

GAHC010107592016



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

Case No. : WP(C)/1154/2016

MANI RUR CHOUDHURY
M/S TRIBENI ENTERPRISE, R/O JAPORIGOG, SAHID MUJAMMIL HOQUE
PATH, KRISHNA NAGAR, H.NO.13, DISPUR, GHY-5

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, HEALTH and F.W.
DEPTT., DISPUR, GHY-6

2:MISSION DIRECTOR
NATIONAL RURAL HEALTH MISSION
ASSAM
CHRISTANBASTI-5

3:SUPERINTENDING ENGINEER
NRHM
ASSAM
CHRISTANBASTI-5

4:PROJECT ENGINEER
NRHM
ASSAM ZONE
HEAD QUARTER
KAMRUP M

5:JT. DIRECTOR
HEALTH SERVICES NALBARI
DIST- NALBARI
ASSA

Advocate for the Petitioner : MR.S RANA

Advocate for the Respondent : MS.A VERMA

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER

15.05.2023

Heard Mr. S.C. Biswas, learned counsel for the petitioner and Ms. A. Bora, learned Sanding Counsel, National Health Mission [NHM] for the respondent nos. 2 – 4.

2. The case of the petitioner is that he as a proprietor of M/s Tribeni Enterprise, in the year 2013, participated in a tender process initiated by a Short Notice Inviting Tender [SNIT] dated 29.08.2013 by submitting his tender papers along with a bid security of Rs. 1,73,000/- for execution of a contract-work viz. 'Strengthening of Existing Blood Bank in Civil Hospitals at SMK Civil Hospital, Nalbari District under NRHM, Assam' ['the Contract-Work', for short] with a bid value of Rs. 20,33,452/-. With the emergence of the petitioner as the successful bidder, a Letter of Acceptance [LoA] bearing no. NRHM/C-CW/REP/BLOOD BANK/SMK Civil Hospital/Nalbari/1968/13 dated 04.12.2013 was issued under the hand of the Special Consultant, National Rural Health Mission [NRHM], Assam notifying the petitioner that his bid dated 04.09.2013 was accepted for a contract price of Rs. 20,33,452/-. The petitioner was thereby, requested to furnish performance security of an amount equivalent to Rs. 1,73,000/- within a stipulated time period and to sign the contract agreement. After deposit of the performance security by the petitioner, a contract agreement was signed between the petitioner and the Mission Director, NRHM, Assam on 21.12.2013. After signing of the contract agreement, the petitioner was issued a notice to proceed with the Contract-Work on 21.12.2013.

2.1. According to the petitioner, after issuance of the notice to proceed with the Contract-Work dated 21.12.2013, he proceeded to execute the Contract-Work according to the plans given by the respondent authorities and completed the same to the extent of 40%. It was during the continuance of the Contract-Work, the petitioner was informed by the Mission Director, NRHM, Assam by a letter dated 15.03.2014 that there would be some major modifications in the design

and specification for setting up of Blood Bank in the Civil Hospital/SDCH as per the latest guidelines and observations from the experts / inspecting authority for setting up of Blood Bank due to which, the then existing model, plan and specification had been completely changed and the area of plan also had increased. With such intimation, the Mission Director, NRHM, Assam requested the petitioner to stop the work and not to proceed any further till the approval of the modified plan and estimate was approved and fund was ascertained from the end of the Mission Director, NRHM, Assam.

2.2. On receipt of the letter dated 15.03.2014 whereby the petitioner was asked to stop the work, the petitioner stopped execution of the Contract-Work. As the petitioner had completed the Contract-Work to the extent of 40% till such order to stop, the petitioner submitted a running bill amounting to Rs. 7,78,253/- against the completed portion of Contract-Work till then and the same was accepted by the respondent authorities in the NRHM Assam. The National Rural Health Mission [NRHM], Assam has since been re-named as National Health Mission [NHM]. When no action was found discernible from the ends of the respondent authorities in the NHM, Assam towards disbursal of the running bill of the petitioner amounting to Rs. 7,78,253/-, the petitioner submitted a Representation before the Mission Director, NHM, Assam on 30.01.2015 with the request to make arrangement for disbursal of the amount against the completed portion of the Contract-Work in terms of the work order dated 21.12.2013 and to release the performance security. The Representation dated 30.01.2015 of the petitioner was replied by the Mission Director, NHM, Assam on 31.03.2015. By a letter dated 31.03.2015, the Mission Director, NHM, Assam, the petitioner was informed that due to change in the specification and increase in the area of the model plan, there would be requirement of additional amount and in that connection, a proposal was submitted to the Government of India for approval of additional fund. It was conveyed that as till 31.03.2015, the necessary additional fund was not sanctioned by the Government of India; as the time of completion of the Contract-Work, that is, 4 [four] months had already expired; and the petitioner had expressed unwillingness to continue with the Contract-Work in his Representation dated 30.01.2015, a decision was taken to finalize the work in incomplete state and the petitioner was asked to be present at the worksite on 04.04.2015 to attend the incomplete final measurement of the work, which was not completed.

3. Mr. Biswas, learned counsel for the petitioner has submitted that the petitioner never

expressed his unwillingness to continue with the Contract-Work. Rather, the petitioner was asked to proceed with the Contract-Work by the Mission Director, NHM, Assam himself by his letter dated 15.03.2014. Referring to the contents of the Representation dated 30.01.2015, Mr. Biswas has contended that during the interregnum, the cost of materials increased manifold and it would not be possible for the petitioner to complete the balance work at the earlier rate. In the Representation dated 30.01.2015, the petitioner requested the respondent authorities in the NHM, Assam to release his running bill amount as well as the performance security at the earliest, after the respondent authorities stopped the execution of the Contract-Work in the mid-stream when it was completed to the extent of 40%.

4. The respondent authorities were put on notice as far back as on 02.03.2016. The counter affidavit on behalf of the respondent no. 2 is filed only on 26.10.2022 by the respondent no. 2 i.e. the Mission Director, NHM, Assam. In the counter affidavit, the respondent no. 2 has admitted about signing of the Contract-Work and issuance of the work order for the Contract-Work in favour of the petitioner. It is averred that when the SNIT was published, the scheme of strengthening of existing Blood Bank in 16 nos. District Civil Hospitals including the SMK Civil Hospital in Nalbari district, was to be executed as per the model that had been provided by the National AIDS Control Organization [NACO] and the contractors were issued work orders on that basis. The total approved amount for 16 nos. of blood banks was Rs. 303.93 lakhs. When the works were in progress, a committee constituted for Blood Banks with Drug Controller, Professor In-Charge Blood Bank, Gauhati Medical College & Hospital [GMCH] and other officials of Assam State AIDS Control Society [ASACS] suggested to stop all of works of Blood Bank based on model plan provided by NACO and as an alternative, a modified plan for Blood Bank as per Drug & Cosmetic Act with increased area was approved by the said Committee.

4.1. The discontinuance of the Contract-Work in progress is admitted by the respondent NHM authorities with the statement that a fresh proposal was submitted for additional amount of Rs. 878.82 lakhs to complete the civil works of 16 nos. of schemes approved in the year : 2012-2013 as per the approved modified plan with Blood Component Separation Unit [BCSU]. In the year : 2014-2015, approval was accorded only for 5 [five] nos. of Blood Bank at civil hospitals viz. [i] Baksa [Civil Hospital]; [ii] Chirang [JSB Civil Hospital]; [iii] Kamrup [Rural Hospital]; [iv] Udalguri [Udalguri Civil Hospital]; and [v] Cachar [SM Dev Civil Hospital], and for the 5 nos. of BCSUs at

five districts viz. [i] Mangaldoi; [ii] Lakhimpur; [iii] Jorhat Medical College; [iv] Kanaklata Civil Hospital [Sonitpur]; and [v] Tinsukia Civil Hospital [Tinsukia]. For the aforesaid purpose, a fund amounting to Rs. 994.00 lakhs was approved for the 10 nos. of Blood Banks and BCSUs the fund of Rs. 303.93 lakhs approved during the year : 2012-2013, thereby, leaving actual fund allocation in the year 2014-2015 as 690.87 lakhs.

4.2. It is averred that the projects earlier taken up in the District Civil Hospitals – [i] Dima Hasao; [ii] Goalpara; [iii] Hailakandi; [iv] Kamrup [M]; [v] Karbi Anglong; [vi] Kokrajhar; [vii] Morigaon; [viii] Nagaon; and [ix] Nalbari - were not included in the year : 2014-2015. It is also stated that on receipt of a communication from the Government of India, a decision was taken to discontinue all the works of 16 nos. of Blood Banks irrespective of the works whether started or not or in incomplete stage as no fund was provided for that purpose. It is also averred that it was in the above situation, more particularly, due to non-finalization of the Contract-Work, the Mission Director, NHM, Assam decided to stop all the contract-works and to make payments of the bills as per the incomplete final measurements. The Mission Director has admitted about issuance of the letter dated 31.03.2015 to the petitioner. It is mentioned that on receipt of the bill amounting to Rs. 7,78,253/-, the same was processed for payment. With a proposal to make payment of the said amount from the fund available in the account of Infrastructure Development for Health Institutions, Assam and the matter has been placed before the Executive Committee, State Health Society for approval as the Government of India approved fund was not available. It is further averred that the Executive Committee, State Health Society has kept the matter pending for which the payment to the petitioner could not be made.

5. From the averments and statements made by the respondent no. 2, Mission Director, NHM, Assam, it has emerged that the liability to the extent of Rs. 7,78,253/- to the petitioner has not been disputed as it is stated that the petitioner's running bill amounting to Rs. 7,78,253/- has been processed for payment. The decision to make payment of Rs. 7,78,253/- has remained pending due to the fact that the Executive Committee, State Health Society has not taken any decision till date. It is not the case of the respondent authorities in the NHM that the petitioner in executing the Contract-Work had defaulted in any manner. The petitioner after issuance of the work order, had proceeded to execute the Contract-Work and till he was stopped to work by the Mission Director, NHM, Assam by letter dated 15.03.2014, the petitioner completed the Contract-

Work to the extent of 40%. It is also not the case of the respondent NHM authorities that the petitioner had submitted a wrong/inflated running bill account. The matter of disbursal of the amount of Rs. 7,78,253/- to the petitioner has remained pending for a period about 9 years since 2014. With the admission of liability to the extent of Rs. 7,78,253/- by the Mission Director, NHM, Assam himself in its counter affidavit, this Court is of the considered view that the respondent authorities shall process and disburse the said amount along with the security money and performance security, if not disbursed till date, to the petitioner as early as possible, preferably not later than an outer limit of 4 [four] months from the date of receipt of a certified copy of this order from the petitioner by the respondent no. 2.

6. With the observations made and the direction give above, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant