

GAHC010026132017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
WP(C)/3413/2017

M/S. RAMAWTAR AGARWALLA
A PROPRIETORIAL CONCERN HAVING ITS OFFICE AT DACCAPATTY
NAGAON
DIST. NAGAON ASSAM AND IS REPRESENTED BY ITS PROPRIETOR SHRI
RAMAWTAR AGARWALA S/O. SRI BAJRANG LAL AGARWALLA
R/O. DUCCAPATTY
NAGAON
IN THE DIST. OF NAGAON
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER
PANCHAYAT and RURAL DEVELOPMENT ASSAM
PANJABARI
JURIPAR
GUWAHATI-37ASSAM.

2:THE SECRETARY TO THE GOVT. OF ASSAM

PANCHAYAT and RURAL DEVELOPMENT ASSAM
DISPUR
GUWAHATI-06 ASSAM.

3:THE NAGAON ZILA PARISHAD

NAGAON ASSAM
REPRESENTED BY ITS CHAIRMAN
NAGAON ZILA PARISHAD
NAGAON ASSAM.

4:THE CHIEF EXECUTIVE OFFICER

NAGAON ZILA PARISHAD
NAGAON ASSAM.

5:THE CHIEF ENGINEER
PWD (BUILDING)
ASSAM
CHANDMARI
GUWAHATI-3 (ASSAM)
-

For the Petitioner (s) : Mr. G.N. Sahewalla, Sr. Advocate.

For the Respondent (s) : Mr. N.K. Debnath, Advocate.
Mr. P. Nayak, Advocate.

Date of hearing & Judgment : **24.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner claiming an amount of Rs.97,23,640/- alongwith interest @ 18% per annum from the date of submission of the running account bill in respect to a formal work order vide letter bearing No.NZP.1353/Pt-I/2014-15/3627 dated 26.03.2015 for the work namely construction of marketing shed at Kawaimari under Lawkhowa Development Block, Nagaon.

2. The facts that can be discerned from the writ petition are that in the Assam Tribune Newspaper dated 15.03.2015 a Notice Inviting Tender was issued by the Respondent No. 5 on behalf of the Respondent No. 3 inviting tenders from experienced and reputed contractors for two works including the construction of a marketing shed at Kawaimari under Lawkhowa Development Block. From a perusal of the said Tender Notice, it reveals that the approximate tender value was Rs.1,74,77,573/- including electrical works of Rs. 21.46 lakhs.

It was further mentioned that the time for completion of the work was 9 months. The Petitioner participated in the said tender process alongwith other bidders and the petitioner was found eligible for being awarded the work for which a Letter of Intent was issued intimating the award of the work in favour of the Petitioner and the Petitioner was further asked to deposit the performance security. Accordingly, the Petitioner deposited 2% performance security and the Petitioner was thereupon issued a formal work order vide Letter No. bearing No.NZP.1353/Pt-I/2014-15/3627 dated 26.03.2015 issued by the Chief Executive Officer, Nagaon Zilla Parishad.

3. It is the case of the Petitioner that as the period of completion of work was 9 months, the Petitioner immediately upon receipt of the work order dated 26.03.2015 took steps for mobilizing its man and machineries so that the work could be completed within the period stipulated. It is the further case of the Petitioner that though the Petitioner took appropriate steps for completion of the work but the Respondent Authorities failed to discharge their part of the obligation for which the Petitioner could not commence the work inasmuch as the Respondents failed to furnish the site, drawings, and designs etc. It is under such circumstances that the Petitioner had issued Communications to the Respondent Nos. 3 & 4 which have been enclosed as Annexure-IV and V to the writ petition. It is further alleged in the writ petition that approximately after 4 months from the date of issuance of the work order i.e. on 20.07.2015 the site was handed over to the Petitioner for commencement of the work. However, the Petitioner could not commence the work due to the existence of a boundary wall which was to be demolished and permission for such demolition was accorded by the Principal, Primary H.S. School only on 06.08.2015. Thereupon the Petitioner commenced the work for the first gallery of the work in question

and upon achieving the desired progress, the Petitioner vide Letter dated 27.10.2015 requested the Respondent No. 4 to handover the site for the second gallery of the work in question so as to enable the Petitioner to continue the work together in all front and complete the same within the stipulated completion period. It is further alleged that the Respondents thereafter failed to handover the site for the work in question for the second gallery. It is the further case of the Petitioner that the Petitioner have also as per the Form-2 of the Item Rate Tender and Contract Work (General Rules and Directions for the Guidance of Contractors) which was made a part of the agreement applied for payment of the running bills. However, the running bills were not paid for which and various other reasons as stated in the writ petition the Petitioner could not further proceed with the work. It is further seen from a perusal of the writ petition that the Petitioner claims that an amount of Rs.97,23,640/- was payable to the Petitioner on account of the running bills. The Petitioner thereupon have represented before the Respondent Authorities time and again for release of the running bills. However, the same have not been released. It is under such circumstances that the Petitioner have approached this Court by filing the instant writ petition seeking the said amount to which the Petitioner claims to be entitled to alongwith interest @ 18% per annum.

4. The records reveals that this Court vide an order dated 07.06.2017 had issued notice. The records further reveals that the Respondent No. 4 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that the tender value for the work namely the construction of the marketing shed at Kawaimari under Lawkhowa Development Block was notified at Rs.1,74,77,573/- but later on the value was fixed at Rs.1,73,84,977/- as per the plan and estimate prepared for the work as per the schedule of rate of the

CEPWD (Building) for the year 2013-14 under the APWD (Building), Assam. It was mentioned that the scheme was partially changed and renamed as construction of marketing shed and sports gallery at Kawaimari under Lawkhowa Development Block as per the demand of local public and accordingly the plan and estimate were prepared. It is further seen from the affidavit filed by the Respondent No. 4 that there was no fault in awarding of the contract to the Petitioner. It was also admitted at paragraph No. 6 of the affidavit that at the time of taking up the scheme the work site was not in a condition for execution of the scheme due to existing concrete wall and other natural problems. It was also admitted that to overcome the said difficulty it took time and therefore handing over of the work site was delayed and the same was unintentional. It was also mentioned that the work site was handed over to the Petitioner vide Certificate dated 20.07.2015. Further to that, in the work order issued to the Petitioner, it was mentioned that necessary payment would be made subject to receiving of funds from the Government. The Government was moved regarding supplementary demand proposals vide letter dated 01.12.2015. It was also mentioned that the running bills submitted by the Petitioner was forwarded to the Commissioner, Panchayat and Rural Development, Assam dated 16.3.2015 with a request to release the funds so as to enable for payment to the writ petitioner but no funds have been received. At Paragraph 10 of the said affidavit, it was categorically mentioned that Communication had been made with the higher authorities for release of the fund and the same was pending for disposal. It was further mentioned that after receiving the funds, payment would be made to the Petitioner. From a perusal of the said affidavit, it reveals that there is no denial in any manner as regards the amount claimed by the Petitioner.

5. This Court also finds it relevant at this stage to take note of the Communication dated 16.03.2016 which have been referred to in the affidavit filed by the Respondent No. 4 and which is a part of the writ petition as enclosed as Annexure-XIII. From the said Communication, it reveals that the Chief Executive Officer of the Nagaon Zilla Parishad submitted the running bill in original of an amount of Rs.93,32,551/- against the public auditorium at Ambagan and Rs.97,23,640/- against the marketing shed at Kawaimari under Lawkhowa Development Block for favour of information and necessary action. Alongwith the said Communication, the status report of the physical achievement alongwith photographs were also sent. It was also requested vide the said Communication that the payment be released at an early date for early completion of the scheme.

6. This Court also finds it relevant at this stage to note that the instant writ petition has been pending for the last 6 years but till date the Respondent Panchayat & Rural Development Department have not chosen to file any reply.

7. This Court have duly heard the learned counsels appearing on behalf of for the parties.

8. From the above materials on record, it transpires that the Petitioner claims an amount of Rs. 97,23,640/- and the Respondent No. 4 duly admits the same as could be seen from the affidavit filed by the Respondent No. 4 as well as also the Communication dated 16.3.2016. The Department of Panchayat and Rural Development have also not denied the said aspect of the matter. Under such circumstances, it is the opinion of this Court that if the Petitioner is entitled to the said amount of Rs.97,23,640/-, the said amount should be paid to the Petitioner. Non-availability of the fund cannot be a ground to deny the Petitioner of his legitimate entitlement. Be that as it may, this Court is of the opinion that

an additional opportunity should be given to the Panchayat & Rural Development Department to make a further verification as regards the entitlement of the Petitioner before disbursement of the amount to the Petitioner.

9. Accordingly, this Court directs the Commissioner, Panchayat & Rural Development Department either by himself or through his delegatee to make necessary verifications as regards the actual entitlement of the Petitioner. If upon the verification so carried out, it is found that the Petitioner is entitled to the amount so claimed or any part thereof, the said amount be released to the Petitioner. In this regard, this Court further directs the Respondent Nos. 3 & 4 to provide necessary assistance for the purpose of carrying out the said verification. The Secretary to the Government of Assam, Panchayat & Rural Development Department is also directed to ensure that the amount upon being found entitled to is disbursed to the Petitioner. The directions so passed hereinabove should be complied with by the Authorities hereinabove within a period of 4 months from the date a certified copy of the instant judgment is served upon the Commissioner, Panchayat & Rural Development Department and Secretary to the Govt. of Assam, P & RD Department.

10. With the above observations and directions, the instant writ petition stands disposed.

JUDGE

Comparing Assistant