

**(2019) 08 MAN CK 0007**

**In the Manipur High Court**

**Case No : Writ Petition (Criminal) No. 832 Of 2017**

Phandombam Dona Singh

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

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**Date of Decision : 26-08-2019**

**Acts Referred:**

**Citation : (2019) 08 MAN CK 0007**

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

**Bench : Single Bench**

**Advocate : Y. Nirmolchand, L. Raju, Momota Devi Oinam**

**Final Decision : Allowed**

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## **Judgement**

MV Muralidaran, J

1. Heard Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. L. Raju, learned counsel for the petitioner and Mrs. Momota Devi Oinam, learned Addl. AG for the respondents.

[2] This writ petition has been filed by the petitioners seeking a writ of mandamus directing the respondents to pay a sum of Rs.6,54,900/-with interest at the rate of 18% per annum due to them for the supply of the materials in terms of the Work Order No.3/35/IED-1/Supply/2004-05/21, dated 20.10.2006.

[3]. The case of the petitioners is that they have been authorised to do all the activities of supply of Engineering materials and execution of contract works assigned by the Government. The petitioners used to supply equipments and other materials to the Government Departments and execute other works awarded to them by the Government from time to time. According to the petitioners, they have supplied materials indicated in the Supply Order dated 20.10.2006 to the erstwhile Electricity Department on 23.10.2006 and the materials were received by them in good condition and acknowledged by the department. After supply, the petitioners submitted the bill amounting to

Rs.6,54,000/- and the concerned authority had also recorded the same in the relevant measurement book and liability bills including supporting documents was also submitted by the Deputy General Manager, Manipur State Power Distribution Company (MSPDC) Limited to the concerned authority. However, the respondents have failed to pay the bill amount. Hence, the petitioners have filed the present writ petition.

[4]. Resisting the writ petition, respondent Nos.4 and 5 have filed affidavit-in-opposition stating that the materials were received on 23.10.2006 by the then Assistant Engineer and verification of receipt of the materials were done on the same day. However, the then Executive Engineer did not verify the bill for almost two years. It is stated that passing of the bill on 31.3.2014 after a gap of 7 years and 5 months of the receipt of materials, the Executive Engineer raised a doubt with respect to the actual receipt of the materials in question. It is also stated that the petitioners have not raised their claim for payment of outstanding dues during the period and claim for non-payment of the outstanding bill was raised only in 2015. In view of the recommendation of the Committee for rejection of the claimed liability amount of the petitioners, the bill amount was not released by the Finance Wing of MSPDC Limited. Hence, the respondents 4 and 5 prayed for dismissal of the writ petition.

[5]. The learned counsel for the petitioners submitted that despite acknowledging the receipt of materials in good condition by the respondent Electricity Department and having submitted the bill amounting to Rs.6,54,900/-, the respondents have failed to sanction and/or pay the bill amount. Hence, he prayed for a direction to the respondents to pay the said amount with interest at the rate of 18% per annum from the date of supply of materials.

[6]. On the contrary, the learned counsel for the respondents submitted that though the materials were received on 23.10.2006, the then Executive Engineer did not verify the bill for almost two years and the then Executive Engineer Shri T. Ibochouba Singh passed the bill on 31.03.2014 after a gap of almost 7 years and 5 months after the receipt of the supplied materials. According to the learned counsel, the same would show that the petitioners had not claimed the liability for supply of the materials for more than 7 years and 5 months. Thus, the supply of materials is doubtful. Further, the learned counsel submitted that as per the guidelines formulated in W.P.(C) No.3354 of 2004, all claims for payment of admitted outstanding dues should be lodged before the competent authority within a period of three years from the date of payment becoming due and that the petitioners have not raised the claim for payment of the outstanding dues within the stipulated period. In such circumstances, the Committee rejected the claim of the petitioners and there is no bona fide in the writ petition and thus, prayed for dismissal of the same.

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

[8]. It is an admitted fact that respondent No.5 had issued Work/Supply order dated 20.10.2006 in favour of the petitioners for supply and fabrication of materials. The first petitioner has supplied the following materials:

- (i) Change over switch 300 Amp. (3 Nos.)
- (ii) L.T. Transformer bushing rod for 750 KVA complete set (30 Nos.)
- (iii) PVC cable 3 ½ Core (50 Mtrs.), 300mm 2.
- (iv) Kit-Kat, 400 Amp. (190 Nos.)

The second petitioner supplied the following materials:

- (i) Single core cable 35mm 2 (15 Coils)
- (ii) PVC A1 single core cable 150mm<sup>2</sup> (4 Coils)
- (iii) 3 core XLPE cable, 3x50mm<sup>2</sup> (U.G.) (40 Mtrs)
- (iv) Kit-Kat 300 Amp. (206 Nos.)
- (v) L.T. Line separator 4 ways (400 Nos.)
- (vi) L.T. Line Separator 3 ways (200 Nos.)

The first petitioner supplied materials to the tune of Rs.2,52,650/- and similarly, the supply made by the second petitioner is to the tune of Rs.4,02,250/-. It is admitted by the respondent that materials were received by the then Assistant Engineer on 23.10.2006 and the verification of the receipt of the materials were also done on the same day.

[9]. The main contention of the respondents in rejecting the claim of the petitioners is that as per the guidelines formulated in W.P(C) No. 3354 of 2004, all claims for payment of the admitted outstanding dues should be lodged before the competent authority within a period of three years from the date of payment becoming due and that the petitioners have not raised their claim for payment of outstanding dues within the prescribed period.

[10]. The specific case of the petitioners is that after the supply of materials, they have simultaneously submitted the bills amounting to Rs.6,54,900/- and the concerned authority had also recorded the same in the relevant measurement book and liabilities bills including supporting documents were also submitted by the Deputy General Manager, MSPDC Limited to the concerned authority. However, the petitioners were not given the bill amounts they were entitled to for the work and supply of materials executed in terms of the Work Order dated 20.10.2006 till date.

[11]. On a perusal of the copy of the measurement book annexed to the writ petition, it is seen that for the supply made by the first petitioner, the amount payable to the first petitioner has been stated as Rs.2,52,650/-. Similarly, the copy of the measurement book annexed to the writ petition, it is seen that for

the supply made by the second petitioner, the amount payable to the second petitioner has been stated as 4,02,250/-. In fact, the entries made in the measurement books clearly indicate the date of receipt of materials, date of verification and the cost of materials supplied. As rightly argued by the learned counsel for the petitioners, if the petitioners have not simultaneously submitted the bills, the authorities would not have entered the amounts in the relevant registers. More over, the respondents have failed to produce any material to show that the petitioners have not submitted bills immediately after the supply made.

[12]. The learned counsel for the petitioners drawn attention of this Court to the order passed by this Court in W.P. (C) No.400 of 2011, dated 14.02.2012 and submitted that long after the execution of work by the contractors/suppliers, the respondent Department cleared the bills.

[13]. On a perusal of the order dated 14.02.2012 passed in W.P.(C) No.400 of 2011, it is seen that the said writ petition was disposed of in the light of the judgment and order dated 13.07.2011 passed in W.P.(C) No.209 of 2011. W.P.(C) No.209 of 2011 etc. batch have been filed by the petitioners therein seeking direction to the respondents to pay the undisputed amount of bills for the contract works/supply of materials by them. After considering the affidavit-in-opposition and other relevant facts, the writ petitions were allowed observing as under:

"3. On bare perusal of the Affidavit-in-opposition filed by the Respondents, it appears that the Respondents are not disputing that the bills for the contract works/supply of materials executed by the Petitioners have not yet been cleared or have not been paid.

4. In view of the above factual background, these writ petitions are disposed of by directing the respondents to clear the undisputed amount of bills after making enquiry, if necessary, within four months from the date of receipt of a certified copy of this judgment and order.

With the above observation and directions, these writ petitions are allowed."

[14]. In the present case also, the respondents have not disputed issuance of Work Order and the receipt of materials from the petitioners. The only grievance of the respondents is that the petitioners have not raised their claim for payment of outstanding dues within the stipulated period. The said contention of the respondents cannot be countenanced, as it is the specific case of the petitioners that simultaneously the petitioners have submitted the bills amounting to Rs.6,54,900/-. As stated supra, the respondents have failed to prove that the petitioners have not submitted the claim immediately after the supply made.

[15]. In W.P.(C) No.3354 of 2004 (Jatin Pathak v. The State of Assam and others) decided on 31.05.2005, Gauhati High Court, while disposing of the writ petition, formulated the following guidelines:

(1) The Public Works Department of the State of Assam shall prepare a list of contracts, in each of the Divisions, 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 contactors may be arranged under the separate Heads of Accounts that may be involved.

(4) The 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 at 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."

[16] Citing the aforesaid guidelines enumerated in Jatin Pathak, *supra*, the respondents cannot contend that the petitioners have failed to lodge their claim before the competent authority within a period of three years from the date of payment becoming due for the reason that the petitioners have knowledge about the order passed in Jatin Pathak case and they have voluntarily failed to lodge their claim before the competent authority. In the affidavit-in-opposition filed by the respondents 4 and 5, it has been stated that the supply of the materials is doubtful. When the respondents admitted receipt of materials on 23.10.2006 itself by the then Assistant Engineer and the verification of the materials was also done on the same day and the amounts of Rs. 2,52,650/- and Rs.4,02,250/- which are enclosed in page Nos. 17 and 18 as document Nos. A-4 and A-1, it cannot be contended that the supply of the materials is doubtful. The aforesaid plea of the Committee alleged by the respondents 4 and 5 in the affidavit-in-opposition is only to deprive the claim of the petitioners. When the concerned Assistant received and verified the materials intact, it is the bounden duty of the said authority to verify and process the bills submitted by the petitioners simultaneously. Thus, by citing the order passed in Jatin Pathak, *supra*, the respondents cannot escape from the liability. Further, in the given facts and circumstances of the case, the respondents 4 and 5 cannot rely upon the order passed in Jatin Pathak, *supra*.

[17] When the respondent Department received the materials supplied, they must settle the bills. The respondent Department cannot take a plea that the claim made by the petitioners is barred. The respondents have not disputed the order passed in W.P. (C) No.400 of 2011, dated 21.08.2012 and its compliance.

[18] The only difficulty on the part of the respondents is qua the Head of Account under which the bill amounts are to be paid to the petitioners. It is for the

respondent authorities to decide the same and blame cannot be put against the petitioners stating that the petitioners have failed to raise their claim for payment of outstanding dues within the stipulated period. As stated supra, having acknowledged the receipt of materials in good condition and having entered the same in the measurement book as well as in the relevant books with the cost of materials and other particulars, it cannot be contended that the claim made by the petitioners is time barred. The non-payment of bill amounts to the bona fide suppliers on a flimsy ground cannot be accepted. In fact, the petitioners have annexed the proforma bills dated 23.10.2006 along with the writ petition. Thus, this Court is of the view that after the supply of materials, the petitioners have simultaneously submitted the bills amounting to Rs.6,54,900/- respectively and that the respondent Department alone wantonly failed to process the bills. In such view of the matter, this Court is of the considered view that the petitioners have established their case and as such, the writ petition filed by the petitioners is liable to be allowed.

[19] Accordingly,

(a) the writ petition is allowed,

(b) the respondents are directed to settle the bill amounts of Rs.6,54,900/- to the petitioners respectively with interest at the rate of 6% per annum from the date of supply of the materials,

(c) the respondents are directed to settle the bill amount of Rs.6,54,900/- with interest, as stated above, within a period of twelve weeks from the date of receipt of a copy of this order.