

GAHC010125582014



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

Case No. : WP(C)/3537/2014

MD. MEHTABUL HOQUE
S/O MD. MOHIBUL HOQUE, R/O GAMES VILLAGE, FLAT NO.A-1/101,
LALMATI, P.O. BASISTHA, DIST- KAMRUP METRO, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PWD, HIGHWAY DEPT., DISPUR, GHY-6

2:THE CHIEF ENGINEER
PWD N.H. WORKS
ASSAM
CHANDMARI
GHY-

For the Petitioner (s) : Mr. S. Rabha, Advocate.
For the Respondent (s) : None appears.

Date of hearing & Judgment : **10.10.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner challenging the Communication/the Letter bearing No. NHC 243/2013/14 dated 28th March, 2014 as well as seeking a direction upon the Respondents to grant compensation or remission of the bid money to the Petitioner to compensate the loss suffered by him on account of non-collection of toll/levy in respect to Gangadhar Bridge on N.H.-31, District -Dhubri due to local and state-wide bandhs that occurred during the period of settlement of the same from 21.10.2012 to 20.10.2013.

2. The facts involved in the instant writ petition as would be discernible from the pleadings is that the Petitioner was granted a settlement for collection of levy in respect to Gangadhar Bridge (Bir Chilarai Dollong) over river Gangadhar on N.H. 31 under Abhayapuri N.H. Division, in the Dhubri District for the period from 21.10.2012 to 20.10.2013 at a bid value of Rs. 2,66,00,000/-.

3. It is the case of the Petitioner that during the period from 21.10.2012 to 20.10.2013 there were several bandhs, both local as well as the State-wide bandhs which had affected his settlement

operation. It was mentioned that on the basis of a document issued by the Superintendent of Police, Dhubri dated 15.09.2013 that the total bandhs period was 114 days. This Court at this stage finds it relevant to mention that a perusal of the document which have been enclosed as Annexure-2 to the writ petition contains the heading of the list of programmes chalked by various organizations w.e.f. 20.10.2013 till date but the period mentioned therein is from 09.11.2012 to 23.08.2013 and the said document was signed on 15.09.2013. On the basis of the said document, the Petitioner sought for remission/granting of compensation to the Petitioner by the Respondent Authorities.

4. It further reveals from the records that prior to the instant litigation, the Petitioner had sought for remission/grant of compensation by filing a writ petition on the ground that the Respondents had refused to grant the compensation to the Petitioner. The said writ petition was registered and numbered as W.P.(C) No. 6985/2013. The said writ petition was disposed of vide an order dated 10.01.2014. It is however relevant to take note of that in the said writ petition the Petitioner sought for further extension to the extension which was already granted by the Respondent Authorities. This Court vide the order dated 10.01.2014 did not grant any extension to the petitioner, but rather permitted the Respondent Authorities to finalise the tender process that was initiated.

5. It further reveals that the Petitioner preferred a Writ Appeal before the Division Bench of this Court which was registered and numbered as WA No. 22/2014. In the said Writ Appeal, it was the case of the Petitioner that the Petitioner be permitted to claim remission from the Department as per the terms of the contract. The Division Bench of this Court vide their order dated 30.01.2014 permitted the Petitioner to approach the Department for remission and the Department was directed to consider the application and pass order in accordance with law.

6. The records further reveals that vide an order dated 28.03.2014, the Chief Engineer, PWD N.H. Works observed that the bandhs during that period was 56 days on the basis of a letter from the Superintendent of Police, Dhubri dated 20.03.2014 and further it was mentioned that the vehicles were plied on police escort during the said Assam bandhs period. It was further mentioned that the Department had already granted extension for a period of 90 days i.e. from 21st of October, 2013 to 20th of January, 2014. In view of the order dated 28.03.2014, whereby the Respondents refused to grant remission, the Petitioner has approached this Court seeking the reliefs above mentioned.

7. The records further reveals that the affidavit-in-opposition had been filed by the Respondent No. 2 i.e. the Chief Engineer PWD N.H.

Works. In the said affidavit-in-opposition, it was mentioned that as per the formal work order dated 19.10.2012, the settlement period was from 21.10.2012 to 20.10.2013. It was mentioned that the work order did not specify as to the number of days the said toll gate should be operated. It was further mentioned that the Superintendent of Police (DSB), Dhubri had mentioned that during the period of settlement i.e. from 21.10.2012 to 20.10.2013 there were 56 days and not 114 days of bandhs. It was also mentioned that the vehicle also plied during this period. Apart from that, the Respondent No. 2 in his affidavit stated that as per the letter dated 17.09.2012 of the Assistant Executive Engineer, PWD, Golakganj NH Sub Division that the traffic movement was not stopped altogether but restricted to single lane (one way) only and there was no reduction of traffic volume. It was therefore stated that in the facts of the case, the Petitioner was not entitled to any remission.

8. To the said affidavit-in-opposition filed by the Respondent No. 2, the Petitioner also filed an affidavit-in-reply denying the contents of the said affidavit-in-opposition.

9. I have heard the learned counsels for the parties and also have duly taken note of the pleadings as well as the materials placed before this Court.

10. The question which arises for consideration is as to whether the

Petitioner is entitled to any remission/compensation on account of the bandhs ?

11. The specific stand of the Respondents is that though there were 56 days of bandhs, but vehicles were plying through escorts. It was also mentioned that there was no reduction in the volume of traffic. The above aspects of the matter clearly shows that these are purely question of facts which requires adjudication viz. the question as to how many days the bandhs were operational; the question as to how much loss the petitioner sustained on account of the bandhs; the question as to whether the vehicles were allowed to ply during the bandhs through police escorts; the question as regards whether there has been any lessening of the volume of traffic on account of the bandhs. These questions of fact cannot be decided under Article 226 of the Constitution.

12. In that view of the matter, this Court therefore dismisses the instant writ petition on the question of maintainability.

13. Be that as it may, this Court however finds it relevant to take note of that the Petitioner have been diligently and bonafidely pursuing the remedy before this Court and taking into account the reason for which the writ petition had been dismissed by this Court, it is the opinion of this Court that the Petitioner should be granted the benefit under Section 14 of the Limitation Act, 1963 for the period

w.e.f. 16.07.2014 till date i.e. 10.09.2023. The Petitioner would be at liberty to approach the competent Civil Court and the dismissal of the writ petition shall not prejudice the rights of the Petitioner.

JUDGE

Comparing Assistant