

GAHC010137862021



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

Case No. : WP(C)/4550/2021

M/S VIKAS MEDICAL DEVICES
A REGISTERED PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF
BUSINESS AT NO. 29, DR. RAJENDRA ROAD, SIDDHARTH 1ST FLOOR, PS
BHOWANIPORE, KOLKATTA, 700020, WEST BENGAL
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER SRI SAJU BARUAH,
AGED ABOUT 44 YEARS. SON OF LATE A.K BARUAH, SENIOR BUSINESS
HEAD, SALES AND MARKETING, M/S VIKAS MEDICAL DEVICES,
RESIDENT OF NATUN SARANIA, BYE LANE 5, HOUSE NO. 15,
SILPUKHURI, GUWAHATI 03 KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI 06

2:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
KHANAPARA
GUWAHATI 22
KAMRUP M ASSAM

3:THE MISSION DIRECTOR

NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
SRINAGAR PATH
CHRISTIAN BASTI
GS ROAD
GUWAHATI 781005

KAMRUP M ASSAM

4:THE PRINCIPAL CUM CHIEF SUPERINTENDENT

ASSAM MEDICAL COLLEGE AND HOSPITAL
DIBRUGARH
ASSAM
78600

For the Petitioner : Mr. B. Sarma, Advocate.

For the Respondents : Ms. A. Bora,SC, NHM.
Mr. D. Upamanya, SC, Health.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

11.08.2023

The instant writ petition has been filed seeking a direction from this Court to the Respondent Authorities and more particularly the Mission Director, National Health Mission, Assam to release the admitted bill amount of Rs. 9,01,600/- with the interest at the rate on which loan is given by the Schedule Bank.

2. It reveals from a perusal of the writ petition, that a Notice Inviting Tender was issued on 23.12.2013 by the Mission Director, National Health Mission, Assam which was followed by a Corrigendum dated 19.02.2014. The Petitioner duly participated in the said tender process and was awarded the contract for supply and installation of hospital equipment/instrument for Mother and Child Health Hospital at

Assam Medical College and Hospital, Dibrugarh amounting to Rs. 8,05,000/- excluding the GST. The Petitioner duly supplied the said machine on 22.08.2018 and installed the same in good condition on 15.09.2018. This aspect was duly acknowledged by the Respondent Authorities. The total payment to which the Petitioner was entitled to was Rs. 9,01,600/- i.e. Rs. 8,05,000/- for the price of the machine + Rs. 96,600/- (GST). The Petitioner duly submitted the bill, but have not been paid the amount as per its entitlement for which the instant writ petition was filed.

3. This Court had issued notice on 20.04.2022 making it returnable by 4 weeks. It was also observed by this Court while issuing notice, that pendency of the writ petition shall not be a bar for the Respondents in the Health and Family Welfare Department as well as the National Health Mission, Assam to release the amounts payable to the Petitioner as per its entitlement and in accordance with law following the due procedure.

4. Today when the matter was listed, Smt. Arundhati Bora, the learned Standing Counsel for the National Health Mission has produced an instructions issued by the Mission Director, National Health Mission, Assam. In the said instructions, it was mentioned that the procurement of the said item i.e. the ventilators were done upon the request of the Director of Medical Education Assam and the funds required for the procurement was required to be transferred to the

National Health Mission in due course. The National Health Mission, Assam had also issued a Communication dated 15.03.2019 for release of the said amount as claimed by the Petitioner. However, the Government at the Health and Family Welfare Department have not released the funds to the National Health Mission, Assam account for which the amount could not be paid. It has been further mentioned that due to non provision of fund by the Director of Medical Education or the National Health Mission under the State budget, the payment to all vendors including the Petitioner could not be released. The said instructions so submitted by Smt. Arundhati Bora, the learned counsel for the National Health Mission, Assam is kept on record and marked with the letter "X".

5. This Court have duly heard the learned counsels for the parties including the counsel appearing on behalf of the Health and Family Welfare Department of the Government of Assam.

6. The fact that the Petitioner was issued the work order and in pursuance to that the Petitioner had supplied the equipments and installed the same is not in dispute. The Respondents being the State cannot deny the legitimate entitlement of the Petitioner of the amount of Rs. 9,01,600/- to which the Petitioner is legally entitled, on the ground of funds being not allotted or available. Such actions of not making payments even after receiving the equipments and upon installation putting into use renders such actions arbitrary and

unreasonable.

7. Under such circumstances, this Court directs the Respondents to sort out the matter amongst themselves and make budgetary provisions for the payment of the amount of Rs. 9,01,600/- to the Petitioner. The said exercise be completed within 3(three) months from the date a certified copy of the instant order is served upon the Respondent Nos. 2 & 3.

8. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant