

GAHC010107792023



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

Case No. : WP(C)/2937/2023

GUL KUMAR WARY
S/O SRI RANJIT KR. WARY, VILL-SHYAMTHAIBARI, P.O.-GARUBHASA,
DIST-CHIRANG (BTC), ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
THROUGH COMMISSIONER AND SPECIAL SECRETARY TO THE
GOVERNMENT OF ASSAM, PWD (R AND B), DISPUR, GUWAHATI-06

2:THE CHIEF ENGINEER
PWD (R AND B)
ASSAM
CHANDMARI
GUWAHATI-03

3:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
BTC
P.O. AND DIST-KOKRAJHAR
ASSAM

4:THE SECRETARY
PWD
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
P.O. AND DIST-KOKRAJHAR
ASSAM

5:TEH COUNCIL HEAD OF DEPARTMENT
PWD
BODOLAND TERRITORIAL COUNCIL

KOKRAJHAR
P.O. AND DIST-KOKRAJHAR
ASSAM

6:THE SUPERINTENDING ENGINEER
PWD (R AND B) CIRCLE
KOKRAJHAR
BTC
ASSAM

7:THE ADDITIONAL CHIEF ENGINEER -CUM- DIRECTOR BTC
P.O. AND DIST-KOKRAJHAR
ASSAM

8:THE EXECUTIVE ENGINEER
PWD
KOKRAJHAR (R AND B) DIVISION
KOKRAJHAR
BTC
ASSAM

9:SMT. RINA BASUMATARY
W/O SRI JWNGCHER BASUMATARY
VILL-GWJWNPURI
P.O.-KOKRAJHAR
DIST-KOKRAJHAR
BTC
ASSAM
PIN-78337

Advocate for the Petitioner : MR R DHAR

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

24.05.2023

1. Heard Mr. R. Dhar, learned counsel appearing for the petitioner and Mr. P. Nayak, learned Standing Counsel, for the PWD as well as respondent nos.

1, 2 and 7.

2. It is seen that there is a discrepancy in the numbering of the respondents in the Cause-Title.

3. Learned counsel for the petitioner is at liberty to appear before the Registrar (Judicial) to correct the series of parties in the Cause-Title by filing this writ petition under Article 226 of the Constitution of India. The petitioner has questioned the award of contractual work of package No. 176-4 of the N.I.T. issued by the Superintending Engineer, PWD (R&B) Circle, Kokrajhar in respect of restoration of flood damaged road on Banugaon village road under SDRF (FDR) for the year 2021-22.

4. The petitioner projects that he is a registered Class I(A) contractor and had participated in the tender process where the contract was awarded to the respondent no. 8 despite the fact that the said respondent had not submitted documents relating to her EPF registration as well as labour licence and accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the notice dated 15.02.2023 (Annexure- 6) and to allot the said contractual work to the petitioner.

5. Opposing the maintainability of the writ petition, the learned Standing Counsel for the respondent nos. 1 to 7 has pointed out that the NIT was issued on 20.06.2022 having the completion period of three months and that the notice to proceed with the work was issued on 15.02.2023 and therefore, he submits that there is every likelihood that either the work has been completed or some small part thereof might have remained incomplete. It is also submitted that in Sub-Clause 23.1 of Clause 23 of Instructions to Bidders, it has been mentioned that the BID has to be opened in the presence of the parties. Hence, it is submitted that on the date of the opening of the

tender the petitioner has not raise any objection that the tender submitted by the respondent no. 8 was deficient in any manner, and it was submitted that at this fag end of the work, the filing of this writ petition may not be entertained.

6. Having noted that the notice to proceed with the work was issued on 15.02.2023 and the time of completion of work was three months, this would not be fit and proper case to interfere with the tendering process as a major part of the work must have been done as the time of completion was three months.

7. In this case, the delay caused in the nature of the work would be fatal as the completion of work was to be done within three months.

8. Notwithstanding that the learned counsel for the PWD has submitted that as per his instructions the work has remained incomplete, but as the work has commenced, interference with the tender of work at this stage could not be in public interest. Therefore, the Court is disinclined to entertain this writ petition on the ground of delay and laches. Therefore, the writ petition stands dismissed without issuance of notice to the respondents.

9. However, if the petitioner is aggrieved by the allotment of work to the private respondent, the petitioner would be at liberty to approach the Civil Court for compensation and/or damages.

10. With the aforesaid observations, this writ petition stands dismissed.

JUDGE

Comparing Assistant