

GAHC040004192023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/164/2023

M/s Peno Enterprises

Represented by its sole proprietor Shri Bamang Mangha, Bamang Cottage, G
Extension, Naharlagun, District Papum Pare, Arunachal Pradesh. 791110

VERSUS

THE STATE OF AP and 5 Ors.

Represented by the Secretary, Rural Work Department, Govt. of Arunachal Pradesh,
Itanagar 791111 2:The Chief Engineer

Age: 0

Occupation :

3:The Chief Executive Officer

Age: 0

Occupation :

4:The Empowered Officer

Age: 0

Occupation :

5:The Executive Engineer/DPIU II

Age: 0

Occupation :

6:The Secretary

Age: 0

Occupation

Advocate for the Petitioner : J Likha

Advocate for the Respondent : Gimi Tarak

**BEFORE
HONBLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

03.10.2023

Heard Mr. R. Cheri, learned counsel for the petitioner. Also heard Mr. G. Tarak, learned Standing Counsel, Rural Works Department representing respondent Nos.1 to 5 and Mr. M. Kato, learned Dy. S.G.I. representing respondent No.6.

2. By filing this writ petition the petitioner has prayed for issuing a direction to the respondent authorities to release the contractual dues of Rs.2,74,00,213.18/- (Rupees Two Crores Seventy-Four Lakhs Two Hundred Thirteen) for the work executed by the petitioner for "*Construction Road from Sangbia Camp to Paffa (Stage-II) Package No.AR/03/ 01/034.*"

3. The case of the petitioner, in brief, is that the Government of Arunachal Pradesh published an NIT/E- Procurement Notice through the office of Executive Engineer, Rural Work Division, Seppa, Government of Arunachal Pradesh on 08.07.2013 for the "*Construction Road from Sangbia Camp to Paffa(Stage-II) Package No.AR/03/01/034*" with estimated cost of Rs.9, 12, 31, 279.88/- only for the construction of road and the time frame for completion of work was 18 months.

4. Pursuant to the aforesaid NIT/E-Procurement Notice the Petitioner Firm submitted online tender along with all the necessary documents. The petitioner

firm was qualified in the technical and financial bid too and thereafter, the respondent No.5 accepted the bid of the Petitioner Firm vide letter of Acceptance bearing No.SRWD/PMGSY/PH-X/13-14, dated 11.09.2013. The final estimated cost of the aforesaid work was of Rs. 8,14,24, 279.88 for cost of execution of work and cost of maintenance works was of Rs.98,07,000/- as quoted by the petitioner firm.

5. Accordingly, the Petitioner Firm started the execution of works which was completed on 30.03.2020 and it was communicated to the Executive Engineer, RWD, Bameng Division, East Kameng District (AP) for issuance of completion certificate at the earliest. On 02.07.2020, again reminder letter was served to the Respondent No.5 for issuance of completion certificate and payment of remaining dues. The final verification of works was physically completed on dated 30.03.2020 which was verified by the respondent No.5 in the month of May, 2020 as per RTI documents furnished by the respondent No.5 on 06.06.2022. The bill of balance amount was Rs.1,41,92, 875.88/-(Execution of works pending amounts) & Rs. 98, 07,000/-(Maintenance works amounts), as per RTI documents furnished by the respondent No.5 on 06.06.2022. On 06.02.2023, the petitioner submitted a representation to the Respondent No.5 for releasing the pending bills/dues of Rs. 2,74,00,213.18/- against the construction of road from Sangbia Camp to Paffa PMGSY ROAD (Stage II) package No. AR/03/01/034. However, on 09.02.2023, the Respondent No.5 vide Letter No. SRWD/PMGSY/PH-XI/I-07/2017-18 informed the petitioner that the payment could not be made to the petitioner as per the Secretary (RWD) Letter No.SRWD-10/PMGSY/1/2019-242, dated 01.11.2019, wherein it was directed not to release any payment towards all 12 controversial PMGSY projects falling under SIC & MoRD case including C/o, road from Sangbia Camp to Paffa, Stage-

II till further proper payment order.

6. Owing to the non-payment of the pending bill amount of Rs. 2,74,00,213.18/-(Project Balance bill of Rs.1,41,92,875.88/-, For 3 years maintenance bill of Rs. 58,84,200/-, Security Deposit of Rs. 50,42,355.3/- and Earnest Money of Rs. 22,80,782/-) and highly aggrieved by the impugned action resorted to by the respondent authorities, the petitioner has filed the instant writ petition.

7. Mr. R. Cheri, learned counsel for the petitioner, submits that on 21.02.23023, the Under Secretary (Vigilance), Government of Arunachal had communicated to the Superintendent of Police, SIC(Vigilance), Itanagar, Government of Arunachal Pradesh vide letter No.VIG-33/2017/2034, dated 21.02.2023 wherein it has been stated that "*I am directed to inform you that the Competent Authority has approved the request for the closure of SIC Vigilance PS Enquiry No.37/2017 regarding gross irregularities in the 12(Twelve) PMGSY Scheme Roads in the East Kameng District Arunachal Pradesh. This may be treated as closure of the complaints*".

8. Mr. Cheri also submits that in a similarly situated matter, i.e., Construction of road from Bameng to Lada under Package No.AR/03/01/021, which is in serial No.7 vide Order No.SRWD-10/PMGSY/1/2019-242, dated 01.11.2019, this Court directed to release the payment within one month vide order, dated 15.03.2023, passed in WP(C) No.194/2022.

9. Mr. G. Tarak, learned Standing Counsel, Rural Works Department representing respondent Nos. 1 to 5 and Mr. M. Kato, learned Dy. S.G.I.

representing respondent No.6. have conceded with the submission made by the learned counsel for the petitioner and have not disputed the entitlement of the petitioner to receive the amount of Rs.2,74,00,213.18/- (Rupees Two Crores Seventy-Four Lakhs Two Hundred Thirteen).

10. Having considered the submissions made by the learned counsel for both sides as well as the averments made in the petition and as the prayer of the petitioner is not opposed by the learned counsel for the respondents, this Court is of the opinion that the petitioner is entitled to receive the undisputed amount of Rs.2,74,00,213.18/- (Rupees Two Crores Seventy-Four Lakhs Two Hundred Thirteen) minus the amount of security deposit and earnest money, for the work executed by the petitioner for "*Construction Road from Sangbia Camp to Paffa (Stage-II) Package No.AR/03/01/034.*"

11. Accordingly, the respondent authorities are directed to release the payment of Rs.2,74,00,213.18/- (Rupees Two Crores Seventy-Four Lakhs Two Hundred Thirteen) minus the amount of security deposit and earnest money, for the work executed by the petitioner for "*Construction Road from Sangbia Camp to Paffa (Stage-II) Package No.AR/03/ 01/034*" **within a period of 2(two) months** from the date of receipt of a certified copy of this order, which shall be furnished by the petitioner.

With the above direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant