

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Samapti Chatterjee

W.P. 347 (W) of 2014

**M/s Kushi Construction and Another
Vs
The Port Blair Municipal Council & Others.**

For the Petitioners : Mr. Rakesh Pal Gobind, Learned Advocate
Mr. Sanjay Singh, Learned Advocate.

For the State : Mr. Arul Prasanth, Learned Advocate

Heard on : June 10, 2015

Judgment on : July 10, 2015.

Samapti Chatterjee, J.

1. The petitioners filed the present writ petition for direction upon the authorities to disburse the petitioners' bills in respect of two work orders.

2. The petitioners no.2 is the proprietor of M/s Khushi construction, having its office at Junglighat, Post Box No.340, Head Post Office, Port Blair, South Andaman.

3. On 24th December, 2014 the Executive Engineer (Works) Port Blair Municipal Council issued a tender for work of carpeting of roads at Joggers Park and for carpeting of road at Gandhi Park vide Agreement no.2/(R) of 2012-13 and Agreement no.3 (R) of 2012/13 respectively. In terms of the aforesaid tenders two separate agreements have been executed between the petitioners and the respondent authorities.

4. According to the terms of the agreement the petitioners have to complete the aforesaid work within a period of 15 days from the date of issuance of the letter dated 24th December, 2012 by the Executive Engineer (Works), Port Blair, Municipal Council. The petitioners accordingly completed aforesaid two works within the stipulated time and specification as referred in the letter dated 24th December, 2012 and thereafter submitted their bills to the authority. But unfortunately till date the authorities failed and neglected to pay the bills for executing the aforesaid two works by the petitioners. As a result whereof, the petitioners without finding any alternative issued the demand notice, on 26th February, 2014 requesting the respondent authorities to pay the bills for the completion of the aforesaid works within two weeks. But the

respondent authorities did not pay any heed to make payment of the petitioners' bills. Again on 30th July, 2014 the petitioners gave a reminder to the respondents praying interalia for disbursement of the amount in favour of the petitioners as indicated in the bills submitted by them. But the respondents failed to disburse the payment.

5. Hence the present writ petition.

6. Mr. Sanjay Singh, learned Advocate appearing for the petitioners vehemently urged that since the petitioners have already successfully completed the work as indicated in two work orders and thereafter raised their bills as per agreement, therefore, respondents are duty bound to make payment as indicated in the bills raised by the petitioners against two work orders.

7. Mr. Singh further strongly contended that while the petitioners smoothly executed those two work orders without any objection from the respondent authorities, therefore, it is the duty of the respondent authorities to disburse the payment as indicated in the bills submitted by the petitioners after completion of the works.

8. Mr. Singh also submitted that nothing was indicated in the affidavit-in-opposition regarding non-payment of the petitioners' bills.

Only in Paragraph-9 of the affidavit-in-opposition the respondent authorities stated as follows :-

“Para-9-.....to submit that the petitioners started the work after 22 days of the issuance of award letter and the said work was not completed as per the terms and conditions, specifications made in the agreement.”

And referred that an FIR was lodged under Section 379/34 of the Indian Penal Code against the petitioners and others. In the midst of the argument learned Advocate appearing for the respondent authorities handed up a document dated 20th March, 2014 from the record wherefrom it reveals that on 20th March, 2014 the Executive Engineer (Works) Municipal Council issued a letter to the petitioners in respect of the agreement no.3 (R) of 2012-13, the same is quoted below:-

“To

*M/s Khushi Construction,
Civil Contractor & Govt. Suppliers,
Junglighat, Port Blair-744103
Post Box No.:-340 (HPO)*

Ref No.:- (1)15-107/EE/WW/R/MC/2011-12/277, dated 29th July,2013.

(2) 15-107/EE/WW/R/MC/2011-12/3410, dated 1st & 24th October, 2013

Sub: - Intimation for Name of Work:- Carpeting of Road at Gandhi Park,

Agreement No.:- 03 R of 12-13 to be read and rectified in terms of Clause 16, Clause 5 and similar condition reg.-

Sir,

Kindly refer above cited Ref No. (Copy Enclosed) where you have been asked to redo/rectify the work under clauses 3 and 16 of agreement whereas you have failed to execute the same, Now as per the power conferred if the work is not rectified or redone the defective part it will be executed by the council at your cost and risk.

Yours faithfully,

Executive Engineer (Works)

Municipal Council.”

Against such document Mr. Sanjay Singh vehemently contended that the said letter is a creature of afterthought just for frustrating the petitioners' legitimate claim, as during execution of those two works the respondent authorities never raised any objection regarding specification of the materials but allowed the petitioners to complete the works.

9. Mr. Singh further contended that the petitioners completed the work order as per specification laid down in the agreement. Mr. Singh also pointed out that the demand notice dated 26th February, 2014 for payment was not replied by the respondent authorities. Therefore, the writ petition should be allowed by directing the respondent authorities to disburse the payment as indicated in the bills raised by the petitioners.

10. Per contra, Mr. Arul Prasanth, learned Advocate appearing for the respondent authorities contended that though it is true that during the execution of work order the respondent authorities never raised any objection regarding specification but from the record it is evident that on 20th March, 2014 the Executive Engineer (Works) Municipal Council intimated the petitioners as mentioned in the said letter. Therefore, that letter cannot be termed as afterthought by Mr. Singh learned Advocate appearing for the petitioners.

11. Mr. Prasanth also contended that it is evident that an FIR was lodged against the petitioners and others under Section 379/34 of the Indian Penal Code.

12. Considering the submissions advanced by the learned Advocates appearing for the respective parties and after perusing the records I find that it is an admitted fact that during process of work

undergone by the petitioners as per agreement the respondent authorities never raised any objection against such work.

13. I find that it is also admitted position that the petitioners completed work orders as per specification of these two agreements and after completion of those work orders petitioners raised bills before the respondent authorities. Since the respondent authorities were sitting tight over the petitioners' bills therefore the petitioners issued a demand notices which remained unreplied by the respondent authorities. Only on 20th March, 2014 long after submission of the bills and also after issuance of the demand notice dated 26th February, 2014 the respondent authorities just to frustrate the petitioners' legitimate claim issued the said letter which has no nexus with the bills submitted by the petitioners.

14. I find that it is also an admitted fact that the petitioners was allowed to complete two work orders as per specification without any objection from the respondent authorities. Therefore, it is obligatory on the part of the respondent authorities to disburse the payments as indicated in the bills raised by the petitioners after completion of the work orders as per specification of two agreements. The respondent authorities could not escape their liability to pay the petitioners' bills.

The respondent authorities are contractually liable to pay the petitioners' bills.

15. Therefore, I direct the respondent authorities to disburse the payment, as per the bills submitted by the petitioners against two work orders awarded vide agreement no. 2(R) of 2012-13 and vide agreement no. 3 (R) 2013-14 for carpeting of Joggers Park and Gandhi Park respectively, within eight (8) weeks for the date of communication of the order.

16. This writ petition is allowed with the above direction, without any order as to costs.

17. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.

(Samapti Chatterjee, J).