

GAHC010101922022



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

Case No. : WP(C)/3564/2022

MADHUJYA MOHAN
S/O- DINDESWAR MOHAN
R/O- BORBARUAH
NEAR PRAKASH STORE
P.O AND P.S- BARBARUAH
DIST- DIBRUGARH
ASSAM, PIN-786007

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVERNMENT
OF ASSAM, PUBLIC WORKS DEPARTMENT
DISPUR, GUWAHATI-781006

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (ROADS)
ASSAM
CHANDMARI
GUWAHATI-03

3:THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT
(R AND B)
DIBRUGARH ROAD CIRCLE
DIBRUGARH

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
DIBRUGARH RURAL ROADS DIVISION
DIBRUGARH

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 24-03-2023

Heard Mr. N. Borah, learned counsel for the petitioner and Mr. P. Nayak, learned Standing Counsel, Public Works Department [PWD] for all the respondents.

2. In this writ petition instituted under Article 226 of the Constitution of India, the petitioner has stated that he is a Class-I contractor registered with the respondent Public Works Department [PWD], Assam and was allotted formal work orders in respect of the following 6 [six] contract works :- [i] "S/R to Belbari Road in Dibrugarh Road Division under Tengakhat Road Sub-Division providing earth work, gravelling and heavy dressing from 1st to 3rd KM"; [ii] "SR to City Road Mariani Amguri Road under Dibrugarh Road Division under Tengakhat Road Sub-Division for 2001-2002 providing GWC [earth work 1st to 3rd KM]"; [iii] "S/R to Maut Lauhali Road in Dibrugarh Road Division under Tengakhat Road Sub-Division for 2001-2002 providing earth work, gravelling and heavy dressing from 1st to 3rd KM"; [iv] "S/R to Nokonwari under Dibrugarh Road Division under Tengakhat Road Sub-Division for 2002-2003 providing GWC [wiring code] 1st to 2nd KM"; [v] "S/R to Tengakhat College Road under Dibrugarh Road Division under Tengakhat Road Sub-Division for 1st to 2nd KM for 2001-2002 providing GWC"; and [vi] "S/R to Chaing Ali Road under Dibrugarh Road Division under Tengakhat Road Sub-Division for 2001-2002 providing earth work [NGWC] from 1st to 2nd KM". The petitioner has claimed that he had executed the aforesaid contract works fully and after completion of execution, the final bills were submitted before the respondent no. 4. The final bills were of a total amount of Rs. 1,53,37,923/- in respect of all the 6 [six] contract works.

3. Mr. Borah, learned counsel for the petitioner has submitted that the petitioner during the year : 2001-2002 were also allotted another 4 [four] other contract works by the

respondent PWD authorities viz. [i] "S/R to Tingrai Chariali to Dehing Bandh Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-2002 [Ch.0.00 KM to 1.50 KM E/W & GWC"; [ii] "S/R to Tipong Facial Road In Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-2002 [Providing E/W, GWG, wearing for 1st to 2nd KM]"; [iii] "S/R to Chiang Ali Road in Tengakhat Road Sub-Division under Dinrugah Road Division for 2001-2002 [Providing gravelling, heavy dressing and side berm from Ch 4th to 6th KM]"; and [iv] "S/R to Ushapur Tangari Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-2002 [Ch 1st to 3rd KM, Providing E/W, GWC wearing court, etc.]". In respect of the said 4 [four] contract works, the petitioner submitted the final bills amounting to Rs. 98,52,157/-. When the petitioner approached this Court by a writ petition, W.P.[C] no. 3649/2021 with a grievance that the said amount of Rs. 98,52,157/- was disbursed to him despite elapse of sufficient time period and seeking a direction to the respondent PWD authorities to disburse the amount of Rs. 98,52,157/-, this Court by an order dated 01.06.2022 had dismissed the said writ petition, W.P.[C] no. 3649/2021 with finding that the writ petition had suffered from not merely delay but also from laches on the part of the petitioner. The Court being a court of equity, had observed that a party shall have to approach the court with clean hands and in a bonafide manner and taking the factors of inordinate delay of more than 2 [two] decades, gross negligence and laches on the part of the petitioner, the writ petition was dismissed by an order dated 01.06.2022.

4. Aggrieved by the dismissal of the writ petition, W.P.[C] no. 3649/2021, containing the claim of the petitioner for an amount of Rs. 98,52,157/-, the petitioner carried the matter before the Division Bench by way of an inter-court appeal, Writ Appeal no. 219/2022. The writ appeal was closed by an order dated 24.01.2023 with the following observations :-

“3. We do not find any reason to interfere with the aforesaid finding and observation of the learned Single Judge as the writ petitioner/appellant has very belatedly approached this Court. However, we are of the view that even if we have declined to exercise our extra-ordinary jurisdiction under Article 226 of the Constitution to issue any writ of mandamus or any direction to respondent authorities to make payment of the aforesaid amount claimed by the petitioner,

nothing prevents the State Government to entertain the request of the petitioner for making payment of the amount due if the petitioner approaches the Government for release of the same.

4. Under the circumstances, as submitted by the learned senior counsel for the appellant, the appellant may approach the Government and the Government may consider the same as per their wisdom and discretion of the State.

5. Accordingly, as also submitted by the learned senior counsel for the appellant/writ petitioner, the writ petitioner/appellant may approach the Government and the Government may consider release of the same considering also the fact that there is no denial by the State Government about its liability on account of the work executed by the appellant/writ petitioner.

6. We make it clear that we have not interfered with the order passed by the learned Single Judge on merit on the ground the learned Single Judge has dismissed the petition, but we have only observed that the appellant/writ petitioner would be at liberty to approach the respondent authorities and the respondent authorities will consider the same as per their wisdom as observed above.

7. With the above observations, the present appeal stands closed.”

5. Mr. Nayak, learned Standing Counsel, PWD has submitted that it is the Head of the Department i.e. the Chief Engineer, PWD who is authorized to admit or deny the liability and the Executive Engineer, PWD is not authorized to admit or deny liability as observed by the Full Bench of this Court in **Tamsher Ali and others vs. State of Assam and others**, reported in **2008 [4] GLT 1 [FB]**, and as such, no consideration shall be made in respect of the stand taken by any subordinate authority, other than the Chief Engineer, PWD, Assam. This Court finds force in the said submission of Mr. Nayak, learned Standing Counsel, PWD. It is clear from **Tamsher Ali** [supra] that other than the stand taken by the Head of the Department i.e. the Chief Engineer, PWD, any admission of liability by any other subordinate authority will not be binding on the part of the State Government in considering the claim of the petitioner.

6. In view of the dismissal of the other writ petition, W.P.[C] no. 3649/2021 in the afore-stated manner by the order dated 01.06.2022; and the order dated 24.01.2023 passed in the

writ appeal, W.A. no. 219/2022 allowing the present petitioner to approach the State Government with his prayer to make payment in respect of the other 4 [four] contract works and having regard to the fact that the 6 [six] nos. of contract works involved in this writ petition also pertained to the same period [2001-2002] and prima facie, there is inordinate delay and laches in approaching the court, Mr. Borah, learned counsel for the petitioner has submitted that while closing this writ petition, the petitioner may be permitted to approach the State respondents in similar manner, as has been observed by the Division Bench in the Order dated 24.01.2023 passed in the writ appeal, W.A. no. 219/2022, granting liberty to the petitioner to approach the respondent PWD authorities in respect of his claim raised in this writ petition and for its consideration as per the wisdom and direction of the State Government.

7. As the 6 [six] nos. of contract works involved in this writ petition also pertained to the same period [2001-2002] like the 4 [four] nos of the contract works involved in the writ petition, W.P.[C] no. 3649/2021, the instant writ petition also entails dismissal on the ground of inordinate delay and laches. It is accordingly ordered, leaving the petitioner to pursue his remedy as regards the claims involved in this writ petition before the State respondents in similar terms, as observed by the Hon'ble Division Bench of this Court with regard to his other claims in the order dated 24.01.2023 passed in the writ appeal, W.A. no. 219/2022.

JUDGE

Comparing Assistant