

GAHC010102652022



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

Case No. : WP(C)/3582/2022

M/S AD AGENCY
PROPRIETOR- SRI MANOJ KUMAR JAIN, AGED ABOUT 56 YEARS, S/O-
LATE PARAJMALL JAIN, RESIDENT OF L.L. TOWER, 3RD FLOOR, TARUN
NAGAR, ABC, MAIN ROAD, GUWAHATI, KAMRUP(M), ASSAM, PIN- 781005.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC HEALTH DEPARTMENT, DISPUR, GUWAHATI-6,
DISTRICT- KAMRUP(M), ASSAM.

2:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
HENGRABARI
DISPUR
GUWAHATI-6
DISTRICT- KAMRUP(M)
ASSAM.

3:THE SUPERINTENDING ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
GUWAHATI CIRCLE
BAMUNIMAIDAM
GUWAHATI-21
DISTRICT- KAMRUP(M)
ASSAM.

4:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
GUWAHATI DIVISION NO. II
BAMUNIMAIDAM

GUWAHATI-21
DISTRICT- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. P TALUKDAR

Advocate for the Respondent : SC, P H E

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 18-09-2023

Heard Mr. P. Talukdar, learned counsel for the petitioner and Mr. R.R. Gogoi, learned Standing Counsel, Public Health Engineering [PHE] Department for all the respondents.

2. It is the case of the petitioner that the petitioner firm, being a registered contractor with the respondent PHE Department, was awarded a number of contract works :- [i] Repairing 350 mm dia pumping main & fitting, fixing of MJ collar & flange spigot at 350 mm dia CI pipe line near royal road at B Barua road vide work order no. PHEE/G-II/TC-233/VOL-XVI/PT-V[A]/18-19/9130 dated 07.01.2019; [ii] Repairing 250 mm dia. DI clear water pumping main from tophill treatment plant to Sarusajai stadium of Sarusajai WSS near Sundarbori Namghar at Jalukdar vide order no. PHEE/GII/TC-233/VOL-XVII/PT-II/18-19/9926 dated 10.01.2019; [iii] Repairing by replacing the existing accessories for outdoor lighting arrangement at Panbazar Barge site vide work order no. PHEE/G-II/TC-233/VOL-XVI/PT-V[A]/18-19/10627 dated 11.01.2019; and [iv] Repairing of CC of pumping station at foot hill of Narakasur hill vide work order no. PHEE/G-II/TC-233/VOL-XVII/PT-II/10-20/11891 dated 27.12.2019 [‘the Contract-Works’, for short]. According to the petitioner, it had executed all the

Contract-Works successfully and thereafter, submitted bills for a total amount of Rs. 7,42,654/- for all the four Contract-Works. It is projected that when despite submission of final bills the respondent authorities in the PHE Department did not disburse the said amount of Rs. 7,42,654/-, the petitioner has to prefer the writ petition seeking a direction to the respondent authorities in the PHE Department to disburse the sum of Rs. 7,42,654/-.

3. Mr. Gogoi, learned Standing Counsel, PHE Department has referred to the statements and averments made in the affidavit-in-opposition, filed by the respondent no. 4 on 11.09.2023. It is submitted by him that the Departmental authorities are not disputing the execution of the four Contract-Works by the petitioner but due to non-availability of fund against the proper head of Accounts, the final bills of the petitioner could not be processed and amount raised therein could not be released in course of time. It has been further averred in the affidavit-in-opposition that the payment will be made subject to availability of fund. It is, thus, submitted by him that the writ petition may be disposed of at this stage with a direction to the respondent no. 2 to verify the claim of the petitioner and to process thereafter, the final bills of the petitioner for the amount found entitled by the petitioner in the light of the principles enunciated in the Full Bench judgment of this Court, rendered on 29.09.2008 in Writ Appeal no. 484/2005 [Tamsher Ali & Ors. vs. State of Assam & Ors.], reported in 2008 [4] GLT 1 [FB] and similar other 194 writ petitions.

4. Mr. Talukdar, learned counsel for the petitioner has agreed to the submission of Mr. Gogoi, learned Standing Counsel, PHE Department.

5. In view of the broad consensus arrived at by the learned counsel for the parties in the afore-stated manner, this Court is of the considered view that

instead of keeping this writ petition pending, the same can be disposed of with a direction to the respondent no. 2 to verify the claim of the petitioner for the amount of Rs. 7,42,654/- against the Contract-Works, mentioned herein above, and thereafter, to take necessary steps for disbursement of the amount of Rs. 7,42,654/- or any other amount found entitled to the petitioner for the said Contract-Works in terms of the direction made in Tamsher Ali [supra]. It is accordingly ordered. The respondent no. 2 shall verify the claim of the petitioner within 6 [six] weeks from the date of receipt of a certified copy of this order at his office from the petitioner and thereafter, to take necessary steps to disburse the amount in terms of the direction made in Tamsher Ali [supra].

6. This order disposes of the writ petition.

JUDGE

Comparing Assistant