

GAHC010048272017



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

Case No. : WP(C)/6797/2017

ATW INDIA PVT. LTD.
HAVING ITS REGD. OFFICE AT 6, PRENA CHOWKIDINGI, P.O. C.R
BUILDING, DIBRUGARH, ASSAM-786003.

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY SECRETARY TO THE GOVT. OF ASSAM, IRRIGATION DEPTT.,
ASSAM, DISPUR, GHY.-781006.

2:THE STATE OF ASSAM
REP. BY SECRETARY TO THE GOVT. OF ASSAM
FINANCE TAXATION DEPTT.
DISPUR
GHY.

3:THE COMMISSIONER OF TAXES

ASSAM
KAR BHAWAN
DISPUR
GHY.-781006.

4:ASSTT. COMMISSIONER OF TAXES

CENTRAL
VAT AUDIT CELL
KARBHAWAN
DISPUR
GHY.-781006.

5:THE CHIEF ENGINEER

IRRIGATION DEPTT.
ASSAM
CHANDMARI
GHY.-781003.

6:THE CHIEF ENGINEER
MINOR
IRRIGATION DEPTT.
ASSAM
CHANDMARI
GHY.-781003.

7:THE ADDL. CHIEF ENGINEER

ZONE-III
IRRIGATION
ASSAM
JORHAT-785001
ASSAM.

8:THE UNDER SECRETARY
TO THE GOVT. OF ASSAM
IRRIGATION DEPTT.
BUDGET BRANCH
DISPUR
GHY.-781006

For the Petitioner : Ms. S. Roy, Advocate.

For the Respondents : Mr. B. Gogoi, SC, Finance & Taxation Deptt.
Mr. N. Upadhyay, SC, Irrigation Deptt.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

04.08.2023

The present writ petition has been filed being aggrieved by the inactions on

the part of the Respondent Authorities in not refunding the security deposit amount of Rs.4,39,198/- to the Petitioner. From a perusal of the writ petition, it appears that the Respondent in the Irrigation Department had floated a tender for the works –

(A) SPL M & R to MDTWS at Singahuti but for supply of brick dust free from foreign materials complete as directed.

(B) SPL M & R to MDTWS at Rangpuria Romai - for supply of brick dust free from foreign materials complete as directed.

2. The Petitioner participated in the said tender process and was awarded the said contracts. On 01.03.2013 works orders were issued to the Petitioner. Pursuant to the said work orders, the Petitioner completed the work within the targeted period and the Respondents also never accepted the same without any objection. At this stage, this Court finds it relevant to take note of Annexure-II, which is the first and the final bill, wherein, it has been shown that the work was done as per the specifications. It is also seen from the said document that an amount of Rs. 57,11,919/- was released and an amount of Rs. 5,45,291/- was withheld which was the security deposit. As the Petitioner had duly completed the work to the satisfaction of the Respondent Authorities, the Petitioner sought for release of the security deposit of the amount of Rs. 5,45,291/-. The Respondent Authorities instead of refunding the entire security deposit had only released an amount of Rs. 1,06,093/- and an amount of Rs.4,39,198/- was outstanding. The Petitioner on various occasions requested the Respondent Authorities for the release of the said amount of Rs.4,39,198/-, however, the same was not released. The Petitioner thereupon submitted a RTI application before the Public Information Officer of the Irrigation Department, Dibrugarh Division. On 05.07.2017, the Assistant Executive Engineer(TC),

Dibrugarh Division, Irrigation who is also the Public Information Officer provided the information that the amount of Rs. 4,39,198/- could not be refunded to the Petitioner inasmuch as the Irrigation Department inadvertently deposited the VAT vide challan to the Tax Authorities twice and the Irrigation Department have been pursuing with the Superintendent of Taxes, Dibrugarh for refund of the said amount and as the said amount has not been paid, the amount of Rs. 4,39,198/- could not be refunded back to the Petitioner.

3. Taking into account that in spite of various representations and request, the said amount of Rs. 4,39,198/- was not refunded to the Petitioner. The instant writ petition has been filed seeking a direction upon the Respondent Irrigation Department to refund the said amount of Rs. 4,39,198/- to the Petitioner.

4. It appears on record that this Court had issued notice as far as back on 10.11.2017. No affidavit-in-opposition however has been filed by the Irrigation Department.

5. Upon hearing the learned counsel for the parties, it is appears that there is a clear admission on the part of the Respondent Irrigation Department that they are liable to refund the security deposit of an amount of Rs.4,39,198/- to the Petitioner. The difficulties faced by the Irrigation Department for not being able to get the refund of the amount from the Taxation Department of the Government of Assam in the opinion of this Court cannot be a reason to withhold the said amount to which the Petitioner is entitled to. Under such circumstances, this Court therefore disposes of the instant writ petition with a direction to the Secretary to the Government of Assam, Irrigation Department to take appropriate steps for refund of the said amount of Rs.4,39,198/- to the Petitioner within a period of 6 weeks from the date a certified copy of the

instant order is submitted to the Secretary to the Government of Assam, Irrigation Department. It is made clear that if the said amount is not refunded to the Petitioner within a period of 6 weeks, the Respondent/Irrigation Department shall be liable to pay interest which this Court quantifies @ 9% from the date of such default.

6. Mr. B. Gogoi, the learned counsel who also is the Standing Counsel for the Finance and Taxation Department of the Government of Assam shall also instruct the Commissioner of Taxes, Assam to do the needful upon request being made by the Irrigation Department for the refund of the said amount, if deposited twice by the Irrigation Department of the Government of Assam.

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

JUDGE

Comparing Assistant