

(2019) 05 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (c) No. 633 Of 2016

Murphy Thumrah

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Citation : (2019) 05 MAN CK 0004

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

Bench : Single Bench

Advocate : M.Devananda, Lenin Hijam

Final Decision : Allowed

Judgement

M.V Muralidaran, J

[1] Heard Mr.MDevananda, learned counsel for the petitioner and heard also Mr. Lenin Hijam, learned Deputy AG for the respondents.

[2] This writ petition has been filed by the petitioner seeking to quash the order dated 11.07.2016 passed by the second respondent and to direct the respondents to conduct verification of the works completed by the petitioner in view of the order dated 30.03.2016 passed in W.P.(C) No. 242 of 2016 by affording the petitioner an opportunity and also direct the respondents to pay a sum of Rs.11,77,866/-.

[3] The case of the petitioner is that the fourth respondent issued Work Orders dated 08.08.2008 to the petitioner for (i) construction of P/dam at Mare paddy field at KhamasomPhyngrel for Rs. 6,74,780/- and (ii) construction of P/W a/c Pharang River at SihaiKahaophung for Rs. 5,03,086/- of Minor Irrigation Department, Manipur after according administrative approval of the Government of Manipur. The petitioner had executed the work and after completion of the work, bills were not settled by the respondent authorities though the Executive Engineer, Minor Irrigation Division No.IV, Minor Irrigation Department prepared

the final payment of bill amount of Rs.11,77,866/- and forwarded the liability statement/list of outstanding bills to the second respondent/Chief Engineer, Minor Irrigation Department. Since the second respondent failed to settle the undisputed amounts, the petitioner approached this Court by filing W.P(C) No. 242 of 2016 praying inter alia for a direction to the respondents to pay the total sum of Rs.11,77,866/-. By an order dated 30.03.2016, this Court disposed of the writ petition directing the second respondent or his authorised Executive Engineer to verify the undisputed outstanding bill amounts within a period of three months from the date of receipt of copy of the order and after verification of the undisputed bill amounts payable to the petitioner, the same shall be released in favour of the petitioner in accordance with seniority in completion of work. However, after a lapse of four months from the date of passing order in W.P.(C) No. 242 of 2016, the second respondent passed the impugned order stating that the works were started only after the expiry of schedule dates of completion of the works and no application for extension of time was received from the petitioner and thus the Work Orders lapsed automatically. Aggrieved by the same, the petitioner has filed the writ petition.

[4] Resisting the writ petition, respondent Nos. 1, 2 and 4 have filed affidavit-in-opposition stating that no agreement was found in respect of the work alleged by the petitioner. It is stated that the progress of the work was recorded in the measurement book, however, the measurement were not signed by the contractor or his representatives. It is further stated that the work was started after the expiry of the scheduled date of completion of the work that fell on 10.8.2009. According to the respondents 1, 2 and 4 the first running account bills amounting to Rs.4, 91, 139/- and Rs.3,53,045/- for the works were submitted by the then Assistant Engineer contrary to the claim of the petitioner that the work was executed during the stipulated time and bills for final payment amounting to Rs.11,77,866/- were prepared by the Executive Engineer and forwarded to the second respondent. On 8.8.2008, the Executive Engineer issued letter of acceptance of the tender floated by the petitioner in respect of the works in question. It is stated that no relevant information for submission of application for extension of time was available on record. Moreover, the verification reveals that no direction was given for inclusion of the petitioner in the internal department process and no role of the petitioner was required under the construction and prayed for dismissal of the writ petition.

[5] Assailing the impugned order, the learned counsel for the petitioner submitted that the main ground for rejection of the petitioner's claim for payment of the entitled undisputed bill amounts for the works completed is not tenable in the eye of law and the order impugned was passed arbitrarily. He would submit that the respondents cannot deny and/or dispute the fact that work Orders were issued to the petitioner after completing all formalities such as the execution of agreement. The learned counsel further submitted that the impugned order was issued to forfeit the petitioner the undisputed bill amounts for the works completed.

[6] Per contra, the learned Junior Government Advocate, reiterating the ground for rejection of the petitioner's claim, submitted that in the absence of agreements which are enforceable by law, the Work Orders being part of the agreement become null and void and not enforceable by law. The learned Junior Government Advocate further submitted that the works were started only after the expiry of the scheduled dates of completion of the works that fell on 10.08.2009 and no application seeking extension of time was received from the petitioner and therefore, the Work Orders were lapsed automatically. Contending so, the learned Junior Government Advocate prayed for dismissal of the writ petition.

[7] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[8] The grievance of the petitioner is that despite completion of the work awarded and executed by him, the respondent authorities without assigning any valid ground declined to settle the undisputed bill amounts and had passed the impugned order arbitrarily.

[9] The respondents contended that no formal agreements were concluded and in the absence of valid agreements, the Work Orders issued to the petitioner become null and void. In the impugned order itself, the second respondent stated that works were started only after the expiry of the schedule dates of completion of works and no application for extension of time was received. When the respondents stated that no agreements were existing between the respondents and the petitioner, how they can say that works started only after the expiry of the schedule dates. The respondents cannot approbate and reprobate. Nothing has been produced by the respondents to show that after the expiry of the schedule dates, the works were completed.

[10] Stating that despite the works being completed, bills were not settled, the petitioner approached this Court by filing writ petition in W.P(C) No. 242 of 2016 for payment of the undisputed bill amounts. By the order dated 30.03.2016, this Court passed the following order:

"In the above factual backdrop, this writ petition is disposed of with the following directions:-

(i) The claim of the petitioner for payment of undisputed bills amount have to be verified by the Chief Engineer or the Executive Engineer authorised by the Chief Engineer.

(ii) The said verification should be completed within a period of 3(three) months from the date of receipt of certified copy of this order; and

(iii) After verification of the undisputed bills amount payable to the petitioner, the same shall be released in favour of the petitioner in accordance with seniority in completion of works".

With the above directions, the writ petition is disposed of.

[11] As against the order dated 30.03.2016 passed in W.P.(C) No. 242 of 2016, the respondents have not preferred any appeal and the said order attained finality. However, after a lapse of four months, the impugned order came to be passed stating inter alia that the Government of Manipur has decided that no payment shall be made to the petitioner in respect of the works viz.,(i) construction of P/dam at Mare paddy field at KhamasomPhyngrel and (ii) construction of P/W a/c Pharang River at SihaiKahaophung.

[12] As rightly argued by the learned counsel for the petitioner, the respondents cannot deny the fact that Work Orders were issued to the petitioner after completing all formalities and the petitioner had also executed the works. Though the respondents contended that works were started after the expiry of the scheduled dates, as stated supra, nothing has been produced to establish the same and moreover such ground has never been taken in the liability certificate issued execution of the work orders.

[13] The contention of the respondents that in the absence of agreements, which are enforceable in law, the Works Orders being part of the agreements become null and void and not enforceable by law is unsustainable. When this Court earlier passed an order in W.P.(C) No. 242 of 2016 directing the respondents to release the undisputed bill amount to the petitioner after verification, contrary to the said direction, the second respondent, after prolonged period of four months, cannot reject the claim of the petitioner raising a plea that no agreements subsist. It is not known as to why such plea was never taken at the first instance by the respondents in the earlier round of litigation and nothing in this regard has been recorded in the earlier order.

[14] Having issued Work Orders in favour of the petitioner for construction of P/dam at Mare paddy field at KhamasomPhyngrel and construction of P/W a/c Pharang River at SihaiKahaophung and having executed the works by the petitioner and also the progress of the work having been recorded in the measurement books maintained by the respondent authorities, the respondents cannot contend that the works were started only after the expiry of scheduled dates of completion of the works.

[15] On a perusal of the impugned order, it is seen that the second respondent without proper application of mind to the facts of the case on hand, rejected the claim of the petitioner and thus, the impugned order cannot be sustained in the eye of law and the same is liable to be set aside and the respondent authorities are bound to settle the undisputed bill amounts due to the petitioner forthwith.

[16] In the result, the writ petition is allowed, thereby setting aside the impugned order dated 11.07.2016 passed by the second respondent. The respondent authorities are directed to settle the undisputed bill amounts viz., Rs. 11,77,866/- to the petitioner as ordered in W.P.(C) No. 242 of 2016 within a period of twelve weeks from the date of receipt of a copy of this order. No Costs.