
(2019) 03 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (c) No. 711 Of 2018

V.S. Vareiyō

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2019) 03 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : R.S. Reisang, Momota Devi Oinam

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri R.S. Reisang, learned Senior Advocate appearing for the petitioner and Smt. Momota Devi Oinam, learned Addl. AG for the State respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to release the security deposit amounting to Rs.3,18,756 (Rupees three lakhs eighteen thousand seven hundred fifty-six) with interest at the rate of 12% per annum.

[3.1] According to the petitioner, he is a registered and special contractor by profession and belongs to Tangkhul tribe of Manipur. In the year 2009, the different contract works were awarded to him by the PWD, Manipur for which he deposited security deposits (SD) for a total sum of Rs.3,18,756/-. Although the works were completed in all respects in the year 2009 and 2010, the respondents had failed to refund the same.

[3.2] Being aggrieved by the inaction on the part of the respondents, the petitioner along with some other contractors filed a joint writ petition being WP(C) No.895 of 2016 praying for refund of Rs.6,12,365/- (Rupees six lakhs

twelve thousand three hundred & sixty-five) being the security deposits which was disposed of with the direction to the respondents to verify the claims of the petitioners and to issue an appropriate order in accordance with law.

[3.3] In compliance with the said direction, the Superintending Surveyor of Works (SE to CE), the Labour Officer, Ukhrul Division, Government of Manipur issued a 'Clearance Certificate' dated 03.01.2017 in favour of the petitioners and others thereby declaring that the petitioners therein had no due as per record available in his office and that so far as the petitioners are concerned, the condition of contract agreements under Clause 45 had been fulfilled. The Superintending Engineer vide its letter dated 25.04.2017, submitted to the Chief Engineer, PWD the liability statement of the SD-II but no action was taken by the Chief Engineer thereon. After the works having been completed, the security deposits which are in the custody of the respondents, shall have to be returned to the petitioners immediately after the execution of the works is over.

[4] Being aggrieved by the further inaction on the part of the respondents, the instant writ petition has filed by the petitioner praying for refund of security deposit amounting to Rs.3,18,756/- on the inter- alia grounds that the respondents have deliberately failed to refund the security deposits although works were completed in the year 2009-2010; that the action and inaction on the part of the respondents is arbitrary, discriminatory and oppressive and that when the contract was entered into, the State Government had declared that it would not commit any breach of contract.

[5] Despite number of opportunities being given to the respondents, no counter has so far been filed on their behalf and therefore, the averments made in the writ petition shall be deemed to have been admitted by them.

[6] It has been submitted by Shri R.S. Reisang, learned Senior Advocate appearing for the petitioner that the issue involved herein is covered by the judgment and order dated 16.10.2018 passed by this Court in WP(C) No.740 of 2017 and connected matters to which Smt. Momota Devi Oinam, learned Addl. AG, refuting the contention of the learned counsel appearing for the petitioner, has relied upon the decision rendered by the Hon'ble Guahati High Court in Tansher Ali & ors. Vs. State of Assam & ors., AIR 2009 Gau 35.

[7] It is not in dispute that certain works have been executed by the petitioner for which he is entitled to refund of security deposits as is evident from the clearance certificate dated 03-01-2017 issued by the Superintending Engineer. The facts of the case, relied upon by the Addl. Advocate General, are not identical to that of the present case and it relates to the payment of undisputed bill. It may be noted that in respect of the non-payment of undisputed bills, many petitions are pending before this court for disposal and many have been disposed of in terms of the said decision rendered in Tansher Ali case. On the other hand, the facts of the present case are almost identical to that of the one rendered in P. Gaidimlung R. Naga case and therefore, the contention of the

learned counsel appearing for the petitioner has some force and merit. The issue involved herein is squarely covered by the said judgment and order dated 16-10-2018 passed in WP(C) No.740 of 2017, the relevant paragraphs of which read as under:

"5. From the aforesaid pleadings, it is seen that the averments made in the writ petitions that despite the final bills having been paid, the security deposits have not yet been refunded to the petitioners, are not denied by the respondents. All that the respondents have submitted, is that the refund of security deposits could not be made, as the original treasury challans were not submitted by the Executive Engineers along with their proposals for refund of security deposits. The Executive Engineers are public servants who have been authorized by the State Government to collect security deposits which are to be deposited in the account through treasury challans. It is the State Government which has authorized the Executive Engineers to collect the security deposits and therefore, it is the duty and responsibility of the State Government to ensure that its instructions are duly implemented by all concerned. It is the State Government which is duty bound to take action against the Executive Engineers when they failed to discharge their duties in accordance with law. There is no material on record to show that the State Government has ever taken any action against any of such Executive Engineers for their failure to comply with the instructions. It is not a simple matter because it involves a huge amount, in terms of more than a crore of rupees, which is nothing but public money. The fact that no action has been taken against any of the delinquent Executive Engineers by the State Government, shows that some high officials in the department appear to be hand in glove with them and are equally to be blamed for creating such an embarrassed situation for it. These high officials cannot shirk away from their responsibilities without any accountability.

6. It may be noted that the amount deposited by the petitioners towards security, is not public money in true sense of the term and it belongs to them. These amounts have been collected by the State Government from the petitioners through its Executive Engineers in the manner as stated hereinabove while paying the running bills. Such amount collected by way of security deposits is to be and can be kept by the State Government till the completion of the work in terms of the agreement entered into between the State Government and the petitioners. Such security deposit is to be refunded immediately after the work is over. Since the work having being completed admittedly to the satisfaction of the State Government, the security deposit ought to have been refunded along the payments made by it towards final bill. The State Government has failed to do that. According to the State Government, it is the fault of the Executive Engineers, because of which the security deposits could not be refunded but it cannot be attributed to the petitioners. It is a matter of internal affairs between the State Government and its employees. The petitioners cannot be penalized for no fault of theirs. The controversy has arisen because the State Government has failed to take appropriate action in time. The State Government cannot take

advantage of its own mistake. The State Government cannot wash off its hands taking an unjustified plea that the original challans are not submitted by the Executive Engineers. Since the problem is its own creation, the State Government has to solve it. The State Government being an institution, ought to act fairly and reasonably within the bounds of the Constitution of India and cannot withhold the security deposits after the work is over. There is no justification at all on the part of the State Government to withhold the security deposits. Failure on the part of the State Government to refund the security deposit is highly unreasonable, malafide and illegal being violative Article 14, 19 and 21 of the Constitution of India."

[8] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed with the direction that the respondents and in particular, the respondent No.1 and 3 shall refund to the petitioner his security deposit for an amount of Rs.3,18,756/- (Rupees three lakhs eighteen thousand seven hundred & fifty-six) only within three months from the date of receipt of a copy of this judgment and order with interest @ Rs. 6% per annum for the period from the date of completion of the works till the expiry of the said three months or till the payment of the said amount whichever is earlier. There shall be no order as to costs.