authorities failed to clear the outstanding bill amount, the petitioner has filed W.P.(C) No.112 of 2014 and the same came to be disposed of on 21.02.2014 as covered by the order dated 29.9.2008 passed in W.P.(C) No.2277 of 2008. Since the respondent authorities failed to obey the order, the petitioner Invoked contempt jurisdiction and pending contempt petition, the impugned order came to be passed rejecting the claim of the petitioner. According to the learned counsel the impugned rejection order has been passed without applying the mind and also the said order has been passed In a prejudicial manner. Hence, prayed for setting aside the impugned order.

9. On the other hand, it is the submission of the learned counsel for the respondent Electricity Department that the Committee constituted to verify the bills had passed an order rejecting the claim of the petitioner on the ground that work/supply orders were not awarded under proper authority, as approved documents have not been submitted and the works/supplies do not have budgetary provisions, nor expenditure sanction. He would submit that in the present case the procedure for purchase of items was not followed.

10. According to the learned counsel for the respondents, the opinion of the Committee was to the effect that some of the work orders were issued without administrative approval and expenditure sanction and also some works executed do not have work order copy, bill copy etc. Arguing so, the learned counsel for the respondents prayed for dismissal of the writ petition.

11. This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. The main ground for rejection of the petitioner's claim for payment of the entitled undisputed bill amount for the works completed is that the Committee could not verify the bills/liabilities claimed against the said works/supply as expenditure sanction have not been accorded. In my considered view, the aforesaid ground for rejection of the claim of the petitioner is not acceptable for the reason that the respondents cannot deny and/or dispute the fact that supply/work orders were executed by the suppliers satisfactorily and supplies were made without any complaints. Only on the basis of successful completion of the work orders, the liability statement was submitted by the Executive Engineer. If

really there was any defect in the work executed by the executants/suppliers, the respondent authorities could have raised the same at the relevant time. But the respondents have failed to do so. Only when the petitioner made a claim for payment of the entitled undisputed bills, the respondents have raised the issue of expenditure sanction not being accorded and the said objection raised by the respondents is not acceptable.

13. It is clear that only to evade settlement of bills, the respondent authorities, particularly, the third respondent has raised such an objection. If the expenditure sanction has not been accorded to the suppliers for the supply of works executed by them, then it is not clear as to how and why the suppliers were made to carry on the supply till the completion of the work. This would go to show that the impugned order dated 14.8.2015 was issued only to forfeit the claim of the petitioner.

14. It is to be noted that earlier, the petitioner had approached this Court by filing W.P.(C) No.112 of 2014 with a prayer to settle the dues. By an order dated 21.02.2014, this Court passed the following order:

"Heard Mr.Amarjit Naorem, learned counsel appearing on behalf of the petitioner as well as Mr.S.Nepolean Singh, learned State counsel appearing on behalf of the State respondents.

It is stated at the bar that the present writ petition is squarely covered by the Full Bench decision of the Gauhati High Court dated 29.09.2008 rendered in W.P. (C) No.2277 of 2008 and others. In view of that, the present writ petition is disposed of under the same terms and conditions provided in the aforesaid Full Bench Judgment and Order.

This writ petition is disposed of accordingly."

15. Since the respondents have failed to take action and/or comply with the directions issued by this Court in the aforesaid writ petition, the petitioner has filed Contempt Petition being Contempt Case (C) No.35 of 2015 for non-compliance of the order dated 21.02.2014. Pending Contempt Petition, the third respondent has passed the impugned order after a lapse of nearly one and half years, which is against the directions issued by this Court in the earlier round of litigation. This Court is of the considered view that faced with the contempt proceedings, the third respondent in a hurried manner, passed the impugned order stating that the Committee could not verify the bills/liabilities claimed against the said works/supply as expenditure sanction have not been accorded. As stated supra, the aforesaid ground for rejection, in my considered view is unsustainable in law and also against the principles of natural justice.

16. The learned counsel for the petitioner placed reliance upon the order dated 26.8.2017 passed by the third respondent and argued that an undisputed bills of similarly situated person have been cleared by the respondent authorities and only with an ulterior motive, the claim of the petitioner has been rejected. The

factum of clearing the undisputed bills of the similarly situated person has not been disputed by the respondent authorities.

17. It is the case of the respondents that there was no sanction order for the work allotment made to the suppliers in the instant case. Thus, being the case how the then Chief Engineer and the then Executive Engineer were allotted the work to the suppliers and pursuant to the allotment made by them the suppliers have also executed the work, but at the relevant point of time, the respondent authorities have not made any objection for non-sanctioning of the work order. Therefore, when the work order was given by the then Chief Engineer and the then Executive Engineer, the respondents now cannot say that the work orders given to the suppliers have not been sanctioned. Hence, the respondent authorities, particularly, the third respondent herein is given liberty to take appropriate action against the then Chief Engineer and the then Executive Engineer concerned for allotting the work order to the petitioner if without sanction order and recover the amount which is to be paid to the petitioner as per order of this Court.

18. It is pertinent to note that the verification of the works pursuant to the order of this Court dated 21.02.2014 done by the respondent authorities is without affording an opportunity of hearing to the suppliers or the petitioner, who is the power of attorney of the suppliers mentioned supra. Nothing has been produced to show that after affording reasonable opportunity to the petitioner or the concerned suppliers, the third respondent passed the impugned order. Therefore, the elementary principles of natural justice have not been complied with. This Court is of the considered view that the order impugned in this writ petition is illegal and arbitrary and also without application of mind. Hence, the impugned order dated 14.8.2015 is liable to be set aside.

19. It is pertinent to note that in similar situation when the petitioner M/s.Kh.P.Singh and Sons of Heingang, Imphal East District, Manipur filed writ petition in W.P.(C) No.937 of 2016 challenging the very same impugned order dated 14.08.2015, this Court, by an order dated 02.05.2019, allowed the said writ petition. The operative portion of the order reads thus:

"13. In the result,

(i) The writ petition is allowed and thereby the impugned order dated 14.8.2015 passed by the third respondent is set aside.

(ii) (ii)The second respondent is directed to pay a sum of Rs.6,33,921/- to the petitioner within a period of three months from the date of receipt of a copy of this order.

(iii) The third respondent is directed to take appropriate action against the then Chief Engineer and the then Executive Engineer concerned for allotting the work order to the petitioner if without sanction order and thereafter to recover the amount of Rs.6,33,921/- from them in a phased manner, if the respondent

wishes.

(iv) No costs."

20. The petitioner in this case is similarly situated person. Nothing has been produced by the respondent authorities to show that as against the order passed in W.P.(C) No.937 of 2016, dated 02.05.2019, any appeal has been preferred. Thus, order passed in W.P.(C) No.937 of 2016 attained finality. In such circumstances, this Court is of the view that it would be appropriate to issue the same direction as contained in W.P.(C) No.937 of 2016, dated 02.05.2019.

21. In the result,

(1) The writ petition is allowed, thereby part of the impugned order dated 14.8.2015 passed by the third respondent in respect of the petitioner is set aside.

(2) The second respondent is directed to pay a sum of Rs.32,34,133/- to the petitioner within a period of three months from the date of receipt of a copy of this order.

(3) The third respondent is directed to take appropriate action against the then Chief Engineer and the then Executive Engineer concerned for allotting the work order to the petitioner, if without sanction order, and thereafter to recover the amount of Rs.32,34,133/- from them in a phased manner, if the respondent wishes.

(4) No costs.