

(2008) 09 GAU CK 0091
In the Gauhati High Court

Tamsher Ali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2009 Guw 35 : (2008) 4 GLT 1

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

Bench : Full Bench

Judgement

B.K. Sharma, J.—This batch of writ petitions and the two writ appeals are before us in terms of the order passed on 18.05.2007 by the Division Bench of this Court in W.A. No. 484/2005. The writ appeal has been filed against the order dated 08.6.2005 passed in WP(C) No. 247/2005, by which the learned Single Judge entertained the claim of the writ petitioner for payment of the contractual bill amount pertaining to the works completed by the petitioner in terms of the work orders issued by the respondents during the period from 14.11.1996 to 12.03.2004. The writ petition was disposed of by the impugned order dated 08.06.2005 in terms of the earlier judgment and order dated 31.05.2005 passed by the learned Single Judge in WP(C) No. 8995/2004 (Jatin Pathqk v. State of Assam and Ors.), which wasted claiming similar relief.

2. Since the writ petition was disposed of in terms of the earlier judgment and order dated 31.05.2005 in WP(C) No. 3354/2004. a little reference to the facts involved in the said writ petition may be stated herein. The writ petition was filed seeking appropriate directions for payment of an amount of Rs. 8,82,064/-, which was claimed to be the admitted amount payable to the petitioner on account of contractual works performed and executed by him for the Public Works Department (PWD) of the Government of Assam.

3. The claim made by the writ petitioner had been admitted to be due and payable by the departmental secretary in the counter affidavit-filed. The ground assigned for nonpayment of the amount was stated to be on account of paucity

of fund. It was stated that no sooner the requisite funds are received by the department, the dues of the petitioner would be settled without any further delay. It was noticed that in similar situations several writ petitions were disposed of earlier directing the department to pay the outstanding dues of the petitioners therein within a particular time frame. Many of such orders having remained unimplemented, contempt proceedings had been initiated wherein the defence taken by the concerned officer(s) was that the order of the Court had remained unimplemented not on account of any deliberate omission, but because of the fact that the no money was available for payment in accordance with the directions issued.

4. Having regard to the proceeding in hand including the proceeding in Contempt Case No. 5/2004 and the stand of the Departmental Commissioner and Special Secretary in his affidavit, the Court reasonably assumed that there would be a large number of other contractors to whom money is due, but who may not have moved the Court for payment of their admitted outstanding dues. It was in such circumstances, the writ petition was disposed of in little modification of the orders passed earlier in similar matters so as to secure to interests of all concerned and to ensure an equitable distribution of Government fund in discharge of the admitted outstanding dues for the citizens.

5. While disposing of the writ petition, it was also ordered that the directions contained in the order should be adopted by the Department in deciding all similar claims that may be pending before it. The directions are as follows:

(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 v verification of their entitlement to the payment claimed.

6. Although, the writ petition filed by the present appellant claiming similar relief was disposed of in terms of the aforesaid judgment and order, the appellant being not satisfied with the similar direction, has filed the appeal making a grievance against the same on the ground that since the amount claimed by the

petitioner has been admitted by the respondents, the petitioner, in terms of the orders passed in earlier such writ petitions directing payment within a stipulated period, is entitled to similar direction and there could not have been any deviation from such directions so as to cover all the cases.

7. It is in the aforesaid writ appeal, the Division Bench of this Court passed the order on 18.05.2007 directing listing of similar writ petitions noticing that the issue involved in all the writ petitions essentially is one of recovery of money claimed to be due to the petitioner on the foot of a contract.

8. The other writ appeal being W.A. No. 313/2007 has been filed making a grievance against dismissal of the writ petition filed by him with similar claim. The writ petition was dismissed at a time when the aforesaid judgment and order dated 31.05.2005 passed in W.P.(C) No. 3354/2004 (Jatin Pathak v. State of Assam and Ors.) was holding the field covering similar claims pertaining to the particular department, i.e. PWD. The writ petition was dismissed on the ground of there being unexplained delay towards making the claim by filing the writ petition on 26.02.2004 pertaining to the contractual works completed by the petitioner in the year 1991-92.

9. In this appeal, the grievance of the writ petitioner is that the learned Single Judge committed error of fact inasmuch as the claim of the petitioner was pertaining to the years 1991 -92 to 1999-2000 and not only 1991-92. Upon a reference to admission of the amount on the part of the head of the department, i.e. the Chief Engineer, vide his letter dated 24.02.2002 (Annexure-II), and the writ petition having been filed in February, 2004, it is the case of the appellant that the learned Single Judge committed manifest error of facts as well as law in dismissing the writ petition on ground of inordinate delay of 12 years.

10. As noted above, all the writ petitions pertain to the claim of the bill amounts in respect of the various contractual works executed by the petitioners. It is their case that they are entitled to the amount claimed against the works executed pursuant to the various work orders issued in their favour by the respective departmental authorities.

11. During the course of hearing, learned Standing Counsel, PWD, agreed for disposal of the writ petitions pertaining to the department in terms of the judgment and order passed in Jatin Pathak (supra). However, learned Counsel representing the other departments of the Government of Assam wanted time to obtain the views of the respective departments as to whether they would agree to the directions contained in the said case. When the matter was taken up on 08.05.2008, Mrs. B. Goyal, learned State Counsel produced the copy of the letter dated 30.04.2008 addressed to the learned Additional Advocate General, Assam by the Govt. of Assam in the PWD. Along with the letter, a copy of the minutes of the meeting held on 19.03.2008 was also produced. The meeting was held in respect of payment of outstanding dues of the contractors of different departments of Govt. of Assam. As per the said minutes of the meeting,

attended by the representatives of all the department of the State Govt., it was accepted on principle that the directions contained in Jatin Pathak's case would be followed.

12. The aforesaid fact was noted by us in our order dated 08.05.2008. Thereafter, the State Govt. filed an affidavit on 03.06.2008 through the Chief Secretary conveying its decision of acceptance of the observations/guidelines issued in the case of Jatin Pathak (supra). In the affidavit, it has been stated that the meeting was held under the chairmanship of the Additional Chief Secretary (Works) to discuss, amongst others, the stand which the State Govt. is required to take in respect of the writ petitions filed by various contractors praying for appropriate writ or directions.

13. As per the said affidavit, in the meeting, all the departments unanimously agreed to adopt the guidelines contained in the judgment and order dated 31.05.2005 passed in Jatin Pathak's case. It was also resolved in the meeting that the Finance Department would issue a format to assess the overall outstanding liabilities of the contractors or suppliers, which should be intimated by all the departments enabling the Finance Department to make appropriate budgetary provisions as per availability of fund.

14. In the affidavit, copy of the minutes of the meeting has been annexed. It has been stated in the affidavit that pursuant to the consensus arrived at in the meeting held on 19.03.2008, the Government of Assam, on principle has agreed to adopt the guidelines issued by this Court in Jatin Pathak's case in the manner of processing the claims, which are admitted to be due, subject however, to the following conditions:

"i) All claims for payment of outstanding dues would be entertained for consideration provided the same are admitted by the respective departments. The admissions of liability shall have to be certified by the respective Chief Engineer in respect of Works Departments and in respect of other departments by the Head of the departments.

ii)) All claims for payment of admitted outstanding dues would be entertained for payment provided the claims are lodged before the competent authority within a period of three years from the date of the payment becoming due.

iii) All claims for payment of admitted outstanding dues in respect of which the contractors intend or have approached the Hon''ble Court, in such cases, the contractors must approach the Hon''ble High Court within a period of 3 years from the date of the payment becoming due. This view has been taken as the Hon''ble Apex Court in the State of Madhya Pradesh Vs. Bhailal Bhai and Others, has observed that though provisions of Limitation Act do not as such apply to proceedings under Article 226, the period of Limitation prescribed by Limitation'' Act for instituting a civil action may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured.

15. We have heard learned Counsel for the appellants and the writ petitioners as well as Mr. K.N. Choudhury, learned Additional Advocate General, Assam. Mr. G.N. Sahewalla, learned Sr. counsel, led the argument on behalf of the appellants and the writ petitioners. While the learned Counsel for the appellants and writ petitioners broadly agreed to the proposal made by the State Govt., but they submitted that the stipulation made in Clause-(iii) of the conditions quoted above, may not be applicable in case of writ petitions filed under Public Law Remedy. As per the said Clause, the contractors must approach this Court within a period of three years from the date of payment becoming due.

16. There was some 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, rigor and inflexibility. This question will also have to be considered in the context of Clause-(i) of the conditions 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 respective Chief Engineer in respect of Works Departments and in respect of other Departments by the head of the Departments.

17. 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 specified in Clause-(i) 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.

18. Since the Govt. of Assam 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.

19. This now lead us to the adjudication of the two writ appeals mentioned above, involved in this proceeding. In so far as W.A. No. 484/2005 is concerned,

learned Counsel for the appellant having agreed for disposal of the appeal in terms of the above, same is also disposed of in terms of this order. Even otherwise also the writ petitions was disposed of in terms of the directions contained in Jatin Pathak (supra).

20. So far as the other writ appeal being W.A. No. 313/2007 is concerned, we are of the considered opinion that the appellant/writ petitioner is entitled to similar relief as in the batch of the writ petitions and the other writ appeal. The claim of the petitioner for payment of contractual bills was pertaining to the period 1091-92 to 1999-2000 and not only 1991-92 as has been held by the learned Single Judge. The claim having been admitted by the Chief Engineer, PWD by his letter dated 23-10-2002, which was also preceded by the letter dated 14-08-2002 addressed to him by the Executive Engineer, we are of the considered opinion that it cannot be said to be a case of not within the purview of "within a period of three years from the date the payment becoming due". By the aforesaid letter dated 23.10.2002, the Chief Engineer requested the Govt. of Assam in the Public Works Department (Budget Branch) for providing fund to the Executive Engineer, PWD for payment of the admissible amount to the petitioner in terms of the aforesaid letter dated 14.08.2002 issued to him by the Executive Engineer. As per the said letter, the amount payable to the petitioner is Rs. 2,00,163/-, which was the claim in the writ petition.

21. In view of the above, we set aside and quash the impugned order dated 01.06.2007 passed by the learned Single Judge in the writ petition being W.P.(C) No. 1295/2004 and allow the writ appeal and consequently the writ petition in terms of this order.

22. All the writ petitions and the two writ appeals are answered in the above manner and stand disposed of.

23. We pass no order as to costs.