

GAHC010067652021



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

Case No. : WP(C)/2514/2021

EAST INDIA SUPPLY CENTRE
SRCB ROAD, FANCY BAZAR, GUWAHATI-1, REPRESENTED BY ITS PARTNER
MR. MRINAL GANERIWAL AGE 40 YEARS, S/O LATE RAVINDRA KUMAR
GANERIWAL, R/O SRCB ROAD, FANCY BAZAR, GUWAHATI-1

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDL. CHIEF SECY. TO GOVT. OF ASSAM,
HANDLOOM, TEXTILE AND SERICULTURE DEPTT., DISPUR, GUWAHATI
781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

HALDOOM
TEXTILE AND SERICULTURE DEPTT.
DISPUR
GUWAHATI 781006

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GUWAHATI 6

4:THE DIRECTOR

HALDOOM AND TEXTILES
ASSAM
AMBARI
GUWAHATI 781001

5:THE ASSAM GOVERNMENT MARKETING CORPORATION LTD.

REPRESENTED BY THE MANAGING DIRECTOR
AMBARI
GUWAHATI 78100

For the Petitioner : Mr. D. Kalita, Advocate.

For the Respondents : Mr. R. Dhar, Advocate.
Mr. A. Chaliha, Advocate (R-3),
Finance Department.

Date of Hearing & Judgment : **11.08.2023**

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

The Petitioner herein is aggrieved by the inaction on the part of the Respondent Authorities in not releasing the amount of Rs. 1,46,14,951/- in respect to Bill No. 252 and 253 dated 16.02.2016 for supply of cotton yarn as per supply order dated 21.01.2016 as well as also claiming interest @ 15% per annum. The Petitioner is also aggrieved by the wrongful deduction of VAT by the Respondent Authorities @ 5% amounting to Rs. 2,81,258/- .

2. From the facts enumerated in the writ petition, it transpires that the Respondent No. 4, i.e. the Director, Handloom and Textile, Assam had issued an E-Tender Notice dated 07.12.2015 for supply of 2/60

mercerised bleached cotton hank yarn and 2/60 mercerised dyed cotton hank yarn (colour fast to sunlight and washing) from registered manufacturers or their authorized dealers for procurement under the Chief Minister's Special Programme for the year of 2015-16 interalia for supply of the aforesaid materials in six groups (Group –A to Group F). The authorities in the Handloom & Textile Department, Government of Assam though issued the said E-Tender, but decided to procure the materials in respect to Group A and B from the Respondent No. 5, i.e. the Assam Government Marketing Corporation Ltd. at the rate already approved by the Tender Committee in respect to Group C, D, E and F.

3. The said offer to purchase from the Respondent No. 5 in respect to the materials at Group A and B was accepted by the Respondent No. 5 vide their letter dated 08.01.2016 and thereupon an order of supply dated 20.01.2016 was issued to the Respondent No. 5 for supply of the materials for Group A and B within a period of 30 days. The Respondent No. 5 thereupon entered into an agreement on 20.01.2016 with the Handloom, Textile & Sericulture Department of the Government of Assam.

4. On the basis of the letter issued by the Respondent No. 5 accepting the offer made by the Handloom, Textile & Sericulture Department of the Government of Assam, the Respondent No. 5 issued a notice inviting quotation and expression on 08.01.2016 itself

from their registered firms/dealers for supply of yarn as per the specifications and rates fixed by the Director of Handloom & Textiles. The Petitioner submitted its quotation for supply of materials in Group A and B covering 5 legislative constituencies in the district of Nagaon and Golaghat. The Respondent No. 5 accepted the quotation submitted by the Petitioner and accordingly two supply orders dated 21.01.2016 for supply of 10025 packets of yarn in Group-A and 10026 packets of yarn in Group-B to the Petitioners were issued in favour of the Petitioners.

5. The Petitioner claims in the writ petition that in pursuance to the said supply orders, the Petitioner supplied the cotton yarn on 08.03.2016 which was duly acknowledged by the officials of the Department in the districts/sub-divisions and the authorities by issuing due certificates as per the tender terms. Thereupon the Petitioner submitted two bills for Rs. 99,80,883/- in respect to supply of materials in Group A and Rs. 99,79,887.50/- in respect to supply in Group B before the Respondent No. 5 on 16.02.2016 enclosing all challans and receipts/certificates and requested for payment of the bill amount. However, the said amount was not paid for which the Petitioner filed the writ petition being W.P.(C) No.2270/2017 praying for a direction upon the Respondent Authorities to release the bill amount. The said writ petition so filed by the Petitioner was taken up by this Court alongwith various other writ petitions and vide a

common judgment and order dated 20.08.2019 observed that the conclusions and decisions so arrived at in the judgment rendered in W.P.(C) No. 2610/2017 dated 28.06.2019 would also apply in respect to the case of the Petitioner. Paragraph Nos. 81 to 85 of the judgment passed in W.P.(C) No. 2610/2017 are quoted hereinbelow :

“81. In such circumstances, Court is of the view that a High Powered Committee is required to be constituted to look into the above aspects and thereafter to take appropriate decisions. The High Powered Committee should comprise of the following officials:-

- 1. Addl. Chief Secretary to the Govt. of Assam, to be nominated by the Chief Secretary;*
- 2. Commissioner and Secretary to the Govt. of Assam, Finance Department;*
- 3. Commissioner and Secretary to the Govt. of Assam, Handloom, Textiles and Sericulture Department;*
- 4. Commissioner and Secretary to the Govt. of Assam, Judicial Department; and*
- 5. Special Director General of Police, CID, Assam.*

82. The above committee shall be constituted within 15 days from the date of a receipt of a certified copy of this order and will have its first meeting within 7 days of its constitution.

83. The committee shall examine payment of dues to the petitioners for supply of polar blankets having due regard to quantity and quality of the materials supplied and having regard to the discussions made above particularly in the context of Section 70 of the Contract Act; in this

regard, Committee shall take a decision whether the goods (polar blankets) were accepted and enjoyed. Further, committee shall examine violation of tendering norms and guidelines in the tender process pursuant to NIT dated 30.10.2015 and fix responsibility whereafter departmental steps may be taken. The mode and manner of issuance of supply orders by AGMC shall be looked into. Committee shall also examine as to whether there was any criminality involved in the tendering and supply process involving various persons. If such examination results in an affirmative finding, Commissioner and Secretary to the Government of Assam, Handloom, Textiles and Sericulture Department shall lodge first information before the CID Police Station whereafter law will take its own course.

84. Ordered accordingly.

85. The High Powered Committee as above shall complete the exercise within 4 (four) months from the date of its first sitting."

6. This Court further finds it relevant that in paragraph No. 57 of the judgment in the writ petition filed by the Petitioner i.e. in W.P.(C) No. 2270/2017, it was further observed that the High Power Committee shall also examine the issue of payment to the suppliers of cotton yarn alongwith polar blankets in terms with the direction issued in paragraph No. 83 of the judgment in W.P.(C) No. 2610/2017 which have already been quoted hereinabove.

7. Pursuant to the said judgment and order dated 28.06.2019 so passed in the case of the Petitioner, the High Power Committee had examined all the issues relating to supply of cotton yarn and

submitted their final report as well as the minutes of the meeting of the High Power Committee on 30.01.2020, wherein it directed the Handloom, Textile & Sericulture Department to take necessary steps for releasing the payment to the concerned suppliers. It is the further case of the Petitioner that pursuant to the said decision of the High Power Committee, the Respondent Authorities in the Handloom, Textile & Sericulture Department had made provisions to pay 56% of the outstanding dues during 2019-2020 financial year but on the ground of financial difficulties the authorities have decided finally to release 28% and thereby withholding the remaining 28% of the outstanding dues to be released subsequently. It is the further case of the Petitioner that against the two bills so submitted by the Petitioner, the Petitioner has received an amount of Rs.26,19,582/- against Bill No. 252 and Rs.26,19,321/- against Bill No.253 and the remaining outstanding dues payable to the Petitioner is Rs.1,46,14,950.50/- which has not been paid till date. Thereupon the Petitioner had submitted representations on various occasions to the Respondent Authorities but the said Respondent Authorities have not released the remaining payment for which the instant writ petition has been filed.

8. It appears from the records that on 8/4/2021, this Court issued notice and further observed that pendency of the writ petition shall not be a bar for the Respondents to dispose the claim of the

Petitioner.

9. I have heard the learned counsel for the parties and perused the materials on record.

10. Mr. R. Dhar, the learned counsel appearing on behalf of the Respondent Nos. 1, 2, 4 & 5 submitted that as per Clause of the agreement dated 21/1/2016, the Respondent No. 5 would only make payment upon receipt of the amount from the Respondent Nos. 1 and 4 and as such till the amount is received by the Respondent No. 5 from the Respondent No. 1 and Respondent No. 4, the Petitioner does not have any enforceable right seeking a direction from this Court for payment of the said amount.

11. This Court put a specific query upon the learned counsel appearing for the Respondent Nos. 1, 2, 4 & 5 as to whether the petitioner had supplied the said materials and as to whether the work order as well as the agreement on the basis of which the Petitioner supplied the materials, at any point of time was terminated or cancelled by the authorities. The learned counsel for the Respondent Nos. 1, 2, 4 & 5 submitted that no doubt the petitioner had supplied materials in pursuance to the work order and the Deed of Agreement dated 21/1/2016 but the fact how much materials the petitioner had supplied is subject to verification. The learned counsel further submitted that the amount so payable to the petitioner upon

verification would require some time to be disbursed taking into account that the budget on the basis of which the said work orders were issued by the Respondent Nos. 1 and 4 have already lapsed. He therefore submitted that for that purpose some approval would be required from the Finance Department in that regard.

12. Upon hearing the learned for the parties and taking into account the agreement between the Respondent No. 5 and the Petitioner and on the basis of which the Petitioner had already supplied the materials, this Court is of the opinion that the Petitioner therefore would be entitled to the amount in respect to the supply so made in pursuance to the agreement dated 21.01.2016. No doubt there is a Clause in the agreement to the effect that the Petitioner would be entitled to the amount only upon receipt of the money by the Respondent No. 5 from the Respondent Nos. 1 and 4, but too long a delay in disbursing the said amount by taking recourse to the said Clause in the opinion of this Court would render the said Clause arbitrary and unreasonable.

13. This Court further is of the opinion that the extent to which the Petitioner had supplied the materials cannot be ascertained by this Court under Article 226 of the Constitution and as such, this Court is of the view that such steps would be best left to the Authorities to decide on the basis of the materials placed.

14. Considering the above, the instant writ petition therefore stands disposed off directing the Respondent No. 2, 4 & 5 to make necessary verification as regards the supply so made by the petitioner and thereupon, if it is found that the petitioner is entitled to the said amount claimed in the writ petition or such other amount as is found due on the basis of the verification, the said amount be paid to the Petitioner. In that regard, the Respondent Nos. 1 and 4 may submit appropriate proposal before the Respondent No. 3 for sanctioning the said amount if the budget had already lapsed and the Respondent No. 3 shall also take appropriate steps so that the Petitioner gets his entitlement.

15. The said exercise be completed within a period of six months from the date a certified copies of this judgment is served upon the Respondent No. 4 and 5 respectively.

16. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant