

GAHC010119932022



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

Case No. : WP(C)/4067/2022

M/S S P ENTERPRISE
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, SRI PRIYANK
GOGOI, AGED ABOUT 34 YEARS, R/O 43, PUBERUN PATH, 8TH BYE LANE,
HATIGAON, GUWAHATI-38, KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY ITS CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-06

2:THE CHIEF ENGINEER (MINOR)
IRRIGATION DEPARTMENT
ASSAM
CHANDAMRI
GUWAHATI-781003

3:THE ADDL. CHIEF ENGINEER
INSPECTION AND QUALITY CONTROL
IRRIGATION DEPARTMENT
ASSAM
GUWAHATI

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

5:THE EXECUTIVE ENGINEER
DIBRUGARH DIVISION (IRRIGATION)
DIBRUGARH

6:THE ASSISTANT EXECUTIVE ENGINEER
DIBRUGARH SUB-DIVISION (IRRIGATION)
DIBRUGAR

Advocate for the Petitioner : MR. M K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 09-03-2023

Heard Ms. B. Chettri, learned counsel for the petitioner; Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent no. 1; and Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department for the respondent nos. 2 – 6.

2. The petitioner is a Class-I [C] Contractor registered with the respondent Irrigation Department. The petitioner has claimed that he was awarded with a contract work – 'LIS from river Tiloi in Hunghungia Area under AIBP for the year 2013-14. [Construction of brick lining of earthen brick canal for 295.00m length and lining works in canal system in right branch canal from ch 811.00m to 1153.00m = 342.00m] ['the Contract-Work', for short] vide an Work Order bearing no. ACEI/Z-III/Tech/CS-102/2014-15/6 dated 09.01.2015. It is the case of the petitioner that he had executed and completed the Contract-Work successfully to the satisfaction of the respondent authorities. According to the petitioner, the total value of the Contract-Work was Rs. 20,08,318/- and accordingly, the petitioner stated to have submitted his final bills for sanction and release. It is the further case of the petitioner that against the final bill

amount, only an amount of Rs. 7,62,240/- has been disbursed to the petitioner till date leaving a balance amount as outstanding. When despite repeated approaches for disbursement of the outstanding amount of Rs. 20,08,318/- less Rs. 7,62,240/-, the respondent authorities had not taken any discernible action for release of the same, the petitioner has stated to have approached this Court by filing this writ petition seeking, *inter alia*, a direction to the respondent authorities to release the balance amount as an admitted outstanding liability.

3. In response, Mr. Upadhyay, learned Standing Counsel, Irrigation Department has placed a communication bearing no. DLCD[I]Esstt/CC/2021-22/3453 dated 27.07.2022 of the respondent no. 5. By the said communication, the respondent authorities have admitted that the Contract-Work was awarded to the petitioner and the petitioner had completed the Contract-Work. It has been clarified to the effect that the total final bill amount should have been Rs. 20,05,898/-. After completion of the Contract-Work, the concerned authorities prepared two nos. of bills for the aforesaid Contract-Work in the following manner and part-payments were made as shown below :

i. Divisional Bill No.:- D/34/RA-I/14-15, Dated 4th March, 2015, Bill amount Rs. 9,23,830.00

1 st part payment made Vide Voucher No. 121 of 3/15 for	Rs. 5,61,411.00
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2 nd part payment made Vide Voucher No. 5 of 3/20 for	Rs. 92,382.00
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Total outstanding balance remained

[Rs. 9,23,830.00 – 6,53,793.00] = Rs. 2,70,037.00

ii. Divisional Bill No. D/19/RF-II/2015-16,

Dated 12th February, 2016

Bill Amount Rs. 10,82,068.00

Part payment made Vide Voucher No. 6 of 3/20 for

Rs. 1,08,447.00

Total outstanding balance remained

Rs. 9,73,621.00

Grand Total of outstanding balance of both the bills is

$$\text{[Rs. 2,70,037.00 + 9,73,621.00] = Rs. 12,43,658.00}$$

4. Thus, from the statements and averments of the contesting parties, it has emerged that the total bill value for the Contract-Work was Rs. 20,05,898/- and against the said amount, an amount of Rs. 7,62,240/- had already been disbursed to the petitioner. As on date, an amount of Rs. 12,43,658/- has remained outstanding to be paid to the petitioner by the respondent authorities in the Irrigation Department. It has been averred that the said amount of Rs. 12,43,658/- could not be released to the petitioner due to non-availability of fund against the scheme. However, regular demand for fund has already been submitted to the higher authorities for payment of the outstanding balance amount against the Contract-Work and the said balance bill amount would be released as soon as fund is received from the State Government in the form of FOC.

5. In view of the above fact situation obtaining in the case, Mr. Upadhyay, learned Standing Counsel, Irrigation Department has fairly submitted that the amount of Rs. 12,43,658/- is an admitted liability and the said amount could not be released due to paucity of fund. He has, thus, submitted that the instant case is squarely covered by 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 and, as such, the respondent authorities will process the claim of the petitioner in light of the principles enunciated in the aforesaid judgment.

6. Ms. Chettri, learned counsel for the petitioner has submitted that the

respondent authorities may be directed to take immediate action for disbursal of the amount of Rs. 12,43,658/- immediately, in terms of the principles laid down in **Tamsher Ali** [supra].

7. In view of the above submissions made by the learned counsel for the parties, this writ petition is disposed of at the admission stage itself with a direction to the respondent no. 2 i.e. the Chief Engineer [Minor], Irrigation Department, Assam, to examine the claim of the writ petitioner within a period of 45 days from the date of receipt of a certified copy of this order and then, the concerned respondent authorities will process the claim of the petitioner as regards disbursal of Rs. 12,43,658/- in accordance with law and in the light of the directions contained in **Tamsher Ali** [supra].

8. The petitioner after obtaining a certified copy of this order shall place the same before the respondent no. 2 i.e. the Chief Engineer [Minor], Irrigation Department, Assam for doing the needful from his end.

9. The writ petition stands disposed of in terms of the above directions.

JUDGE

Comparing Assistant