
(2019) 02 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (c) No. 379 Of 2010

L.Amusana Rongmei

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Citation : (2019) 02 MAN CK 0003

Hon'ble Judges : Ramalingam Sudhakar, CJ

Bench : Single Bench

Advocate : H.S.Paonam, S.Nepolean

Final Decision : Allowed

Judgement

Ramalingam Sudhakar, CJ

The prayers in the writ petition read as follows:

"i) issue an appropriate writ or direction to the respondents for releasing the entitled bill amount of Rs. 19,62,342/- for the aforesaid works executed at the Regional Health and Family Welfare Centre at Porompat which was completed in 2006;

ii) direct the respondents to pay the interest for the entitled amount for causing inordinate delay in making payment of the entitled amount;

[1] Heard Mr. H.S.Paonam, learned senior counsel for the petitioner. Also heard Mr. S.Nepolean, learned Government Advocate for the State respondents.

[2] The petitioner is a registered Government contractor engaged in contract works in various department in the State of Manipur. Since the petitioner was a registered contractor, it is stated that the department of Health and Family Welfare by office letter dated 12.6.2006 requested the petitioner to undertake repair of (1) Latrines, Septic tanks, (2) Improvement of internal electrification, (3) Repairing of office and hostel building and (4) construction of cycle shed.

Annexure-A/4 dated 12.6.2006 is the office letter, which reads as follows:-

"Annexure -A/4

"GOVERNMENT OF MANIPUR

REGIONAL HEALTH & FAMILY WELFARE TRG

CENTRE : POROMPAT: IMPHAL

NO. A/5/HRT/78 (Pt. III): Imphal, the 12th June 2006.

To

The Director,

Family Welfare Services,

Manipur.

Subject:- Completion Certificate.

Sir,

In inviting a reference to Memo No. 10/BLD/FWD/2005 dated, the 12th June 2006 of Directorate of Family Welfare Services, Manipur, I have the honour to say that (i) Repairing of Latrines, Septic tanks, (ii) Improvement of internal electrification, (iii) Repairing of Office and Hostel Building and (iv) Construction of Cycle shed have been completed. Due to exigency & as per verbal instruction from the Director, F.W. the matter was supposed to have been taken up departmentally.

This is for favour of kind information and necessary action.

Yours faithfully,

Sd/-

(M. Brajamani Mangang)

Principal,

Regional Health & F.W. Trg. Centre,

Porompat, Imphal."

[3] This order was given orally because of the exigency and also based on the directions from the Director, Family Welfare Services.

The Director, Family Welfare Services thereafter informed the Commissioner (Health/ Family Welfare) by letter dated 16.6.2006 stating that the petitioner contractor has made representation dated 20.5.2006 for release of the amount on the basis of work executed. The petitioner's request was for a sum of Rs.20, 26,276/- on the basis of completion certificate dated 12.6.2006. It is not disputed that no work order was issued at any point of time but the work was

done at the request of the department. Annexure-A/5, the office letter of the Director, Family Welfare Services, Manipur contains the details of the claim made by the petitioner. There is a comment with regard to non-issue of authorization for the work done. In effect, it is indicated that there was no administrative sanction for the work done. As a result, it appears that the amount has not been paid to the petitioner.

[4] On 15.10.2017, the Joint Secretary (FW), Govt. of Manipur called upon the Director, Family Welfare Services to make inspection of the works done. Thereafter, on 27.10.2007, Joint Secretary (FW), Govt. of Manipur wrote to the Director, Family Welfare Services stating that the government has decided to appoint a Technical Committee to assess the value of the work done though it has been completed without proper administrative sanction. As per the request, an order dated 29.10.2007(Annexure-A/8) was issued by the Joint Secretary (Health & FW), Govt. of Manipur directing that 3 (three) officers to perform duties as Technical Committee members. The same reads as follows:-

"Annexure-A/8

GOVERNMENT OF MANIPUR

SECRETARIAT: FAMILY WELFARE DEPARTMENT

ORDERS

Imphal, the 29th October, 2007

No.2/30/2006-S(FW): The Governor of Manipur is pleased to constitute a Technical Committee comprising of the following members for assessing the value of work done at the Regional Health & Family Welfare Training Centre, Porompat:

1. Executive Engineer, TP Cell
2. Executive Engineer, MTDC
3. Executive Engineer, MDS

2. The technical Committee shall undertake assessment on the value of the following works done, albeit unauthorisedly at the Regional health & Family Welfare Training Centre, Porompat.

(a) Repairing of building of the Regional health & Family Welfare Training Centre, Porompat. Estimated amount Rs.6,15,300/- (Rupees six lakhs fifteen thousand three hundred) only.

(b) Improvement of Sanitary installation & Construction of Septic Tank of Office and Hostel. Estimated amount Rs. 8,07,000/- (Rupees eight lakhs seven thousand) only.

(c) Internal Electrical Improvement (IEI). Estimated amount Rs. 2,90,003/-

(Rupees two lakhs ninety thousand and three) only.

3. The technical Committee shall complete the assessment and submit its finding to the Government on or before 6th November, 2007.

By orders & in the name of Governor;

(Athem Muivah)

Joint Secretary (Health & FW),

Government of Manipur"

[5] The Technical Committee submitted a detail report at Annexure-A/9 and the highlight of the report is that they have stated that the work was completed in the year 2002. To support the same, 5(five) copies of photographs of the building was also submitted. Thereafter, another letter was issued by the Under Secretary (Family Welfare), Govt. of Manipur to the Executive Engineer, T.P.Cell (V) R.C.S. Office to reassess the value of works done. This letter is Annexure-A/10, page No.33.

[6] In response to the above, a detailed work sheets was submitted to the Under Secretary (Family Welfare Services) by the Technical Committee member, Executive Engineer-II on 24.01.2008 which is a very detailed evaluation report that has been accepted without any adverse remark.

[7] Another communication dated 14.02.2012 Annexure-A/12(colly) issued by the Under Secretary (FW), Govt. of Manipur to the Director (FW), Manipur in relation to the availability of funds for the work executed. In response to that, the Director, Family Welfare Services wrote a letter addressed to the Principal Secretary (Health & FW), Govt. of Manipur stating that the amount of Rs.17,89,969/- cannot be adjusted in the financial year 2007-08 but it can be considered in the budget estimate of 2008-09. The Commissioner (Health & FW) by his proceeding dated 14.4.2008 (Annexure-A/13) took up the following decisions:-

"8. Administrative Department of Health & FW, Govt. of Manipur had decided to take up the following steps:

"To refer the matter to the Committee of Officers for its consideration for approval and sanction of Rs. 19,62,342/ - (Rupees nineteen lakhs sixty two thousand and three hundred forty two) only for the four works mentioned above after obtaining the Budget provision with the appropriate Head of Accounts and Fund availability from the Director Family Welfare."

9. Director, Family Welfare, Govt. of Manipur have reported vide his letter dated 14th March, 2008 that there is no Budget Provision for payment for these four works during the current year 2007-2008. (Annexure-D)

10. COO is therefore requested for approval of the four works already constructed albeit without proper and prior approval of the Government and

provide Rs. 19,62,342/- (Rupees nineteen laks sixty two thousand and three hundred forty two) only in the revised Budget Estimate 2008-2009 from the State Plan Fund or any other alternative available source."

[8] The Director, Family Welfare Services by his letter dated 20.3.2009 addressed to the Commissioner (Health & FW) seeking administrative approval and expenditure sanction for a sum of Rs.19,62,342/- for payment of works executed at Regional Health & Family Welfare Training Centre, Porompat by the petitioner. Reference is made to the report of the Technical Committee's assessment of work done by the petitioner and the funds available during the financial year concerned.

[9] The Under Secretary (Finance) by his proceeding dated 28.3.2009 addressed to the Commissioner (Family Welfare) conveyed approval of the Finance Department for drawal of Rs.1,56,37,108/-(Rupees one crore fifty six lakhs thirty seven thousand one hundred and eight) only for discharging 4(four) liabilities and it included the claim of the petitioner. Thereafter, on 28.3.2009 (Annexure-A/5), the Government issued the following order which reads as follows:-

"Annexure -A/5

"No. 10/BLD/FWD/2006

GOVERNMENT OF MANIPUR

SECRETARIATE : FAMILY WELFARE DEPARTMENT

ORDERS BY THE GOVERNMENT :MANIPUR

Imphal, the 20th March, 2009

No.2/30/2006-S (FW) : The Governor of Manipur is pleased accord Administrative Approval and Expenditure Sanction not exceeding to Rs.19,62,342/ (Rupees nineteen lakhs sixty two thousand three hundred forty-two) only , as ascertained and reported by a Technical Committee comprising of the Executive Engineer, T.P.Cell, the Executive Engineer, MTDC and the Executive Engineer, MDS, for payment of works executed at the Regional Health & Family Welfare Trg. Centre, Porompat subject to deposit under Major Head - 8449 - Other Deposit from the fund provided in the Revised Estimates, 2008-09 in respect of the Family Welfare Department, Manipur as the matter is under consideration of the High Powered Committee.

The expenditure is debitable to the following Heads of Account:

Major Head : 2211-FW (CSS)

Sub-Major- 00

Minor Head : 001 - Direction & Admn.

Sub-Head : 20-SFW

Detailed : 00

Object: 13- O.E. for the year 2008-09

This issue with the concurrence of the F.D. Vide their U.No.1/2008-09/FD(11-CSS/273) dt. 28/3/2009.

By order in the name of the Governor

Sd/-

(V.Vumlunmang)

Commissioner (FW),

Govt. of Manipur"

[10] In effect, the Government while according administrative approval observed that the matter is under consideration by the High Powered Committee.

[11] The High Powered Committee in its meeting held on 4.3.2010, under the Chairmanship of the Chief Secretary, decided as follows:-

"C/1

MINUTES OF THE MEETING OF THE HIGH POWERED COMMITTEE HELD ON 04/03/2010 AT 3.00 P.M UNDER THE CHAIRMANSHIP OF CHIEF SECRETARY, GOVERNMENT OF MANIPUR IN HIS OFFICE CHAMBER TO CONSIDER THE ALLEGED EXECUTION OF UNAUTHORISED WORKS IN THE RURAL HEALTH & FAMILY WELFARE TRAINING CENTRE, POROMPAT.

Members Present;

(1) Shri A. N. Jha,

Principal Secretary (Finance), Government of Manipur.

(2) Shri P.K. Singh, Commissioner (DP), Government of Manipur

(3) Shri Y. Rameshchandra Singh, Secretary (Law), Government of Manipur.

S/Shri A. Muivah, Joint Secretary (Health) and Dr. H. Yaima Singh, Director (Medical) and Dr. W. Gulapi Singh, Addl. Director (FW), Dr. S. Rabei Singh and Dr. Brajamani Mangang were present.

In his written statement dated 04/01/2010, Dr. S. Rabei Singh denied the statement of Dr. M. Brajamani Singh that the works were executed with the knowledge of the then concerned authorities of the Government including the then Hon'ble Minister of Family Welfare, etc. He also submitted that the submission of Dr. M. Brajamani Singh that "I also verbally discussed the matter with the then Director in-charge Dr. S. Rabei Singh who told me that work orders of the works were in process and same would be delivered in due course" is a fabricated and false allegation without any basis. Further, he submitted that

during his tenure as Director in-charge of the Family Welfare, he did not instruct or advise his subordinate Officers to do any unofficial or unauthorized works.

The Committee, after examining both the written statement, observed that so far there is no liability of the State Government as no work orders for execution of the unauthorized works had been issued to anybody/contractor. Accordingly, the Administrative Department of Family Welfare Department shall cancel its earlier sanction order.

Sd/-

(D.S. Poonia)

Chairman,

High Powered

Committee."

The Committee was of the view that since no work order was issued for execution, the work done by the petitioner is unauthorised and the Committee came to hold that there is no liability on the part of the State Government to pay the amount. It also directed the Administrative Department of Family Welfare Department to cancel the sanction order. On the basis of that, on 24.6.2010, the sanction order dated 28.03.2009 has been cancelled by the Commissioner (FW) and that order has been impugned in the writ petition.

[12] At the outset, it was pointed out by Mr.H.S.Paonam, learned senior counsel that the genesis of this special work which was exigency, was executed by the petitioner/ contractor at the behest of the department. The narration facts clearly goes to show that from the beginning of the letter of intimation to take up the work, namely, Annexure-A/4 dated 12.6.2006 till the administrative sanction was granted by the Government. There was not an iota of fault indicated as against the petitioner. There is no allegation of fraud, collusion or misappropriation. There is also no allegation of breach of rules or procedure by the petitioner. On the other hand, the entire departmental correspondence show that the Family Welfare Services department from the lowest level to the Government level has clearly accepted that the petitioner contractor had executed the work only at the behest of the department. The learned senior counsel was at pains to point out as to why he should be faulted with or punished just because the officer has failed to take the work order or administrative approval that is required from the department concerned. The petitioner has no role in the process of issuance of the work order or administrative approval and his role is only to execute the work as may be directed by the department officials since he is a registered contractor. Furthermore, the petitioner's plea is that since the officers who have consistently approved the work and also forwarded the file for sanction, both administrative and finance aspects, the petitioner cannot be said to have committed any error at any point of time. Therefore, on the pretext of the view of the High Power Committee, the lawful claim of the petitioner should not be

declined.

[13] Shri H.S.Paonam, learned senior counsel submits that both the proceeding of the High Power Committee and the impugned cancellation order has been passed behind the back of the petitioner without giving him notice that too after extracting the work and Government has gained out of the hard labour of the petitioner. The action of the respondent/ Department is totally inequitable and shows arbitrariness and capriciousness in approach. In support of his case, learned senior counsel has referred to a decision of the Hon'ble Supreme Court passed in Siemens Ltd. vs. State of Maharastra & ors. reported in (2006) 12 SCC 33.

[14] Heard Mr. S.Nepolean, learned Government Advocate for the State respondents who states that this is a case of no work order and therefore, as per observation by the High Power Committee, there is no liability to the State and therefore, the cancellation of the sanction order is correct.

[15] This Court, having considered the above plea, has no hesitation to hold that the respondent/ department having continuously approached the case for sanction of the amount for the work done at their behest, suddenly, cannot turn around and say that the work order was not issued and there was no administrative approval. This appears to be a very unfair treatment by the State against an individual concerned.

[16] In any event, at the time of execution of the work, completion of the work and after utilization, the petitioner has contributed his money to the department concerned. Therefore, he should be lawfully compensated. There is no reason to deny the petitioner his lawful claim for creating infrastructure to the Department of Family Welfare Services on their request. The sanction order of the Government including the Finance Department makes it clear that at no point of time, the petitioner was found to be at fault. The High Powered Committee has not considered these documents at all before making the two line statement that there is no liability to the State Government because there is no work order.

The Committee's approach is arbitrary and unjust. The further direction to cancel the administrative sanction appears to be an order directing the Government to do something overlooking the earlier correspondences. Furthermore, to add insult to injury, the Commissioner, Family Welfare Services and the Department of Family Welfare Services who have maintained a positive approach towards the petitioner all along have simply made a U-turn and cancelled the sanction order without giving the petitioner an opportunity of hearing and without giving any reason for the cancellation. Therefore, the impugned order, on the face of it, is bad for non-application of mind and also on account of violation of the principles of natural justice. It is also bereft of reasons which is the hall mark of administrative decisions, more so when the right of persons is being affected and his claim is declined.

[17] For the above said reasons, the impugned order dated 24.6.2010 under

challenge is set aside and the respondents are directed to release the amount to the petitioner as per recommendation of the Government.

[18] The writ petition stands allowed as above. No costs.