

GAHC010007862015



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

Case No. : WP(C)/507/2015

RAMAWATAR BHARTIA
CLASS 1A GOVT. CONTRACTOR, S/O SRI PANNALAL BHARTIA, R/O 201,
ROYAL ARCADE, B. BARUAH COLLEGE ROAD, ULUBARI, GHY-7

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, PWD,
DISPUR, GHY-6, ASSAM

2:STANDING EMPOWERED COMMITTEE
REP. BY ITS CHAIRMAN
PWD
DISPUR
ASSAM

3:THE CHIEF ENGINEER
PWDR
CHANDMARI
GHY-3
ASSAM

4:THE SUPERINTENDING ENGINEER
PWD NAGAON ROADS CIRCLE
NAGAON

5:THE EXECUTIVE ENGINEER
PWDR
CHANDMARI
GHY-3
ASSAM

6:THE BRANCH MANAGER
AXIS BANK LTD.
PALTAN BAZAR BRANCH
GUWAHATI
ASSA

Advocate for the Petitioner : MR.P DEKA

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 14.02.2023

Heard Mr. P. Deka, learned counsel for the petitioner and Mr. P. Nayak, learned standing counsel, PWD.

2. This writ petition is filed by the petitioner challenging the order of the Standing Empowered Committee rejecting his claims for payment of works executed in compliance of the work orders issued to him in respect of- '*BIDDING DOCUMENTS FOR CONSTRUCTION/ UPGRADATION & MAINTENANCE OF RURAL ROADS UNDER PRADHAN MANTRI GRAM SADAK YOJANA (PMGSY) Rural Road Sector-II-Project Funded by ADB, Year 2005-2006*'. The said contract was initiated by the office of the Chief Engineer, PWD (Roads), Assam, Chandmari, Guwahati-3. The petitioner applied for Package No. AS-1712 (ADB) for the District- Morigaon and was awarded the contract. Pursuant to the petitioner being accepted as a bidder, an agreement was duly executed by and

between the petitioner and the respondent authority. In terms of the contract, the petitioner is to execute the work within the periods specified and thereafter, provide maintenance for five (5) years. The said contract was under PRADHAN MANTRI GRAM SADAK YOJANA (PMGSY) scheme. As per the terms of the contract, the petitioner deposited the necessary security deposits EMDs etc along with its bill, which were required to be returned after executing completion of the work as per the satisfaction of the authorities concerned. According to the petitioner works executed were duly completed as per the permissions of the contract. After completion of the work there was some dispute with regard to the maintenance of the road constructed. According to the petitioner there were some portions of the road which required maintenance and on which he had carried out the maintenance as required. However, according to the department, the said maintenance required to be carried out as per the terms of the contract were not done and the same eventually had to be carried out by engaging the separate contractors. This according to the department is atreach of the terms and conditions of contract as agreed upon and therefore, the employers namely the respondents were entitled to retain 50% of the fixed deposit. Accordingly, from the amount of EMDs security deposit submitted by the petitioner, 50% was refunded but 50% of the said amount i.e. Rs.26,93,508.00 were deducted from the bills of the petitioner and retained by the department.

3. Being aggrieved petitioner represented before the department under the terms of the contract as per Clause 24, the matter was referred to the Standing Empowered Committee. The Standing Empowered Committee upon due deliberations in the matter vide order dated 29.08.2014 passed the following order:-

“ FINDINGS :-

- The work Construction of road from Morigaon to Moirabari including C.D. work and maintenance of five years (Pkg. No.AS-17-12, ADB) for the year 2005-06 consisting of road length = 12.90 KM and Bridges (4 nos) was allotted to Sri R. Bhartia on 17.01.06 at a Tender Value of Rs.11,01,54,100.00 and the Stipulated Completion date was 16.10.06 but completed on 28.05.09 (Extended Completion Date) From 29.05.09 the Routine Maintenance (R.M) works of the road starts as per Tender Agreement. But the contractor did not carry out any Routine Maintenance (RM) works as per Agreement and many correspondence was made to him by Executive Engineer Morigaon Rural Road Division/Assistant Executive Engineer (AEE) Morigaon Rural Road Sub-Division for carrying out the Routine Maintenance works as per Agreement.*
- The contractor (Sri R. Bhartia) did not carry out any Routine Maintenance works as per Bidding Document nor submitted any claim for payment monthly as stipulated in the Tender Agreement.*

- *Finally finding no-other way left, the Deptt. have engaged another contractor to repair (Defect Correction) the portion of road from ch.0.00M to ch. 4000.00 M at an estimated cost of Rs.26,93,000.00 and accordingly the other contractor who was engaged on 11.09.2013 (Within DLP) completed the works and submitted the Bills for payment. As per agreement, this payment was to be made from the SD/PS of the contractor (Sri R. Bhartia). Accordingly one letter was issued to the concerned bank for liquidation of the Special Term Deposit amounting to Rs.26,93,508.00 of Sri R. Bhartia vide letter No.NRC/Bill/PMGSY (ADB)/53/2006/19, Dtd. 17.01.2014 in the meantime the contractor Sri R. Bhartia have filed this suit challenging the letter in the Hon'ble Guwahati High Court, Guwahati.*
- *The Hon'ble Gauhati High Court has passed an order to resolve the dispute through 'Standing Empowered Committee (SEC)' as per clause No.24 of the Bidding Document.*
- *The petitioner Sri R. Bhartia has attended the meeting in person and has agreed to the decision taken by the Standing Empowered Committee.*

ORDER:-

After much deliberation in the Standing Empowered Committee meeting under Dispute Redressal System, held on 06.08.2014 the undersigned is of the considered view that,

a) The departmental action forfeiting of the 50% Security Deposit money (S. D. Money) of the Contractor (Sri R. Bhartia) is as per contract agreement of package No.AS-17.12 is in order.

The matter is recorded and disposal.

Sd/- illegible

29.8.14

(M.C. Bora)

*Chairman, Standing Empowered Committee and
Commissioner & Special Secretary to the Govt. of Assam
PWRD, Dispur, Guwahati-781006.”*

4. In terms of the findings by the Standing Empowered Committee it was held that 50% of the security deposit of the contractors was retained in view of the failure of the petitioner as the contractor to comply with the Terms and Conditions of the contract agreement in respect of package No. AS-17.12. It is to be mentioned that this order of the Standing Committee was carried out in terms of the directions of an earlier writ petition filed by the petitioner being WP(C) No. 715/2014 whereby this Court had directed the respondent department to referred the matter to Standing Empowered Committee. In terms of directions of this Court, the Standing Empowered Committee deliberated on the matter and passed the impugned order.

- 5.** Aggrieved, the present writ petition has been filed.
- 6.** The department had filed their counter affidavit justifying the stand of the department and the findings of the Standing Empowered Committee.
- 7.** The learned counsel for the petitioner submits that there are correspondences between the petitioner and the department, which clearly reflects that a portion of the work with regard to maintenance was duly carried out by the petitioner in contrast to the findings arrived at by the Standing Empowered Committee. Learned counsel for the petitioner refers to a communication dated 24.09.2013 issued by the Superintending Engineer, PWD, Nagaon Road Circle, Nagaon to the petitioner. Referring to the said letter, learned counsel for the petitioner submits that the letter itself reflects that 2 kms of the work was carried out by the petitioner. It is further pointed out that by another communication dated 13.12.2013 issued by the Executive Engineer, P.W.D., Morigaon Rural Road Division, Morigaon, it is categorically pointed out by the department that the defects from the Ch. 13197.00 m to 17097.00 m has been repaired by the petitioner and further he was requested to take steps to repair the portion from ch.17097.00 m to ch. 22097 m.
- 8.** According to the petitioner in terms of this communication, the petitioner carried out of the work to the satisfaction of the respondents. However, inspite of the petitioner carrying out the works as directed, as per the requirement of the contract, the

amount of EMDs and security deposits retained by the respondent department has not yet been refunded back.

9. Mr. Nayak, learned counsel for the respondent department raised the objection as regards to the maintainability of the writ petition itself on the ground that these are disputed questions of facts which ordinarily a writ court would not delve into. According to Mr. Nayak, learned counsel for the department, the claims of the petitioner that he had carried out the work upto the satisfaction of the department cannot be sustained in view of the order of the Standing Empowered Committee dated 29.08.2014.

10. Having heard the learned counsels for the parties and upon due perusal of the pleadings on record, it is seen that there are certain communications issued by the department to the petitioner which indicate that certain portions of the repair work stated to have been executed by the petitioner in terms of the contract. These communications although issued by the department are not found to be referred in the order of the Standing Empowered Committee, which is impugned in the present proceedings. There is no reference as to whether these letters were indeed issued by the department or having been issued did the petitioner carry out the required repair works as required by the department.

11. The question of maintainability to be decided today in a writ petition filed in 2015 would be slightly belated and would not be in the interest of justice more particularly when such

objections are not found in the affidavit filed by the petitioner as far back as 09.01.2018. Taking the entire aspects into consideration, this Court is of the view that the matter can be remanded back to the Commissioner and Special Secretary, PWD, Government of Assam, who will cause the matter to be re-decided by the Standing Empowered Committee as prescribed under the terms of the contract by taking all the aspects into considerations.

12. It is seen that as per Clause 24.4 of the contract agreement the contractor and the employer are entitled to present their case in writing duly supported by documents. There is also a provision for the Standing Empowered Committee to allow one opportunity to the contractor and the employer for oral arguments for a specified period. Accordingly, in terms of the directions above, the Standing Empowered Committee will revisit the matter by examining all documents connected to the said contract and will afford an opportunity of hearing to the contractor as well as to the employer and thereafter pass an appropriate order in this matter. Any order that is passed, copy thereof should be furnished to the petitioner. If the Standing Empowered Committee upon rehearing comes to a conclusion that the department is not entitled to withhold 50% of the EMD of the petitioner, then the earlier order dated 06.08.2014 should be recalled. Until such an order is passed the impugned order dated 06.08.2014 shall be kept in abeyance by the respondent authorities.

13. This matter be placed before the Standing Empowered Committee within a period of 2 (two) weeks from the date of receipt of certified copy of this order by the Commissioner and Special Secretary, PWD, Government of Assam. Thereafter the standing committee will commence the hearing of the matter as per the manner and mode prescribed under the Clause 24.4 upon due notice to the petitioner for appearing before the Standard Empowered Committee.

14. Writ petition is accordingly disposed of in terms of the above.

15. No order as to cost.

JUDGE

Comparing Assistant