

GAHC010005172014



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

Case No. : WP(C)/381/2014

BIRENDRA NATH BHUYAN
S/O- LT. RUDRESWAR BHUYAN, R/O- MAHURAMUKH HAHCHARA GAON,
P.O.- MAHURAMUKH, P.S.- KAMARGAON, DIST.- GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER and SPECIAL SECY. TO THE GOVT. OF
ASSAM, P.W.R.D., DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
P.W.D. ROADS
ASSAM
CHANDMARI
GHY- 3
DIST.- KAMRUP
ASSAM.

3:THE EXECUTIVE ENGINEER
P.W.D. GOLAGHAT STATE ROAD DIVISION
BOKAKHAT
DIST.- GOLAGHAT
ASSAM
PIN- 785615.

4:THE DY. COMMISSIONER
GOLAGHAT
DIST.- GOLAGHAT
ASSAM
PIN- 785621.

5:THE DY. ELECTORAL OFFICER
ASSAM

DISPUR
GHY- 6
DIST.- KAMRUP
ASSAM.

6:THE DIST. ELECTION OFFICER
BOKAKHAT
P.O. and P.S.- BOKAKHAT
DIST.- GOLAGHAT
ASSAM
PIN- 785615.

7:THE SUB-DIVISIONAL OFFICER CIVIL
BOKAKHAT
P.O. and P.S.- BOKAKHAT
DIST.- GOLAGHAT
ASSAM
PIN- 785615.

8:THE ASSTT. EXECUTIVE ENGINEER
P.W.D. GOLAGHAT STATE ROAD SUB-DIVISION
GOLAGHAT
P.O.
P.S. and DIST.- GOLAGHAT
PIN- 785621.

9:THE ASSTT. EXECUTIVE ENGINEER
P.W.D.
BOKAKHAT STATE ROAD SUB-DIVISION
BOKAKHAT
P.O. and P.S.- BOKAKHAT
DIST.- GOLAGHAT
ASSAM
PIN- 785615

Advocate for the Petitioner : MR.P PATHAK
Advocate for the Respondent : SC, PWD

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri P. Pathak, Sr. Advocate
Ms. S. Bokht

Advocates for the respondents : Shri P. Nayak, SC, PWD
Shri DK Sarmah, Addl. Sr. GA, Assam

Date of hearing : **21.03.2023**

Date of Judgment : **28.03.2023**

JUDGMENT & ORDER

The instant writ petition has a chequered history of more than a decade when the petitioner has been time and again required to approach this Court for redressal of a grievance which has arisen for certain works done by him in the wake of the Assam Assembly Election of 2011. The petitioner had filed writ petitions in which directions were issued in favour of the petitioner. The writ appeal filed by the Department against such direction was also dismissed and the contempt petition was closed on the basis of certain communications which gave an idea that the grievance of the petitioner would be completely redressed. However, eventually, the same did not lead to complete redressal as a result of which, the present writ petition has been filed.

2. To address the issues, it is necessary to put on record the facts of the case in brief.

3. The petitioner is a registered contractor under the Public Works Department (PWD) Golaghat. In the wake of the State Elections of 2011, a number of works were taken up by the State Government including in respect of LAC No. 93 - Bokakhat with which the present *lis* is concerned. It is the case of the petitioner that various works relating to repair roads, culverts and bridges leading to various polling stations were allotted to the petitioner for urgent execution. The petitioner had completed all the works allotted within time and this fact is not disputed. In this connection the petitioner has referred to a certificate issued by the Golaghat State Road Division, Bokakhat certifying that 100% of the job was completed by the petitioner. Accordingly, the petitioner had raised a bill of Rs.121.929 lacs.

4. Since, the aforesaid amount was not paid, the petitioner was facing grave hardships for which, he had to approach this Court by filing WP(C)/3931/2012. In the said proceedings, it transpires that though the original amount was Rs.121.929 lacs, it was only the estimate which upon calculation was actually found to be Rs.105.421 lacs. Another issue was highlighted by the respondents regarding lack of administrative approval and other formalities. However, the fact of due execution of the work and its completion were admitted. Under those circumstances, this Court vide order dated 14.12.2012 had directed the Department to pass appropriate orders within 31.01.2013.

5. On such remand and in spite of all the discussions on the facts and circumstances and the observations made by this Court, the PWD had passed an order dated 16.01.2013 declining payment of any amount to the petitioner on the ground that the same was executed without maintaining any formalities.

6. Being aggrieved, the petitioner had to approach this Court again by filing WP(C)/348/2013. This Court vide order dated 19.02.2013 had interfered with the matter by setting aside the impugned order dated 16.01.2013. The Court specifically observed that in the earlier proceeding, the Department had clearly admitted the fact that the petitioner had completely executed the work in question which was urgent in nature for the ensuing elections and therefore, they were estopped from raising the plea of formality to deny the petitioner from his due entitlement. This Court accordingly, directed the Department to clear the admissible amount to the petitioner preferably within four months.

7. The aforesaid order dated 19.02.2013 was however tested by the Department by preferring a writ appeal before the Hon'ble Division Bench which was registered as WA/97/2013. The Hon'ble Division Bench however was not inclined to accept the submission made to the effect that since the work was done at the instance of the Deputy Commissioner and not the PWD, payments could not be done. The Hon'ble

Division Bench vide an order dated 06.05.2013 has held as follows:

"Grievance in this appeal filed by the State of Assam is that work executed by the respondent-writ petitioner for which the payment was being sought was done at the instance of the Deputy Commissioner and not by the P.W.D.

If the work has been got executed at the instance of one department and the other department makes any payment, it is an inter departmental matter which may be sorted out between the two departments and settled at the appropriate level.

No ground is, thus, made out to interfere with the order passed by the learned Single Judge.

The appeal is dismissed."

8. After such dismissal of the appeal preferred by the State, the PWD had made budget allocation and in respect of the present case, the amount was Rs.7523.345 thousand. It is the case of the petitioner that the estimated amount which was already revised from Rs.121.929 lacs to Rs.105.421 lacs, the respondents could not have further reduced the amount to Rs.7523.345 thousand.

9. I have heard Shri P. Pathak, learned Senior Counsel assisted by Ms. S. Bokht, learned counsel for the petitioner. I have also heard Shri P. Nayak, learned Standing Counsel, PWD whereas the State is represented by Shri DK Sarmah, learned Additional Government Advocate, Assam. Shri Nayak, learned Standing Counsel, PWD has also produced some documents in original including the Measurement Books, which have been carefully examined.

10. Shri Pathak, the learned Senior Counsel for the petitioner has submitted that the exercise of revision of the estimated amount has already been undertaken once when the original amount of the work was reduced from Rs.121.929 lacs to Rs.105.421 lacs and the said fact has also been stated on affidavit in the earlier

proceeding before this Court which this Court had taken cognizance of. After such disclosure and admission, further reduction, that too for an amount of more than Rs.30 lacs would be absolutely illegal and unreasonable as the amount in question is a legal entitlement for the petitioner.

11. The learned Senior Counsel for the petitioner has further submitted that the issue arising in this case has already been decided on principle by this Court which has also been upheld by the Hon'ble Division Bench in its order dated 06.05.2013 passed in WA/97/2013. The only issue was regarding payment / release of the amount which was clearly arrived at after reducing of the original estimate. In that view of the matter, it is submitted that a direction be issued to clear the balance amount.

12. *Per contra*, Shri Nayak, learned Standing Counsel, PWD has submitted that the amount of Rs.105.421 lacs was only in the realm of estimate which would not vest any right to the petitioner to claim. He further submits that the work was done without maintaining the formalities including the sanction letters etc. and therefore, there is grave doubt on the entitlement of the petitioner.

13. The learned Standing Counsel has also drawn the attention of this Court to the affidavit-in-opposition dated 26.02.2018 filed by the Commissioner & Special Secretary, PWD (R) in which in paragraph 3 it has been stated that there was no work order and other formalities for the work in question and the petitioner had done the work at his own risk. By drawing the attention of this Court to the statements made in paragraph 8 of the affidavit-in-opposition, it is submitted that after the matter was remanded back, the entire works were re-examined and the Government vide order dated 28.11.2013 had sanctioned the amount of Rs.75.23345 lacs which the petitioner was accordingly paid. He submits that apart from annexing the sheets of the Measurement Book (MB), the same are also produced in original before this Court.

14. The learned Standing Counsel, PWD further submits that the work orders were issued on a later stage only to regularize the work in question.

15. In support of his submission, Shri Nayak, the learned Standing Counsel, PWD has relied upon a judgment of the Hon'ble Supreme Court dated 06.09.2021 passed in Civil Appeal No.4981/2021 **[Union of India Vs. M/S Puna Hinda]**. The observations made in paragraph 24 has been relied wherein it has been laid down as follows:

"Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of Joint Survey Report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads."

16. Rejoining his submission, Shri Pathak, the learned Senior Counsel for the petitioner has submitted that a bare look at the sheets of the MB would show that those are of the year 2013 and even the work orders are not matching. He submits that the work was completed in the year 2011 which mainly pertained to repairs and renovations of approach roads to different polling stations. The learned Senior counsel submits that even for the sake of arguments it is assumed that the work orders were issued in the year 2013 for regularization of the process, measurement done after two years cannot be a basis for making the calculations. It is submitted that the

assessment / calculations were already carried out earlier at the relevant time on the basis of which there has been a deduction of the estimate from Rs.121.929 lacs to Rs.105.421 lacs. Therefore, further deduction made on the basis of irrelevant consideration cannot be allowed.

17. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been dully perused. The MB placed before this Court in original has also been carefully examined.

18. The issue regarding the want of formalities in the execution of the work has been finally settled in the earlier round of litigations including the order dated 06.02.2013 by the Hon'ble Division Bench which had dismissed WA/97/2013 preferred by the State. Therefore, the said issue will not be permitted to be reopened in this proceeding. The only issue which requires adjudication is the issue of payment.

19. The materials before this Court including the orders passed by this Court in the earlier rounds of litigation would bring to a conclusion that though the initial estimate was Rs.121.929 lacs, after observations made by this Court and upon due diligence exercised by the Department on its own, the estimate was reduced to Rs.105.421 lacs. The said reduction however was not challenged by the petitioner.

20. What transpires now is that the revised estimate of Rs.105.421 lacs has been further reduced to Rs.7523.345 thousand. Such reduction has been said to be done on the basis of certain MBs which clearly is of the year 2013 whereas the work was completed in the year 2011. This Court finds force in the argument made on behalf of the petitioner that considering the nature of the work which is repairs and renovations of roads, culverts and bridges leading to polling stations which were urgent in nature in the wake of ensuing State Elections of the year 2011, measurement done in the year 2013 cannot be a just means to come to the exact figure / amount of works done. This Court has also observed that apart from the measurement done in the year 2013, those also appeared to be of different works in other districts and on a query,

this Court has been informed that the petitioner was also engaged in such works which are outside the purview of the present dispute.

21. The Standing Counsel, PWD had also tried to raise the issue of disputed questions of fact. The said issue, though may be available to be taken in a general case of contractual bills, in the instant case, the said issue is not available to the Department in view of the categorical statement of facts made in the affidavit-in-opposition filed in the earlier proceedings as well as the observation of this Court in its judgment and order dated 14.12.2012 in WP(C)/3931/2012, 19.02.2013 in WP(C)/348/2013 and the order dated 06.05.2013 passed by the Hon'ble Division Bench dismissing the appeal of the Department being WA/97/2013.

22. Therefore, it appears that the denial of the Department to release the balance amount of Rs.30,18,755/- is without any basis which is part of the legal entitlement of the petitioner even after reduction of the estimated amount from Rs.121.929 lacs to Rs.105.421 lacs. This Court is also of the view that since an exercise of due diligence has already been done reducing the estimated amount, it would not be open for the Department to further reduce the amount to the prejudice of the petitioner, that too on the basis of certain calculations in the MBs which *ex-facie* are unacceptable both on account of the dates of measurement as well as the works for which the measurement has been shown to be done.

23. It is submitted that the sheets of the MBs are also bearing the signature of the petitioner. However, Shri Pathak, learned Senior Counsel for the petitioner has submitted that the works for which the measurement have been taken, apart from being of the year 2013, are also pertaining to the different districts altogether. He submits that even if the signatures are not disputed it is clearly for different works done by the petitioner at subsequent point of time in different districts and therefore, that by itself would not act as a bar for the petitioner to raise the present issue. This Court is also of the humble opinion that the reference to the case of the Hon'ble

Supreme Court in the case of ***Puna Hinda (supra)*** would not come to the aid of the Department inasmuch as, the caveat on the exercise of jurisdiction of the High Court is for pure contractual matters in the matter of private law wherein disputed question of facts exist. However, in the instant case, the contract is against the State and with an element of public law involved and the questions of fact have already been settled by the earlier rounds of litigations.

24. In view of the aforesaid facts and circumstances, the instant writ petition stands allowed by directing the Public Works Department to release the balance amount of Rs.30,18,755/- within a period of 45 days from today, failing which, the amount would carry interest at the rate of 12% per annum.

25. No order as to cost.

26. The records of the case in original including the MBs are returned back to Shri P. Nayak, learned Standing Counsel for the PWD.

JUDGE

Comparing Assistant