

GAHC040009422020



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

Case No. : WP(C)/357/2020

Sama Dodum
S/O LT. TAJE DODUM, RESIDENT OF GOHPUR, TINALI, ITANAGAR, PO/PS
RK MISSION, ITANAGAR, PAPUM PARE DISTRICT, AP.

VERSUS

The State of AP and 4 Others
THROUGH THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR. 2:THE
SECRETARY

Age: 0

Occupation :

3:THE DIRECTOR

Age: 0

Occupation :

4:THE EXECUTIVE ENGINEER

Age: 0

Occupation :

5:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST CUM PRINCIPAL
SECRETARY

Age: 0

Occupation

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 26.07.2023

Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Ms. G. Ete, learned Additional Senior Government Advocate for the respondents No. 1 & 5; Mr. N. Pada, learned Standing counsel for the Tourism Department, representing the respondents No. 2 & 3 and Mr. G. Tarak, learned Standing counsel for the Rural Works Department (RWD) representing the respondent No. 4.

2. This writ petition has been filed seeking payment of sum of Rs. 38,67,425/- (Rupees Thirty-Eight Lakh Sixty-Seven Thousand Four Hundred Twenty-Five Only) payable to the writ petitioner on account of the additional contract works, the details of which is stated to have been fully mentioned in paragraph-5(G) of the writ petition. Paragraph-5(G) reads as under:

“...(G). Therefore, in view of the above instruction and assurance, which had been given by the higher and responsible government authority, the writ petitioner readily agreed and thereby, successfully completed the additional contract works as per the technical specification and supervision of the officials concerned of the Rural Works Department, Poma Division. The details of the Additional Contract works carried out by the writ petitioner and the corresponding payable pending bill amount are as follows:

Details of the Additional Contract Work at Ganga Lake, Itanagar:

<u>Sl.</u>	<u>PARTICULARS OF WORK</u>	<u>DUE PAYMENT</u>
<u>1.</u>	<u>Four staff quarters with</u>	<u>Rs. 29,67,425/-</u>

	<i>attached toilets and bathrooms;</i>	
2.	<i>Septic Tank;</i>	<i>Rs. 2,00,000/-</i>
3.	<i>Police bed point/police duty room;</i>	<i>Rs. 3,00,000/-</i>
4.	<i>Restaurant</i>	<i>Rs. 4,00,000/-</i>
<i>Rs. 38,67,425/-]”</i>		

3. The respondents No. 2 & 3 has filed a counter-affidavit, wherein, the averments made by the petitioner in paragraph-5(G) of the writ petition has been answered in paragraph-8, hereunder:

“...8. That in regards to the statement made in sub-para-C, D, E, F and G of paragraph-5 of the Writ petition the deponent unequivocally clarify hereon that the so-called construction of 4 (four) room staff quarters, septic tank, police out post and restaurant as mentioned by the petitioner must have been undertaken and carried out by him from his own resources and at his own capacity. Towards that end the deponent further clarifies that the petitioner did not obtain any prior permission and requisite approval from the tourism department before carrying out any such construction work. Situated thus, the department of Tourism cannot be blamed for a work which was not known to it nor was ever approved by it.”

4. On perusal of the contention raised by the writ petitioner, as stated in paragraph-5(G) of the writ petition, quoted herein above, is that the writ petitioner had executed additional contract work, mentioned therein, for which he is entitled to be paid Rs. 38,67,425/-. To the above averments made by the writ petitioner, the respondents No. 2 & 3 in Paragraph-8 of the counter-affidavit filed, which has also been quoted herein above, has stated that the construction stated to be undertaken by the petitioner must have

been undertaken and carried out by him through his own resources and at his own capacity. The Department of Tourism had never approved and asked the petitioner to undertake any such construction.

5. In view of the above, it being the settled position of law that writ Court insofar as payment of bills is concerned can be entertained only when such a bill is admitted by the respondent authorities. In the instant case, there being no any such admission by the respondent authorities, rather a specific denial by the respondent authorities in the counter-affidavit filed to the effect that the Department of Tourism did not authorize the petitioner to undertake any such construction, there is no merit in the writ petition requiring any interference by this Court in exercise of power under Article 226 of the constitution of India.

6. Mr. R. Sonar, learned counsel for the petitioner by referring to the pleadings made in Paragraph-5 E of the writ petition has further contended that the additional work referred to herein above was executed by the petitioner on a direction by one Er. Toko Otu. Er. Toko Out is stated to be an Engineer of the Rural Work Department. The learned counsel for the petitioner further contends that pursuant to the additional work executed by the petitioner as above, the Department of Tourism is using the infrastructures constructed by the petitioner and because of the above facts, in terms of the provision of Section 70 of the Indian Contract Act, 1872, the Department of Tourism is duty bound to compensate the petitioner for the additional work the petitioner has executed.

7. In support of his contention, Mr. Sonar, learned counsel for the petitioner has relied on the following decisions:-

- I. Jarka Gamlin Vs. Tummar Bagra and Ors., reported in (2009) 4 GLT, 314.
- II. Girin Deka Vs. Union of India, reported in (2023) SCC Online Guwahati, 2150.
- III. Purushottamlall Basudeo Vs. State of Assam and Ors., reported in 2020 (3) GLR 415.
- IV. State of West Bengal Vs. B. K. Mondal and Sons, reported in AIR 1962 SC 779.

8. I have considered the contention advanced and the decisions relied on by the learned counsel for the petitioner.

9. Section 70 of the Indian Contract Act, 1872 reads as under:-

“70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

10. On reading of Section 70 of the Indian Contract Act, 1872, it appears that the three ingredients to support the cause of action, under Section 70 of the Indian Contract Act, 1872 are the following:-

Firstly, the goods are to be delivered lawfully, or anything has to be done for another person lawfully;

Secondly, the things done or the goods delivered is to be done or delivered, not intending to do so gratuitously and

Third, the person to whom the goods are delivered enjoys the benefit thereof.

11. In Paragraph-8 of the counter-affidavit filed by the respondent Nos. 2 & 3, which has been already quoted herein above, the Department of Tourism

has made a categorical statement that the construction of an additional work stated to be undertaken by the petitioner must have been undertaken and carried out through him by his own resources and at his own capacity and the Department of Tourism had never approved and asked the petitioner to undertake any such construction.

12. In view of the above averments made by the Department of Tourism that the Department of Tourism had never approved the additional work done by the petitioner, it cannot be said that the petitioner had executed the additional work lawfully and therefore the First ingredient of Section 70 of the Indian Contract Act is found to be absent in the instant case.

13. The petitioner may have executed the additional work not intending to do so gratuitously and thereby may have fulfilled the Second ingredient of Section 70 of the Indian Contract Act, but, in so far as the Third ingredient of Section 70 of the Indian Contract Act, which is that the additional work executed by the petitioner has been used or enjoyed by the Department of Tourism in the counter-affidavit filed, the respondent Nos. 2 & 3 has not unequivocally admitted of such use made by the Department of Tourism on the additional work executed by the petitioner.

14. In the absence of such admission in the counter-affidavit filed by the Department of Tourism that the Department of Tourism has been using the additional work that has been executed by the petitioner, it may not be possible for this Court exercising jurisdiction under Article 226 of the Constitution of India to record a categorical finding that the additional work executed by the petitioner has been used and enjoyed by the Department of Tourism. As such, it cannot, therefore, be said that the Third ingredients of

Section 70 of the Indian Contract Act has also been attracted in the instant case.

15. Under the aforesaid facts and circumstances of the case, this Court is of the considered view that no direction can be issued to the respondent authorities to compensate the petitioner for the additional work alleged to have been executed by the petitioner as above, in terms of Section 70 of the Indian Contract Act, 1872.

Accordingly, I find no merit in this writ petition and the same stands dismissed.

JUDGE

Comparing Assistant