

GAHC010163852023



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

Case No. : WP(C)/4325/2023

AMIYA KUMAR PATHAK
S/O- LATE KANURAM PATHAK,
R/O- HOUSING ROAD, HOUSE NO-4,
P.O- SILPUKHURI, GUWAHATI-03, KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, INLAND WATER TRANSPORT DEPARTMENT, ULUBARI,
GUWAHATI-7

2:THE DIRECTOR
INLAND WATER TRANSPORT DEPARTMENT
ULUBARI
GUWAHATI-7

3:THE DEPUTY DIRECTOR
INLAND WATER TRANSPORT DEPARTMENT
ULUBARI
GUWAHATI-7

4:THE ASSISTANT EXECUTIVE ENGINEER (T/C)
INLAND WATER TRANSPORT DEPARTMENT
ULUBARI
GUWAHATI-

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, IWT

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 16-10-2023

Hears Ms. S.A. Khalifa, learned counsel for the petitioner and Ms. M.D. Bora, learned Standing Counsel, Transport Department for all the respondents.

2. The petitioner has preferred the instant writ petition projecting *inter alia* that in response to the Notice Inviting Tender [NIT] dated 19.01.2021 for "Minor repairing, electrification, painting works of T.F. Sukrewwar of G.N ferry service" [the Contract-Work no. 1', for short], he submitted his tender on 01.02.2021 and the respondent authorities through the Executive Engineer, I.W.T. Division, Guwahati issued a Letter of Acceptance [LoA] vide Letter bearing no. EWT/[T]298/07-08/1550 dated 02.02.2021 [Annexure-A]. It is the case of the petitioner that the petitioner had carried out the contract-work as per specifications provided with the rates as enclosure to the Letter of Acceptance [LoA] dated 02.02.2021. On 23.02.2022, the Executive Engineer, I.W.T. Division, Guwahati had issued another work order vide Letter bearing no. EWT/[T]550/VVIP/2019-20/2356 dated 23.02.2022 [Annexure-B] for "Painting works of vessel TF Karnachal of G/N ferry service in connection with VVIP programme" [the Contract-Work no. 2', for short]. As per the specification provided with the rates as enclosure thereto similarly, the petitioner was issued 2 [two] other work orders vide Letter bearing no. EWT/[T]550/VVIP/2019-20/2344 dated 23.02.2022 [Annexure-C] for "Painting works of vessel MV Narayan of G/N ferry service in connection with VVIP programme" [the Contract-Work no. 3', for short] and Letter bearing no. EWT/[T]550/VVIP/2019-2020/2350 dated 23.02.2022 [Annexure-D] for "Painting works of vessel RPL Baghbor of G/N ferry service in connection with VVIP programme" [the Contract-Work no. 4', for short].

3. The petitioner has averred that after executing all the 4 [four] Contract-Works awarded to him, he had submitted the final Bills in that respect and when the respondent authorities

did not release an amount of ₹ 5,83,439/- against those final Bills, he is constrained to approach this Court by the writ petition seeking *inter alia* a direction to the respondent authorities to disburse of the said amount of ₹ 5,83,439/-.

4. The respondent no. 2 i.e. the Director of Inland Water Transport, Assam has submitted a counter affidavit on 28.08.2023 stating *inter alia* as under :-

4. That with regard to the statements made in Paragraph no. 7 of the writ petition the deponent begs to state that as per record available in the office of the Executive Engineer, IWT, Ulubari Division, Guwahati the work of [i] Minor repairing, electrification, painting works of T.F. Sukreswar of G/N ferry service, [ii] painting works of vessel TF Kamachal of G/N ferry service in connection with VVIP programmes, [iii] painting works of vessel MV Naranarayan of G/N ferry service in connection with VVIP programmes, and [iv] painting works of vessel RPL Baghbar of G/N ferry service in connection with VVIP programmes was awarded to the petitioner. The petitioner executed all the four works and submitted bills amounting to Rs. 5,83,037/-. As such the outstanding liability due to the writ petitioner for the above mentioned works is Rs. 5,83,037.00 which is admitted.

5. That with regard to the statements made in Paragraph no. 8 of the writ petition the deponent begs to state that, the writ petitioner executed various works under different head of Account. However due to insufficient fund under the proper Head of Account the liability to the writ petitioner could not be fully cleared. The deponent further begs to submit that at the time of issue of preliminary work order it was clearly mentioned that payment will be made subject to the availability of fund.

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9. That with regard to the statements made in Paragraph no. 12 of the writ petition the deponent begs to state that, as per record the various prior works was awarded to the petitioner and the payment against that works has been duly made by the Department. However due to the paucity of funds the outstanding liability towards the writ petitioner has not been cleared. As and when the higher authority provides the funds, the liability towards the writ petitioner would be cleared.

11. That with regard to the statements made in Paragraph no. 14 of the writ petition the deponent beg to state that, on receipt of the fund under proper head of account, strict chronological order will be maintained for making payment by displaying the name of contractors who is entitled to get the payment by covering the amount of ceiling allotment and contractor will be communicated to receive the payment.”

5. Ms. Bora, learned Standing Counsel, Transport Department has submitted that since the outstanding liability to the extent of ₹ 5,83,037/- has been admitted in the affidavit filed on behalf of the respondent no. 2, who is the Head of the Directorate, this writ petition can be disposed of in the line of the directions contained in the Full Bench judgment of this Court, rendered on 29.09.2008 in **Writ Appeal no. 484/2005 [Tamsher Ali & others vs. State of Assam & others]**, reported in 2008 [4] GLT 1 [FB] and similar other 194 writ petitions.

6. Ms. Khalifa, learned counsel for the petitioner has agreed to such submissions of Ms. Bora.

7. From the statements and averments made in the counter affidavit filed by the respondent no. 2 i.e. the Director of Inland Water Transport, Assam as the Head of the Directorate, it is evident that the respondent authorities had admitted the liability to the extent of ₹ 5,83,037/- in respect of the 4 [four] Contract-Works executed by the petitioner on behalf of the respondent authorities. A stand has been taken therein that due to availability of the sufficient fund in the proper Head of Account, the liability of the writ petitioner could not be disbursed till date. In such view of the matter, this Court is of the considered view that the writ petition can be disposed of with a direction in similar lines as directed in the **Tamsher Ali** [supra]. Accordingly, this writ petition is disposed of with a direction to the respondent authorities to disburse the amount of ₹ 5,83,037/- to the petitioner strictly in terms of the directions made in **Tamsher Ali** [supra], more particularly, by strictly adhering to the chronological order of claims pending in the Directorate of Inland Water Transport, Assam, on availability of fund.

8. This order disposes of the writ petition.

JUDGE

Comparing Assistant