

(2011) 12 CAL CK 0049

Calcutta High Court (Port Blair Bench)

Case No: Writ Petition No. 1064 of 2011

Shri. Sanjay Kumar Singh

APPELLANT

Vs

The Administrator and Others

RESPONDENT

Date of Decision: Dec. 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 136, 226

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Anjili Nag, for the Appellant;

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

The writ petitioner has filed this petition praying for the following reliefs:-

(A). A Writ or Writs in the nature of certiorari quashing the order dated 16.02.2011 passed by the Executive Engineer(Planning), Nicobar District, APWD, Car Nicobar.

(B) A Writ or Writs in the nature of mandamus directing the respondent authorities to recognize trenching and refilling of the earth to be extra works and further directing the respondent authorities not to deduct the amount of Rs.13,17,168/- which has been paid to the petitioner from the final bill.

(C) A writ or Writs in the nature of mandamus directing the respondent authorities to pay Rs. 5.76,192/- to the petitioner with bank interest as the petitioner has performed additional works of trenching and earth filling as proposed by the Executive Engineer(Construction Division), APWD, Campbell Bay in its letter dated 20.07.2010.

(D) A Writ or Writs in the nature of mandamus directing the respondents to act in accordance with law.

(E) A Writ or Writs in nature of certiorari directing the respondents to certify and produce all the relevant records pertaining to the case before this Hon"ble Court at the time of hearing.

(F) Cost of the incidental thereto of this application be borne by the respondents.

(G) Any other relief/order/orders, direction/directions which may be deemed fit and proper by this Hon"ble Court.

2. The short question involved in the matter is whether this Hon"ble Court should direct the respondent authorities to make payment to the petitioner for doing extra works relating to excavation and filling up soil after laying of pipe pursuant to an agreement dated August 20, 2009 between the petitioner and the Andaman Public Works Department for carrying out the work of improvement of Magar Nallah Water Supply System in GNI and other works.

3. Upon hearing the learned advocate for the petitioner and on going through the materials on record, I find that the petitioner was asked to carry out the works of excavation of trenches and refilling of soil after laying of pipes on the assurance that the payment as proposed would be released to the petitioner at the time of final payment.

4. The petitioner was directed to submit the performance guarantee of Rs. 9,34,200/- within 15 days from the date of issue of letter dated June 22, 2009 and accordingly, the petitioner submitted performance guarantee amounting to Rs. 9,34,200/- from the Syndicate Bank, Port Blair Branch.

5. The petitioner, the Executive Engineer and the Junior Engineer also signed in the measurement book and these authorities were satisfied with the work done by the petitioner. Thereafter, the petitioner submitted his bills for extra works but payment was not made and the petitioner was informed by the letter issued by the Executive Engineer(Plg), Nicobar Circle, APWD, Car Nicobar to the Executive Engineer, Construction Division, APWD, Campbell Bay to the effect that the claim for charges for extra works is not permissible as the extra item proposed is for excavation of trenches and refilling of excavated soil after laying of pipes includes the rate for trenching and refilling also, as per CPWD specifications. As such extra item for this activities is not permissible.

6. But in the instance case, I find that from Annexure P-3 the Executive Engineer, Construction Division, APWD, Campbell Bay wrote to the Superintending Engineer, Nicobar Circle, APWD, Car Nicobar for approval of the extra item statement no.II amounting to Rs. 18,93,360/- for the work mentioned under the heading "subject" for approval signifying that the petitioner might have done extra works. But there is no paper to show that the said extra works item statement No. II had been approved by the higher authority i.e. the Superintending Engineer, Nicobar Circle.

7. From the record it appears that the respondent authorities took several adjournments to file an affidavit in opposition but they did not do so. They did not contest the writ petition ultimately.

8. On the basis of the materials on records, I find that by the prayer(A), the petitioner has prayed for quashing the order dated February 16, 2011 passed by the Executive Engineer(Plg), Nicobar District, appearing at page no 74 which clearly indicates that extra items for these activities such as, excavation of trenches and refilling of excavated soil after laying of pipes is not admissible. On knowing the contents of the letter dated February 16, 2011(Annexure P-5), the petitioner submitted a representation dated May 30, 2011 to the Chief Engineer, APWD and the Superintending Engineer, Nicobar Circle, APWD, Car Nicobar (Annexure P-4) that his bill was cleared in part i.e. the amount to which he was entitled for performing the extra work of excavation of trenches and refilling of soil after laying of pipes was partly paid to me. He has also added by the said letter that the authority cleared the complete bill in respect of the original works and paid around Rs. 4 to 5 lakhs for carrying out the works of excavation of trenches and refilling of soil after laying of pipes. This contention does not appear to have been admitted by the respondent authorities from the papers filed by the petitioner. On the other hand, from the relief sought for in prayer (B), it appears that the authorities asked the petitioner to deposit or adjust a sum of money already paid to him, but no material has been placed before this Court in support of such prayer(B) in the writ application. Similarly, as to the prayer(C) of the writ petition, the writ petitioner has prayed for issuance of writ in the nature of mandamus directing the respondent authorities to pay Rs. 5,76,192/- to the petitioner with bank interest for performing additional works. The petitioner has failed to show any material from which it could be understood that the petitioner is entitled to get such reliefs in the nature of mandamus writ. All the reliefs as prayed for in A, B and C relate to the matter of taking evidence and the materials as produced by the petitioner are not at all sufficient to grant such reliefs.

9. Moreover, as per letter dated 16.02.2011 (Annexure P-5) the question of doing extra item is not admissible. Therefore, from such papers it appears that the claim of the petitioner relates to a disputed fact which could be decided only by the civil forum having jurisdiction.

10. Mrs. Nag, learned counsel appearing on behalf of the petitioner has referred to the decision o [Food Corporation of India and Another Vs. SEIL Ltd. and Others](#), and submits that even in case of contractual matter involving public law, the contractual disputes are amenable to writ jurisdiction. She has also referred to a decision of [Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others](#), and submitted that when a term of contract is violated, ordinarily the remedy is not a writ petition under Article 226. The dispute arising out of the terms of contract or alleged breaches have to be settled by the ordinary principles of law of contract. The

Hon"ble Apex Court held that where alternative remedies are no longer efficacious due to lapse of time, held, Supreme Court will intervene in exercise of its powers under Article 136 to prevent a miscarriage of justice. Accordingly, the Apex Court reduced the rate of interest from 18% to 9% and the impugned judgement of the High Court was modified accordingly. This is not the exact situation in respect of the present one. Therefore, the decision of Kerala State Electricity Board and Another has no application in any manner in the instant case.

11. In that view of the matter, I am of the opinion that no specific direction as prayed for in the writ petition can be passed against the respondent authorities although they are not contesting the writ application. In such circumstances, I have no other alternative but to dismiss the writ petition. Accordingly, the writ petition is dismissed.

12. Urgent xerox certified copy of this judgment be supplied to the parties, it applied for on observing requisite formalities.