

**(2008) 09 GAU CK 0002**

**In the Gauhati High Court**

**Case No :** WP (C) No (s) . 6252 of 2007 (Ghy) , 235 of 2007

Ng John Poumai and Another

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

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**Date of Decision :** 29-09-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2011) 4 GLR 480

**Hon'ble Judges :** J. Chelameswar, C.J;Hrishikesh Roy, J;B.K. Sharma, J

**Bench :** Full Bench

**Advocate :** M. Devananda, Mr. Churchill N., Mr. N. Jotenra Singh and Mr. Th. Khageuba, for the Appellant; K. Singh, N. Ibotomi, S. Suresh and Mr. C. Karnal, for the Respondent

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## Judgement

B.K. Sharma, J.—These writ petitions are before us in view of the reference made by the learned Single Judge while dealing with the writ petitions. The matter involves the claim of the Petitioners for payment of undisputed amounts involved in the bills submitted by the Petitioners on conclusion of the contractual works pursuant to various work orders issued by the Respondents to the Petitioners.

2. A Division Bench of this Court in *State of Manipur v. Moirangthem Chaoba Singh*, 2006 (2) GLT 191 held that the writ petitions pertaining to undisputed security deposits and undisputed bills after successful completion of contract works are not maintainable having regard to the Arbitration Clause in the contract. It was held that the parties are not entitled to have recourse to any remedy except arbitration.

3. On the other hand in a later decision reported in *J. J. Deep Chemicals and Fertilizers Vs. State of Tripura and Others*, another Division Bench of this Court dealing with the same issue held that exhaustion of alternative remedy is a rule of discretion and not one of compulsion. Having found that there was no justifiable reason for withholding of payment to the amount agreed to be paid

under the contract, writ petition was held to be maintainable.

4. It appears that the aforesaid decision in Moirangthem Chaoba Singh (supra) was carried on appeal before the Apex Court by way of Special Leave of Appeal (Civil) No. (S) 6203/06 and the same was disposed of by order dated 8.1.2007 without deciding the question of law involved and the same was left open. The order was so passed when it was brought to the notice of the Apex Court that the amount involved had already been refunded. In that view of the matter, the SLP was held to have become infructuous.

5. In all the writ petitions it is the case of the Petitioners that they having successfully completed the contractual works entrusted to them are entitled to the bill amounts which they have submitted in terms of the work orders, agreements, etc. It is the grievance of the Petitioners that although they have raised the bills, the Respondents have ignored the same, but on the other hand have entertained the bills submitted by some other contractors. They have filed the writ petitions alleging discrimination and arbitrary exercise of power on the part of the Respondents in the matter of making payments to the contractors. According to the Petitioners since there is no dispute in respect of the bill amounts, the Respondents are duty bound to clear the same without any discrimination.

6. In the affidavit in opposition filed by the Respondents, falling back on the decision in Moirangthem Chaoba Singh (supra), it has been contended that the writ petitions are not maintainable. Except making the general statement of methodology adopted towards awarding the work orders, executing of agreement containing the clause of arbitration, etc., the Respondents have not disputed the claim of the Petitioners. Thus, the contention of the Petitioners that the amount involved in their bills are undisputed, go unrefuted. The only question which arises, for consideration is as to whether even in cast: of such undisputed amounts, the parties should be directed to take recourse to arbitration, etc., throwing them out of the writ jurisdiction.

7. These writ petitions came before us at a time when a batch of writ petitions and two writ appeals were placed before us pertaining to the similar grievance of non-payment of contractual bills which the contractors had submitted upon execution of the contractual 1 works/ supply orders, etc. Be it stated here that two writ appeals and 1 he batch of writ petitions were in respect of various departments of the Government of Assam. It was noticed that all the writ petitions initially were for recovery of money claimed to be due to the Petitioners on the foot of a contract. It was brought to our notice that by judgment and order dated 31.5.2005 passed in WP(C) No. 3354/04 (Jatin Pathak v. State of Assam and Ors., learned Single Judge of this Court by way of reconciling the issue involved in such matters and to secure the interest of all concerned and also to ensure an equitable distribution of Government fund in discharge of admitted outstanding dues for the citizens, disposed of the writ petition with the following directions. Be it stated here that the learned Single Judge was dealing

with such claims pertaining to only one department of the Government of Assam, i.e., PWD.

(1) The Public Works Department of the State of Assam shall prepare a list of contractors, in each of its Division, to whom money is admitted to be due on account of the contract works performed whether under orders of the court or otherwise.

(2) Such lists will be prepared Division-wise in strict chronological order on the basis of the date on which payment is due.

(3) In drawing of the aforesaid list, the names of the contractors may be arranged under the separate heads of accounts that may be involved.

(4) That funds received by the Public Works Department under the particular heads of accounts and against the Division will be applied for discharge of the admitted dues in the order in which the list is prepared and maintained.

(5) All the contractors who claim money to be due will be a liberty to have their names registered in the concerned Division, which registration will be effected by the concerned authority after due verification of their entitlement to the payment claimed.

8. During the course of hearing of the aforesaid batch of writ petitions and the two writ appeals, all the Government departments of the Government of Assam agreed to follow the aforesaid guideline issued in Jatin Pathak case subject, however, to the condition that all claims for payment of admitted outstanding dues are lodged before the competent authority within a period of three years from the date of payment becoming due.

9. During the course of hearing of the present writ petitions, Mr. K. Singh, learned Advocate General, Manipur was requested to obtain instruction as to whether the Government of Manipur is agreeable to follow the guidelines formulated in Jatin Pathaks case. The Learned Counsel for the Petitioners also made it known that the Petitioners would have no objection if the guidelines in Jatin Pathaks case are followed by the Government of Manipur.

10. Pursuant to the aforesaid developments, the Government of Manipur has filed an additional affidavit on 11.8.2008, inter alia, stating that the Government of Manipur has also reconsidered the matter relating to the admitted outstanding dues arising out of execution of contractual works taking into account the guidelines formulated in Jatin Pathaks case. It is stated in this affidavit that a meeting was held on 30.7.2008 under the chairmanship of Chief Secretary, Government of Manipur and the same was attended by the officers of the various departments of the Government of Manipur to formulate the stand of the State Government.

11. In the aforesaid meeting while affirming the earlier stand of the State Government regarding non-maintainability of the writ petition under Article 226

of the Constitution of India for enforcement of contractual works leading to an obligation arising out of agreement, it was agreed that certain guidelines need to be formulated for payment of admitted outstanding dues arising out of execution of contractual works in the same line as that of the guidelines formulated in Jatin Pathaks case. The guidelines formulated in the meeting are as follows:

(i) The departments shall prepare a Division-wise list of contractors to whom money is admitted to be due on account of authorized contract works executed and completed satisfactorily.

(ii) The lists shall provide (a) name of work; (b) name of agency; (c) sanctioned estimate; (d) work order No. and date; (e) date of commencement of execution of work; (f) date of completion of works; (g) date of submission of claims.

(iii) Such lists will be prepared by every Department and Division (in Engineering Departments) in strict chronological order on the basis of the date on which payment is due.

(iv) In drawing the aforesaid list, the names of the contractors may be arranged under the relevant heads of accounts that may be involved.

(v) The authorized work should be within the Funds available under the Departmental Budget for the particular heads of accounts.

(vi) The claims of "Registered Contractors" only shall be entertained.

(vii) The funds available for discharge of pending liabilities will be earmarked within the head of account separately in consultation with the Finance Department.

12. Apart from the aforesaid general guidelines formulated in the meeting, it was also resolved to follow the following principles towards processing and discharging the admitted liabilities:

(i) All claims will have to be certified as admitted liability by the Head of Department/Chief Engineer concerned.

(ii) Any claims will be entertained only if it is lodged before competent authorities within a period of three years from the date of payment becoming due.

(iii) The liabilities will be disposed of on a first come first served basis.

13. We have also considered the materials on record. Although the issue initially raised was about maintainability of the writ petitions in respect of payment of contractual bills, but having regard to the agreement arrived at by and between the parties and the matter essentially being one of the admitted amount of contractual bills, we need not deal with the issue in this proceeding.

14. As in the case of the batch of writ petitions and two writ appeals pertaining to the Government of Assam, in the instant case also there was similar controversy as to what would constitute "payment becoming due". Eventually it

was agreed that the same shall be construed depending upon the terms and conditions of the individual work orders and/or the contract and as may be applicable under the law. We are also of the opinion that the writ jurisdiction essentially being the one by way of Public Law Remedy, the strict principle of limitation of three years as may be applicable as per the provisions of Limitation Act may not be applicable with its rigidity, rigour and inflexibility. This question will also have to be considered in the context of the condition in terms of which all claims of payment of outstanding dues would be entertained for consideration provided the same are admitted by the respective departments. As per the said clause the admission of liability shall have to be certified by the head of the Department/Chief Engineer concerned.

15. It may so happen that after submission of claims before the competent authority within the specified period of three years from the date of the payment becoming due, the claim is entertained and/or admitted by the prescribed authorities after expiry of three years from the date the "payment becoming due". In such an eventuality, even on the principles underlying limitation, the strict application of limitation of three years from the date the "payment becoming due" may not be applicable. The expression, "within a period of three years from the date of the payment becoming due", apart from being construed as per the terms and conditions of the work orders, will also have to be construed in that context. The Learned Counsel for the parties agreed that the said expression shall be construed as per law as well.

16. Since the Government of Manipur has agreed for disposal of the writ petitions in terms of their broad agreement to abide by the guidelines formulated in Jatin Pathak's case with the aforesaid terms and conditions, we need not answer the question formulated as to whether the forum under Article 226 of the Constitution of India is appropriate to adjudicate the claims relating to payment of contractual bills and whether the writ petitions are required to be entertained in such cases. In view of the broad agreement arrived at by and between the parties, we dispose of all the writ petitions in terms of the agreement.

17. The writ petitions are answered in the above, manner and stand disposed of, leaving the parties to bearing their own costs.