

GAHC010122662022



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

Case No. : WA/219/2022

MADHUJYA MOHAN
S/O SRI DINDESWAR MOHAN, R/O BORBARUAH, NEAR PRAKASH STORE,
P.O. BARBARUAH, P.S. BARBARUAH, DIST. DIBRUGARH, ASSAM, PIN
786007

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, PUBLIC WORKS DEPTT., DISPUR, GUWAHATI 6

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPTT. (ROADS)
ASSAM
CHANDMARI
GUWAHATI.

3:THE SUPERINTENDENT ENGINEER
PUBLIC WORKS DEPTT.
(R AND B)
DIBRUGARH ROAD CIRCLE
DIBRUGARH.

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPTT.
DIBRUGARH RURAL ROADS DIVISION
DIBRUGARH

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, PWD

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

(ORAL)

24.01.2023

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Ms. R.R. Kakati, for the appellant. Also heard Mr. P. Nayak, learned standing counsel, PWD, appearing for the respondents.

2. The present appeal has been filed against the order dated 01.06.2022 passed by the learned Single Judge in WP(C) No.3649/2021 by which plea of the petitioner for directing the State respondents for payment of certain alleged billed amount of ₹ 98,52,157/- for execution of works, namely, *S/R to Tingrai Chariali to Dehing Bandh Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Ch. 0.00 KM to 1.50 KM E/W & GWC*”; *"S/R to Tipong Facial Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Providing E/W, GWC, wearing for 1st to 2nd KM)"*, *"S/R to Chiang Ali Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Providing gravelling, heavy dressing and side berm from Ch 4th to 6th KM)"* and *"S/R to Ushapur Tangari Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Ch 1st to 3rd KM, Providing E/W, GWC wearing court, etc."* was declined by the learned Single Judge on the ground that the petitioner approached the Court very belatedly. The order passed by the learned Single Judge is as follows:

"Heard Shri N. Borah, learned counsel for the petitioner, who by means of this writ

petition has prayed for a direction for release of the contractual bills amounting to Rs.98,52,157/-. It is the case of the petitioner that a work namely, *“S/R to Tingrai Chariali to Dehing Bandh Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Ch.0.00KM to 1.50 KM E/W & GWC”*, *“S/R to Tipong Facial Raod in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Providing E/, GWC, wearing for 1st to 2nd KM)”*; *“S/R to Chiang Ali Road in Tengakhat Road Sub-Division under Dinrugarh Road Division for 2001-02 (Providing gravelling, heavy dressing and side berm from Ch 4th to 6th KM)”* and *“S/R to Ushapur Tangari Road in Tengakhat Road Sub-Division under Dibrugarh Road Division for 2001-02 (Ch 1st to 3rd KM, Providing E/W, GWC wearing court, etc)”* was duly allotted to him which he had completed in all the aspects.

The learned counsel has drawn the attention of this Court to the formal work order dated 28.02.2002 which was completed in the same year itself as would be evident from the completion certificate issued by the Executive Engineer. Though the petitioner who has claimed a huge amount, it is failed to be understood as to how a claim of 2002 would be entertainable by filing of a writ petition in the year 2021. Though the law of limitation per se may not have any application in a writ proceedings, it is not the question of delay but laches which stares on the face of the petitioner. This Court is also astonished to notice the stand of the Department, which has filed an affidavit through the respondent No. 4, Executive Engineer which has failed to take the basic objection and has gone into simply giving the ground for not being able to pay.

A Writ Court being a court of equity, the party approaching this Court has to come bona fide and with clean hands. The ordinate delay of more than two decades has prima facie established the gross negligence and laches on the part of the petitioner.

In that view of the matter, the writ petition stands dismissed.”

3. We do not find any reason to interfere with the aforesaid finding and observation of the learned Single Judge as the writ petitioner/appellant has very belatedly approached this Court. However, we are of the view that even if we have declined to exercise our extraordinary jurisdiction under Article 226 of the Constitution to issue any writ of mandamus or any direction to respondent authorities to make payment of the aforesaid amount claimed by

the petitioner, nothing prevents the State Government to entertain the request of the petitioner for making payment of the amount due if the petitioner approaches the Government for release of the same.

4. Under the circumstances, as submitted by the learned Senior counsel for the appellant, the appellant may approach the Government and the Government may consider the same as per their wisdom and discretion of the State.

5. Accordingly, as also submitted by the learned Senior counsel for the appellant/writ petitioner, the writ petitioner/appellant may approach the Government and the Government may consider release of the same considering also the fact that there is no denial by the State Government about its liability on account of the work executed by the appellant/writ petitioner.

6. We make it clear that we have not interfered with the order passed by the learned Single Judge on merit on the ground the learned Single Judge has dismissed the petition, but we have only observed that the appellant/writ petitioner would be at liberty to approach the respondent authorities and the respondent authorities will consider the same as per their wisdom as observed above.

7. With the above observations, the present appeal stands closed.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant