

GAHC010152322023



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

Case No. : WP(C)/3971/2023

M/S S D CONSTRUCTION
HAVING THEIR OFFICE AT BORA SERVE BYE LANE, ULUBARI, GUWAHATI,
ASSAM-781007 DULY REP. BY ITS PROPRIETOR, SRI DEBOPRIYO DEBROY
AGED ABOUT 46 YEARS.
S/O LATE SANKAR DEBROY,
R/O STAR ENCLAVE, G.N.B. ROAD, PANBAZAR, GUWAHATI-781001, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY,
MINISTRY OF DEFENCE, NEW DELHI-110001.

2:ENGINEER-IN-CHIEF
MILITARY ENGINEER SERVICES
DIRECTORATE OF CONTRACT MANAGEMENT
KASHMIR HOUSE
RAJAJI MARG

NEW DELHI-110011

3:THE CHIEF ENGINEER (AF)

SHILLONG ZONE

MILITARY ENGINEER SERVICES (MES)
ELEPHANTA FALLS CAMP
NONGIYER
SHILLONG- 793009
MEGHALAYA.

4:THE COMMANDER WORKS ENGINEER

(AIR FORCE) MILITARY ENGINEER SERVICES
JORHAT
ASSAM
PIN-785005.

5:THE GARRISON ENGINEER (AF)

MILITARY ENGINEER SERVICES
JORHAT
ASSAM
PIN-78500

Advocate for the Petitioner : MRS. R BORAH

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.07.2023

Heard Mr. D. Borah, learned counsel for the petitioner and Ms. A. Gayan, learned CGC appearing for the respondents.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the notice dated 09.05.2023 (Annexure-16) and order dated 09.05.2023 (Annexure-17), both issued by the Chief Engineer (AF), Shillong Zone (respondent no. 3).

3) In brief, the case of the petitioner is that he was awarded with a contract work for "Provn of Master Control and Associated Facilities at AFS Jorhat". It is not in dispute that the petitioner has failed to complete the work within the time schedule, which led to several letters being written by the respondent authorities to the petitioner to complete the work.

4) It is projected that on 27.01.2023, the petitioner was directed to complete the balance 4% work by 31.01.2023 and that no extension of time would be granted. It is projected by the petitioner that on 31.01.2023, the work was completed and handed over to the respondent authorities and a request letter dated 31.03.2023, was made for issuing completion certificate. The petitioner was served with letters dated 10.03.2023 and 10.04.2023, informing him about certain defects in the work and directed to rectify the same. Vide letter dated 03.05.2023, the respondent no. 5 was informed that the defects were rectified and a request to issue completion certificate was made. On 09.05.2023, the contract with the petitioner was terminated by the letter impugned herein and the projection of the petitioner is that only 1% work was allegedly pending. As the representation of the petitioner dated 17.05.2023 did not yield any result, the present writ petition has been filed under Article 226 of the Constitution of India. The learned counsel for the petitioner has submitted that the petitioner was served with a final notice on 29.11.2022, and thereafter he was allowed to resume the work. Therefore, before terminating the contract, the petitioner was entitled to a two month's notice. Moreover, it was submitted that as per his instruction, the value of work was more than Rs.5.00 Crore and therefore, it was not believable that for 1% remaining work, which would be quantified at about Rs.5.00 lakh, the petitioner would endanger payment worth Rs.5.00 Crore. Hence, it was submitted that the respondent authorities had terminated the work for extraneous considerations.

5) Per contra, the learned CGC has produced a bunch of communications to demonstrate that the contract was entered on 11.03.2016 and the date of completion was on 10.03.2017, but even after inordinate delay, the work was not completed by the petitioner. It was submitted that on

29.11.2022, as the work was lying stand-still at 93%, the petitioner was served with a final notice to resume the work within 12.12.2022, and on default, the Chief Engineer (AF) (respondent no. 3) proposed to cancel the work at the risk and cost of the petitioner. By letter dated 27.12.2022, the petitioner was put to notice to complete the work by 31.01.2023, failing which the work would be cancelled on 31.01.2023. Thereafter, vide letter dated 27.01.2023, the petitioner was put to notice to rectify the defects and to complete the balance works. By letter dated 23.02.2023, the petitioner was asked to respond to 8 (eight) queries relating to the work. Thereafter, vide letter dated 10.03.2023, a list of defects were pointed out to the petitioner with a request to complete the balance work. Thereafter, vide letter dated 09.05.2023, the work was cancelled and the petitioner was put to notice that the balance work would be completed at the risk and cost of the petitioner, followed by convening order dated 09.05.2023. By a letter dated 21.06.2023, the petitioner was put to notice that (a) sub-station building was incomplete and cable duct was incomplete; (b) master control room building had several incomplete works like omission of (i) RCC platform; (ii) RCC shelves; (c) failure to provide *nahni*/ floor traps and bottle traps; (d) incomplete finish of kota stone flooring; (e) unacceptable roof treatment; (f) non-provision of (i) drainage board as per CA; (ii) plate racks; (iii) eaves board; (g) incorrect provision of (i) rain water pipes, and (ii) water tank; (iii) incorrect size and specification of sanitary pipes; (h) incomplete arboriculture; and (i) incomplete fencing work. Moreover, the petitioner was informed about the assembly and accordingly, he was asked to attend the site on 28.06.2023 at 11.00 hours; which was rescheduled to 08.07.2023 and then to 26 and 27 July, 2023 at 11.00 hours, and he was forewarned that on failure to attend, the BOO would proceed *ex parte*.

6) Therefore, it is seen that the petitioner had been put to two months' notice on 29.11.2022 and again he was put to notice dated 27.12.2022, to complete the work by 31.01.2023, failing which the petitioner was informed that the contract work would be cancelled on 31.01.2023.

7) In the considered opinion of the Court, despite allowing time to the petitioner to complete the works, the notice dated 29.11.2022 was never withdrawn. Therefore, the Court is unable to accept the submission that impugned letters were *prima facie* not sustainable on facts and in law.

8) Moreover, it is noted that vide representation dated 19.06.2023, the petitioner had invoked arbitration clause and had prayed before the Engineer-in-Chief (respondent no. 2) for appointing an arbitrator. In view of invoking of the arbitration clause by the petitioner, the Court is disinclined to entertain the challenge to this writ petition against the impugned notice no. 88476/JOR/259/E8 dated 09.05.2023 (Annexure-16) and impugned convening order no. 88476/JOR/ 260/E8 dated 09.05.2023 (Annexure-17), both issued by the Chief Engineer (AF), Shillong Zone (respondent no. 3).

9) Moreover, the contract work relates to constructions within Air Force Station, Jorhat, which is a defence establishment and expeditious completion of construction is in greater public interest.

10) Before parting with the records, it may be stated that the photocopy of the bunch of documents produced by the learned CGC, which have been referred to in para-5 above has been supplied to the learned counsel for the petitioner. Therefore, the photocopy of the said documents are retained as a part of record.

11) The writ petition stands dismissed in the motion stage without issuing notice upon the respondents.

JUDGE

Comparing Assistant