

GAHC010078982023



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

Case No. : WA/137/2023

BAPOJITH LANGTHASA
S/O- LATE BRAJENDRA LANGTHASA, R/O- VILL- DIGRIK, P.O. HAFLONG,
DIST.- DIMA HASAO, ASSAM- 788819.

VERSUS

THE STATE OF ASSAM AND 4 ORS. H
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS (BUILDING AND NATIONAL HIGHWAYS) DEPTT., DISPUR,
GUWAHATI- 1.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL
REP. BY THE PRINCIPAL SECRETARY
HAFLONG
DIMA HASAO, PIN- 788819.

3:THE ADDITIONAL CHIEF ENGINEER
P.W.D. (R AND B) HILLS
ASSAM
HAFLONG, DIMA HASAO- 788819.

4:THE EXECUTIVE ENGINEER
P.W.D.
HAFLONG BUILDING DIVISION
HAFLONG- 788819.

5:THE ASSISTANT EXECUTIVE ENGINEER
P.W.D.
HAFLONG BUILDING SUB- DIVISION
HAFLONG, PIN- 788819

For Appellant(s) : Mr. K.N. Choudhury, Sr. Adv.
Mr. D.J. Das, Adv.

For Respondent(s) : Mr. R.M. Das, SC, NCHAC.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

16.05.2023

[Sandeep Mehta, CJ]

The instant intra-Court writ appeal is directed against the judgment/final order dated 17.02.2023 passed by the learned Single Bench whereby, WP(C) No.4884/2020 preferred by the appellant/writ petitioner for questioning the legality and validity of the letter dated 15.09.2020 by which the contract issued to the petitioner/appellant for construction of a Media Centre at Haflong in the district of Dima Hasao was terminated.

2. Mr. K.N. Choudhury, learned Senior counsel representing the appellant has advanced following arguments for questioning the legality and validity of the decision terminating the contract granted to the appellant. (i) That no notice of termination was given to the appellant before terminating contract. (ii) That the contract was terminated by the Executive Engineer and not the Additional Chief Engineer and thus, the impugned action has been perpetrated by an authority not having the jurisdiction to do so. Mr. Choudhury urged that under the contract, the employer is defined as the Additional Chief Engineer and hence, the Executive Engineer was not competent to take the decision of terminating the contract. On these grounds, Mr. Choudhury implored the Court to accept the appeal, set aside the impugned orders and direct restoration of the construction contract granted to the appellant.

3. Per contra, Mr. R.M. Das, learned standing counsel for the NCHAC vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the writ petition itself was not maintainable because Clauses 24 & 25 of the contract lays down a procedure for resolution of disputes. He drew the Court's attention to Clauses 24

and 25 of the contract which are reproduced hereinbelow for the sake of ready reference and urged that even the issue of the decision taken by the Engineer being beyond the authority or that the same was wrongly taken can be subjected to challenge before the Dispute Review Board prescribed under Clause 25 of the contract.

"24. Disputes

24.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contractor or that the decision was wrongly taken, the decision shall be referred to the Dispute Review Board within 14 days of the notification of the Engineer's decision.

25. Procedure for Disputes

25.1 The Dispute Review Board shall be constituted with three members, one from Employer, One from Contractor and the other to be nominated jointly by the above two members to give a decision in writing within 28 days of receipt of notification of a dispute.

25.2 The Dispute Review Board shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of types specified in the Contract Data and the cost shall be divided equally between the Addl. Chief Engineer, PWD (R&B), Hills, Assam, Haflong, Dima Hasao, Assam and the Contractor, whatever decision is reached by the Dispute Review Board. Either party may give notice to the other to refer a decision of the Dispute Review Board to an Arbitrator within 28 days of the Dispute Review Board's written decision.. If neither party refers the dispute to arbitration within the next 28 days, the Dispute Review Board's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract (SCC)."

4. He further urged that the decision to terminate the contract of the appellant became unavoidable and imperative because the construction of the Media Centre under the contract granted to the appellant was to be completed within a period of 2 years from the date of the work order i.e. 22.02.2017. However, the appellant failed to complete the work in time on which, repeated notices were given by the Executive Engineer. However, despite repeated notices and reminders, the appellant failed to complete the work and the time period exceeded to nearly 4 years whereafter the matter was deliberated by the

Council the principal employer on whose behalf the Additional Chief Engineer executed the contract with the appellant.

5. After a threadbare discussion, the Council arrived at a considered decision to terminate the contract granted to the appellant. He drew the Court's attention to the notices issued to the appellant more particularly the notice dated 06.12.2019 wherein, it is clearly indicated that if the work under the contract was not expedited, the department would be left with no other option but to initiate action as per the tender agreement. He contended that despite all possible efforts and warnings given and notices issued to the appellant for completing the work was not completed, the employer being the Council, took a considered decision in the meeting dated 03.05.2019 instructing the Executive Engineer to cancel and issue a fresh tender notice for the project. He submitted that despite this direction, the Executive Engineer gave further windows to the appellant vide notices dated 04.02.2020 and 08.06.2020 imploring it to complete the work but when the desired result was not forthcoming, the jurisdiction under Clause 59(e) of the work agreement was exercised and the Executive Engineer acting on behalf of the Council communicated to the appellant, the decision to terminate the contract. He submitted that the appellant having committed a fundamental breach of contract cannot be allowed to raise the flimsy pleas of non-service of notice and the termination of contract by an incompetent authority while bypassing the remedy provided under the contract. He urged that Clause 24 of the work agreement provides a remedy of review against the impugned action to the appellant who failed to avail the same and hence, the writ petition was not maintainable. On these grounds, he implored the Court to dismiss the appeal and affirm the order passed by the learned Single Bench.

6. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and the material placed on record.

7. At the outset, we may note that as per the work order/letter of acceptance dated 06.02.2017, the appellant was required to complete the work within 24 months. However, as the appellant failed in timely completion of work, repeated notices were issued to it by

the Executive Engineer, PWD, Building Division, Haflong. Ultimately, the matter went up to MoS Implementation Committee, NCHAC and after thorough deliberations, the Council took a considered decision to cancel the work orders of two projects including the one granted to the appellant. The appellant was himself present in the meeting held on 18.11.2019.

8. Needless to say that as the work order was issued on behalf of the NCHAC, the principal employer was undoubtedly the Council. As regards the argument advanced by Mr. Choudhury that the letter terminating the contract was issued by the Executive Engineer who was not competent to do so under the contract, suffice it to say that the said communication is nothing but an intimation of the decision taken in the Review Committee meeting held on 18.11.2019 wherein, the appellant himself was present. In the said meeting, it was clearly resolved that to cancel the work order. As the appellant was himself present in the meeting, as a consequence, he cannot be allowed to question the decision to terminate the decision on the ground of non-issuance of notice. In addition thereto, it may be mentioned here that the statutory remedy of approaching the Review Committee under Clause 24 of the work contract though not considered to the prejudice of the appellant by the learned Single Bench, definitely has bearing on the issue because no justifiable cause has been shown in the writ petition as to why the appellant failed to avail the said remedy.

9. As a consequence of the above discussion, we find no justifiable cause so as to interfere in the impugned judgment dated 17.02.2023 rendered by the learned Single Judge while rejecting the writ petition preferred by the appellant.

10. Hence the writ appeal fails and is dismissed as being devoid of merit.

Sd/- *Mitali Thakuria*
JUDGE

Sd/- *Sandeep Mehta*
CHIEF JUSTICE

Comparing Assistant