IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1412 of 2023
With
I.A. No. CAN 1 of 2023
The Ghani Khan Choudhury Institute
of Engineering and Technology & Ors.
Vs.
M/s. Malda Construction Company & ors.
With
MAT 1413 of 2023
With
I.A. No. CAN 1 of 2023
The Ghani Khan Choudhury Institute
of Engineering and Technology & Ors.
Vs.
M/s. Malda Construction Company & ors.
With
MAT 1414 of 2023
The Ghani Khan Choudhury Institute
of Engineering and Technology & Ors.
Vs.
Gouri Construction & Ors.
With
MAT 1415 of 2023
With
I.A. No. CAN 1 of 2023
The Ghani Khan Choudhury Institute
of Engineering and Technology & Ors.
Vs.
Gouri Construction & Ors.
With
MAT 1416 of 2023
With
I.A. No. CAN 1 of 2023

The Ghani Khan Choudhury Institute of Engineering and Technology & Ors.
Vs.
Subham Enterprise & Ors.

For the Appellants	: Md. Sarwar Jahan Mr. Maidul Islam Kayal Mr. Sayantan Hazra Ms. Tapati Sarkar .....advocates
For the Respondents	: Mr. Abhratosh Majumder, Sr. Adv. Mr. Subhabrata Datta Mr. Debasish Sarkar ... advocates
For the Union of India	: Mr. Kumar Jyoti Tewari, Ms. Ashima Roy Chowdhury, Mr. Tirthapati Acharyya ... advocates
Reserved on	: 10.04.2024
Judgment on	: 02.05.2024

Hiranmay Bhattacharyya, J.:-

1. These appeals at the instance of Ghani Khan Choudhury Institute of Engineering and Technology and its Director, Chairman and others are directed against a common judgment and order dated May 17, 2023 passed in a batch of writ petitions, the lead case being WPA 27966 of 2022.

2. M/s. Malda Construction Company filed two writ petitions being WPA 27966 of 2022 and WPA 28412 of 2022. WPA 28415 of 2022 was at the instance of Subham Enterprise. Gouri Construction filed two writ petitions being WPA 28417 of 2022 and WPA 28419 of 2022.

3. The aforesaid writ petitions were heard analogously by the learned Single Judge and were disposed of by a common judgment and order. The aforesaid appeals arise out of a common judgment and order and common

questions of law and fact are involved, for which the aforesaid appeals were heard analogously and are decided by this common judgment and order.

4. The writ petitions involve similar facts and there are minor factual differences including the dates of the correspondences exchanged between the parties. In order to avoid repetition and for the purpose of convenience, the facts of WPA 27966 of 2022 is summarised hereunder and the appeal being MAT 1412 of 2023 arising out of the said writ petition is treated to be the lead case.

5. The Superintending Engineer of Ghani Khan Choudhury Institute of Engineering and Technology, Malda (hereinafter referred to as "the Institute") issued a Notice Inviting Tender being No. 04 of 2013-2014 dated 27.01.2014 inviting enlisted bona fide contractors to participate in the tender in respect of six items of work relating to Land Development by Earth filling on low land ditches. Considering the rate quoted by the writ petitioner, the proposal of the writ petitioner was accepted and a work order was issued in favour of the writ petitioner on 28.02.2014 in respect of the item of work being (Sl. No. A). The Superintending Engineer handed over the site on March 03, 2014. The 1st and 2nd running bills raised by the petitioner on May 14, 2014 and June 20, 2014 respectively were honoured. Completion certificate was issued on January 7, 2015. The writ petitioner, by a letter dated February 23, 2015, requested the Superintending Engineer of the Institute i.e., the 4th appellant herein to release the payment against the 3rd Running Account cum Final Bill. Petitioner claims to have submitted several representations and the last of such representation was addressed to the Assistant Registrar (Finance) of the Institute bearing the date January 25, 2017. Being aggrieved by the withholding of the final payment against the work order issued in favour of the writ petitioner, the said writ petition was filed.

6. Institute contested the writ petition by filing a report in the form of an affidavit and the writ petitioner filed an exception to the report filed by the Institute.

7. The learned Single Judge noted that the Institute, by issuing the completion certificate, has admitted that the petitioners have successfully completed the work. The learned Single Judge observed that the non-payment of the petitioners' bills despite the petitioners' completing the work to the satisfaction of the Institute amounts to arbitrary and unreasonable conduct on the part of an entity amenable to Article 226 of the Constitution of India. After recording the aforesaid findings, the learned Single Judge allowed the writ petitions with a direction upon the Director of the Institute to release the amounts as indicated in the impugned order along with the security deposits furnished by the petitioners and with interest at 6% per annum with each of the amounts indicated in the said order from the dates on which the 3rd and final running account bills were raised to the dates of payment.

8. Being aggrieved, by the said judgment and order, the Institute has approached this Court with these intra-court appeals.

9. Md. Sarwar Jahan, learned Advocate appearing in support of the appeals contended that the Institute was established and placed under the mentorship of NIT, Durgapur till 06.08.2017. He submitted that the Chairman, Board of Governor was not eligible to execute tender works as per the Memorandum of Association of the Institute as he had no financial powers. He submitted that the final bills were raised by the agencies during the mentorship of NIT, Durgapur in the year 2015 and those were submitted before the mentor Institute namely NIT, Durgapur for releasing the payment. He submitted that the Assistant Engineer of the Institute appointed by NIT, Durgapur made a note of objections on 03.06.2016 in connection with the bills in question and the NIT, Durgapur did not release the payment towards the agencies and returned all the original files related to the said works. He further submitted that each items of work under the Notice Inviting Tender

in question were in excess of Rupees Thirty lakhs which should have been assigned to a public work organization and not to the writ petitioners. He concluded by submitting that the impugned order is liable to be set aside.

10. The learned Advocate representing Union of India/ respondent no.3 contended that the final bill was submitted and request for releasing the payment was made on February 23, 2015 and the writ petition was filed only in the month of December 2022. He submitted that the claim for realization of money on account of work performed had already become time barred when the writ petition was filed. He contended that money claims arising out of contractual obligations should not be entertained by a writ court. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Union of India and ors. vs. Puna Hinda*** reported at ***(2021) 10 SCC 690*** and ***Bharat Coking Coal Limited and Ors. vs. Amr Dev Prabha and Ors.*** reported at ***(2020) 16 SCC 759***. He therefore, submitted that the learned Single Judge ought not to have entertained the writ petitions.

11. Mr. Majumdar, learned Senior Counsel appearing for the writ petitioners/ respondent nos. 1 and 2 seriously disputed the submissions of the learned Advocates for the appellants and the 3rd respondent. He contended that the writ petitioners successfully completed the works allotted to it which would be substantiated by the completion certificate issued by the Institute. He contended that the payment against the 1st and 2nd running bills had been released in favour of the writ petitioners and the balance amount raised in the final bill is nothing but an admitted due. He submitted that the learned Single Judge was right in granting relief in favour of the writ petitioners as the Institute being an entity amenable to Article 226 of the Constitution behaved arbitrarily by not releasing payment of undisputed amount. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Surya Constructions vs. State of Uttar Pradesh and Others*** reported at ***(2019) 16 SCC 794***. Mr. Majumdar relied upon a decision in the case of ***M.P. Power Management Company Limited,***

Jabalpur vs. Sky Power South-East Solar India Private Limited and Ors. reported at ***(2023) 2 SCC 703*** in support of his contention that an aggrieved party can approach the writ court seeking payment of the amounts arising out of contractual obligation. Mr. Majumdar contended that the Institute cannot be permitted to raise the points indicated in the CAG report as a defence against the claim of the writ petitioners as the CAG report is not sacrosanct as the same is subject to parliamentary debates. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Arun Kumar Agrawal vs. Union of India and ors.*** reported at ***(2013) 7 SCC 1***. For the same proposition, Mr. Majumdar placed reliance upon a decision of a co-ordinate bench in the case of ***KMDA & Another vs. Riddhi Siddhi Mall Management Pvt. Ltd. & others*** reported at ***2018 SCC Online Cal 12876***.

12. Heard the learned Advocates for the parties and perused the materials placed.

13. The writ petitioners have prayed for a direction upon the Institute to compel the Institute to honour its contractual obligations of making payment.

14. Serious objections as to the maintainability of the writ petitions have been raised by the appellants as well as by the Union of India i.e., the 3rd respondent. Therefore, this Court shall proceed to decide such issue first.

15. The Institute is a Central Government funded technical institute. That the said Institute is amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India is not in dispute. The contract entered into between the Institute and the writ petitioners is a non-statutory one. The rights of the parties to the contract in the case on hand are governed only by the terms of the contract.

16. The issue whether a matter which lies entirely within a private realm can be dealt with under a writ jurisdiction against an entity amenable to such jurisdiction cropped up in ***M.P. Power Management*** (supra). The Hon'ble Supreme Court culled out the conclusions in paragraph 82 of the said reports which is extracted hereinafter.

"82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

*82.2. *****

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se, arbitrary.

*82.4. *****

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.
*82.8. ******** "*

17. The proposition of law laid down by the Hon'ble Supreme Court in the aforesaid reports is that even in case of non-statutory contract, the

jurisdiction of the writ court can be invoked if the aggrieved party is able to establish that the action of the entity amenable to writ jurisdiction is per se arbitrary. The said decision also recognizes the right of an aggrieved party to call upon such an entity to honour its obligation of making payment unless a serious and genuine dispute is raised relating to the liability to make such payment.

18. Before arriving at a final conclusion as to whether the judgment and order impugned calls for interference, this Court has to turn back to the case on hand to see whether there is a serious and genuine dispute relating to the liability to make payment.

19. The stand of the Institute in the report filed in the form of an affidavit before the writ court that the Institute was established and placed under the mentorship of NIT, Durgapur, in the absence of its regular Director and the mentorship continued till 06.08.2017 and also that the Institute got its first director on and from 07.08.2017 does not appear to have been disputed by the writ petitioners.

20. It further appears that the Government of India, Ministry of Human Resource Department, Department of Higher Education by a letter dated 13th March, 2014 addressed to the Accounts Officer, Pay and Accounts Office of the Department of Higher Education conveyed the sanction for the payment of the final installment of Grant in Aid during the Financial Year 2013-14. It appears therefore that the said Grant in Aid was released to the NIT, Durgapur for utilization on account of the Institute. The said Grant in Aid was subject to the condition that the same is to be utilized for development of land in the campus as per the norms approved by the Government and subject to the provisions contained in the General Financial Rules (for short “GFR”). It was also stipulated therein that the amount so paid to the grantee shall be open to inspection by the Government of India and the Accounts shall be audited by the Comptroller and Auditor General of India (CAG).

21. The work order issued in favour of the writ petitioner for Land Development by earth filling on low land ditches were during the period when the Institute was under the mentorship of the NIT, Durgapur. The 3rd running account cum final bill was submitted on February 23, 2015 i.e., during the mentorship of NIT, Durgapur. The dispute in the instant writ petition is non disbursal of the amount raised in the Final Bill.
22. The Institute claims to have submitted the Final Bills raised by the writ petitioners before the NIT, Durgapur Government of India, by a letter dated 18th March 2015 while conveying its decision to release the Plan Grant for the financial year 2014-15 requested NIT, Durgapur to clear all pending bills submitted by the Institute immediately. However, it was clarified that if NIT, Durgapur finds that any expenditure by the Institute is against the prescribed procedure or rules or beyond the sanctioned amount then that may immediately be brought to the notice of the Ministry and it may be ensured that prescribed procedures and rules are complied with totally by the Institute.
23. It further appears from the said affidavit that the Assistant Engineer (Civil) of the Institute made a note of objections on 03.06.2016 in connection with the bills in question and the NIT, Durgapur accordingly returned the original file relating to the works in question without releasing the payment. Therefore, the amount claimed in the Final Bill cannot be said to be an admitted one.
24. The affidavit filed by the Institute refers to the CAG report which noted that the entire construction work of the Institute was entrusted to NBCC by virtue of MOU signed between the Institute and NBCC. The said report pointed out that the requirement of "Land Development by Earth Filling" was not referred to in the declared estimate of NBCC. It also referred to a letter of the NBCC addressed to the Institute that NBCC were not intimated about the execution of earth filing work and also that the same was causing hindrance to the construction work due to slush after rains. CAG report states that the expenditure amounting to Rs. 1023.51 lakhs for earth work

was outside the plan and the estimate prepared by the NBCC was irregular. The said report further states that as per Rule 126 of GFR 2005, the Ministry and Department may at its discretion execute original work only upto Rupees Thirty lakhs above which the work should have been assigned to a public work organisation.

25. Mr. Majumdar would contend that adverse observation in the CAG report cannot be used as a defence to defeat the claim of the writ petitioners as such report is not sacrosanct.

26. On the issue as to whether reliance can be placed on the CAG report in order to adjudicate the issues involved in the writ petition, it would be profitable to note the observations of the Hon'ble Supreme Court in ***Arun Kumar Agrawal*** (supra). In paragraph 68 of the said reports it was observed that since the CAG report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective Ministers have to offer on the CAG's report.

27. In ***Riddhi Siddhi Mall Management*** (supra), a co-ordinate bench did not go into the correctness or otherwise of the report as the CAG was not before the Court.

28. Even if the argument of Mr. Majumdar is accepted that the adverse observations in the CAG report cannot cloud the writ petitioners' right to claim payment but the larger issue would be whether the remedy in the case on hand is barred.

29. In ***Puna Hinda*** (supra), the Hon'ble Supreme Court while reiterating that there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised, held that discretion lies with the High Court which under certain circumstances can refuse to exercise such discretion. The Hon'ble Supreme Court specified the circumstances where normally the Court would not exercise such a discretion. It was held that money claims

per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

30. Therefore, this Court has to consider as to whether the learned Single Judge was right in exercising discretion in favour of the writ petitioners.

31. Three Hon'ble Judges of the Supreme Court in ***Bharat Coking Coal Limited*** (supra) held that merely because the accusations made are against the State or its instrumentalities it does not mean that an aggrieved party can bypass established civil adjudicatory process and directly seek writ relief.

32. From the aforesaid discussion, this Court is of the considered view that in case of alleged violation of a contractual right or duty by the State or its instrumentalities or entities amenable to jurisdiction under Article 226, normally the aggrieved person has to avail the established civil adjudicatory process and only in exceptional circumstances in contractual matters or even when money claim is raised, the writ court may in exercise of its discretion entertain the writ petition.

33. In the case on hand, the allegation of the writ petitioners is with regard to violation of a contractual right. The writ petitioners have claimed payment on account of work done by them. The dispute, therefore, is within the private realm. In order to maintain a writ petition involving such a dispute, the writ petitioners have to satisfy the Court that the case falls within the exceptional circumstances. The conduct of the writ petitioners may be of some relevance for deciding whether the case of the writ petitioners fall within the exceptional circumstances.

34. The completion certificate was issued was January 7, 2015; the Final Bill was submitted on February 23, 2015; and the writ petition was filed only in December, 2022. Limitation Act prescribes the period of limitation for filing a suit involving a money claim. Going by the sequence of events as pleaded by the writ petitioner it appears to this Court that a civil suit for such relief may have become time barred at the time of institution of the writ petition. The question would be whether an aggrieved party can knock the door of the

Writ Court even after the period of limitation prescribed for filing a civil suit for such relief has expired merely because of the fact that there is no prescribed period of limitation for filing a writ petition. It is now judicially settled that the writ petition has to be filed within a reasonable time of accrual of the cause of action. Delay and laches disentitles an aggrieved person to discretionary relief under Article 226 of the Constitution of India.

35. This Court, therefore, holds that the period prescribed under the Limitation Act for filing a suit shall be considered to be the reasonable time period for filing a writ petition involving money claim. Any contrary interpretation would encourage an aggrieved person, not vigilant of his rights, to get a claim arising out of contractual matters adjudicated through judicial process which has already become time barred.

36. In the case on hand there has been an inordinate delay in filing the writ petition which remains unexplained. The writ petitioners have failed to satisfy this Court that a civil suit for such reliefs would not have become barred by limitation at the point of time when the writ petition was filed. Such an issue goes to the jurisdiction of the Court which somehow escaped the attention of the learned Single Judge. Therefore, it appears to this Court that there is a serious dispute as to the liability to make payment.

37. To the mind of this Court, the writ petitioners have miserably failed to bring their case within the exceptional circumstances for the Writ Court to entertain a money claim for alleged violation of a contractual right by an entity amenable to the jurisdiction under Article 226 of the Constitution of India.

38. For the reasons as aforesaid, this Court is of the considered view that the writ petitioners could not have been allowed to bypass the established civil adjudicatory process merely because the claim is against an entity amenable to writ jurisdiction. This Court, therefore, holds that the writ petitions were not maintainable.

39. It appears that Issuance of Completion Certificate in favour of the writ petitioner forms the basis of the decision to grant relief by the learned Single

Judge. The aforesaid relevant factors as indicated in the preceeding paragraphs, goes to the root of the jurisdiction of the Court to grant relief, non-consideration of which amounts to improper exercise of discretion by the Learned Single Judge for which this Court is inclined to interfere with the impugned judgment and order in these intra court appeals.

40. ***Surya Constructions*** (supra) cannot come to the aid of the writ petitioners /respondents as the money claim therein was not disputed, whereas in the case on hand, the claim for payment of money cannot be said to be an admitted one in view of the note of objections dated 03.06.2016 of the Assistant Engineer of the Institute and the consequent return of the original file by the mentor, NIT, Durgapur.

41. For the reasons as aforesaid the appeals stand allowed. The impugned judgment and order stands set aside. The connected applications stand disposed of. Writ petitioners/ respondents are left free to approach the proper forum for appropriate reliefs in accordance with law. Before parting, this Court makes it clear that the aforesaid observations are only to support the ultimate conclusions in these appeals and the same shall not prejudice the parties in case the proper forum is approached.

    There shall be, however, no order as to costs.

42. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.) **(Hiranmay Bhattacharyya, J.)**