

GAHC010048272017



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

WP(C)/3470/2019

M/S. LANDMARK ENGINEERING
A PARTNERSHIP FIRM
REGD. UNDER THE PARTNERSHIP ACT
HAVING ITS PRINCIPAL PLACE OF BUSINESS AT SOUTH JALAN NAGAR
P.O. CHOWKIDINGI
DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY SECY. TO THE GOVT. OF ASSAM
IRRIGATION DEPTT.
ASSAM
DISPUR
GHY-6

2:THE CHIEF ENGINEER
IRRIGATION DEPTT.
ASSAM CHANDMARI
GHY-3

3:THE CHIEF ENGINEER (MINOR)
IRRIGATION DEPTT.
ASSAM CHANDMARI
GHY-3

4:THE ADDL. CHIEF ENGINEER
ZONE-III
IRRIGATION
ASSAM
JORHAT- 785001
ASSAM

5:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
IRRIGATION DEPTT.

BUDGET BRANCH
DISPUR
GHY-6
6:THE EXECUTIVE ENGINEER
JORHAT IRRIGATION DIVISION
ATILAGAON-785001

For the Petitioner : Ms. S. Roy, Advocate.

For the Respondents : Mr. B. Gogoi, SC, Finance & Taxation Deptt.
Mr. N. Upadhyay, SC, Irrigation Deptt.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

04.08.2023

The Petitioner herein is aggrieved on account of the non-refund of the security deposit of an amount of Rs. 4,46,439/- to the Petitioner by the Respondent/Irrigation Department and as such has filed the instant writ petition.

2. The brief facts of the instant case is that the Petitioner was issued a formal work order on 09.03.2013 for the various works stated in the said work order. In terms with the said work order, the time of completion of the work was 20 days and the value of the contract was Rs. 55,80,491/-. It further appears from the writ petition that the Petitioner also deposited 2% of the total amount as security deposit. The petitioner completed the work to the satisfaction of the Respondent/Irrigation Department and received the entire dues towards the performance of the contract. However, the security deposit of an amount of Rs. 4,46,439/- was not refunded to the Petitioner. The Petitioner on various

occasions approached the Respondent Authorities but the said Respondent Authorities did not take any steps for refunding the said amount to the Petitioner for which the instant writ petition has been filed.

3. It appears from the records that this Court had issued notice on 02.08.2019 making it returnable on 28.08.2019. It is further relevant to take note of that there were certain orders also passed by this Court directing the Respondent/Irrigation Department to take steps for refund of the said amount to the Petitioner.

4. It further reveals from the records that an affidavit-in-opposition has been filed by the Respondents wherein, it is the specific stand taken that the Respondent/Irrigation Department inadvertently deposited Rs. 11,75,041/- realized from different contractors, as VAT twice, and Respondent/Irrigation Department have been pursuing with the Tax Authorities for refund of the said amount, but the Tax Authorities had not refunded the said amount for which the Respondent Irrigation Department is not in a position to refund the said amount to the Petitioner.

5. Upon hearing the learned counsel for the parties, it appears that there is a clear admission on the part of the Respondent Irrigation Department that they are liable to refund the security deposit of an amount of Rs. 4,46,439/- to the Petitioner. The difficulties faced by the Irrigation Department for not being able to get the refund of the amount from the Taxation Department of the Government of Assam, in the opinion of this Court, cannot be a reason to withhold the said amount to which the Petitioner is entitled to. Under such circumstances, this Court therefore disposes of the instant writ petition with a direction to the Secretary to the Government of Assam, Irrigation Department to take appropriate steps for refund of the said amount of Rs. 4,46,439/- to the

Petitioner within a period of 6 weeks from the date a certified copy of the instant order is submitted to the Secretary to the Government of Assam, Irrigation Department. It is made clear that if the said amount is not refunded to the Petitioner within a period of 6 weeks, the Respondent/Irrigation Department shall be liable to pay interest which this Court quantifies @ 9% from the date of such default.

6. Mr. B. Gogoi, the learned counsel who also is the Standing Counsel for the Finance and Taxation Department of the Government of Assam shall also instruct the Commissioner of Taxes, Assam to do the needful upon request being made by the Irrigation Department for the refund of the said amount, if deposited twice by the Irrigation Department of the Government of Assam.

7. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant