

GAHC010164992020



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

Case No. : WP(C)/4884/2020

BAPOJITH LANGTHASA
S/O- SHRI BRAJENDRA LANGTHASA, R/O- VILL- DIGRIK, P.O. HAFLONG,
DIST.- DIMA HASAO, ASSAM- 788819

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, PUBLIC
WORKS (BUILDING AND NATIONAL HIGHWAYS) DEPTT., DISPUR, GHY-1

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL
REP. BY THE PRINCIPAL SECY.
HAFLONG- 788819
DIMA HASAO

3:THE ADDL. CHIEF ENGINEER
P.W.D. (R AND B) HILLS
ASSAM
HAFLONG
DIMA HASAO- 788819

4:THE EXECUTIVE ENGINEER
P.W.D.
HAFLONG BUILDING DIVISION
HAFLONG- 788819

5:THE ASSTT. EXECUTIVE ENGINEER
P.W.D.
HAFLONG BUILDING SUB- DIVISION
HAFLONG- 78881

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioner : Shri K.N. Choudhury, Senior Advocate,
Shri D.J. Das, Advocate.

Advocates for respondents : Shri R.M. Das, Standing Counsel, NCHAC.

Date of hearing : 24.01.2023

Date of judgment : 17.02.2023

1. The legality and validity of a letter dated 15.09.2020 by which the contract of the petitioner has been terminated is the subject matter of this writ petition. However, before going to the issue to be decided, it would be convenient if the facts of the case are recorded in brief.

2. A Notice Inviting Tender was published on 22.11.2016, for Construction of S. R. Thaosen Media Centre at Haflong in the district of the Dima Hasao. It is the case of the petitioner that upon participation in the said tender process, the petitioner was duly selected and accordingly, a Letter of Acceptance dated 06.02.2017 was issued to him. According to the petitioner, after completion of the necessary formalities, he had started the execution of the work and had constructed 150 numbers of piles and 2 slabs including substantial brick works. As per the petitioner, he has completed about 45% of the work.

3. It is, however, the case of the petitioner that during the execution of the work, there were several hindrances, including non availability of Supervising Officer, non-payment of running account bills and various other circumstances as a result of which, the petitioner could not proceed with the work in a smooth manner. The petitioner specifically contends that the Department was fully aware of the difficulties.

4. Over and above the aforesaid difficulties, the petitioner has alleged that the pandemic had also adversely affected the execution of the work by a major way. Since the petitioner was prevented by sufficient reasons including the onslaught of the pandemic, he could not execute the work further as a result of which, vide the impugned letter dated 15.09.2020, the work was terminated and the petitioner was directed to attend the work site on 23.09.2020 for recording up-to-date measurement of the works done towards finalisation of the contract. As indicated above, it is this termination letter which has been questioned in this writ petition.

5. I have heard Shri K.N. Choudhury, learned Senior Counsel for the petitioner assisted by Shri D.J. Das, learned counsel whereas the respondent - Dima Hasao Autonomous Council is represented by Shri R.M. Das, learned Standing Counsel. The materials placed before this court has been duly perused.

6. Shri Choudhury, the learned Senior Counsel has submitted that the impugned letter dated 15.09.2020 is not sustainable in law inasmuch as, it was not preceded by any opportunity or notice. The learned Senior Counsel has

submitted that the impugned letter dated 15.09.2020 is apparently issued in a high-handed manner without following the due process of law. It is also submitted that as per information gathered, the said termination has been done on extraneous consideration whereby an instruction dated 11.09.2020 issued by the P.A. to the Chief Executive Member, North Cachar Hills Autonomous Council had played a major role.

7. Elaborating his argument, the learned Senior Counsel for the petitioner has submitted that there is a jurisdictional error which would go to the root of the matter. He submits that while the work order is issued by the Additional Chief Engineer, who is the employer, the termination order dated 15.09.2020 has been issued by the Executive Engineer. The learned Senior Counsel submits that as per the contract governing the parties, such powers are vested only with the Additional Chief Engineer and on this ground alone, impugned order is unsustainable in law.

8. The learned Senior Counsel for the petitioner has submitted that there were sufficient reasons and grounds for not being able to complete the work in time and those factors have been wholly ignored before passing the impugned order of termination dated 15.09.2020.

9. *Per contra*, Shri R.M. Das, learned Standing Counsel, North Cachar Hills Autonomous Council, NCHAC submits that none of the grounds projected by the petitioner are tenable either in law or on facts. He submits that as per the Notice Inviting Tender dated 22.11.2016, the date of completion of the work was 24 months. By drawing the attention of this court to the affidavit-in-

opposition dated 04.12.2022, the learned Standing Counsel has submitted that there were negligence and laches on the part of the petitioner towards the work which was causing inordinate delay. He submits that the work was of immense public importance as the Media Centre in question was to be used for major public functions. Sri Das, the learned Standing Counsel submits that the pandemic was declared only from March, 2020 whereas the work should have been completed way back in the year 2018 and therefore, the excuse of pandemic cannot be taken at all.

10. As regards the argument regarding jurisdictional error that the impugned order of termination has been issued by the Executive Engineer and not by the Additional Chief Engineer, the learned Standing Counsel has submitted that the aforesaid issue has been decided by this court in the case of ***Kaustav Saikia vs. The State of Assam & Ors.*** Vide order dated 18.02.2021 passed in WP(C)/4154/2020 wherein it has been held that such an action was permissible in law and would not by itself be a ground for interference if the attending materials justifies the same and there are proper authorisation. The concept of agent was also brought in.

11. Shri Das, the learned Standing Counsel also raises a preliminary objection towards maintainability of the writ petition on the ground of availability of an alternative dispute redressal mechanism by way of arbitration.

12. The learned Standing Counsel relies upon the following case laws:

1. *National Highways Authority of India vs. Ganga Enterprises and*

Anr. [(2003) 7 SCC 410]

2. Nirma Ltd. vs Lurgi Lentjes Energietechnik GMBH and Anr. [(2002) 5 SCC 520].

3. Kerela State Electricity Board and Anr. Vs. Kurien E. Kalathil and Ors. [(2000) 6 SCC 293].

4. State of U.P. and Ors. Vs. Bridge & Roof Company (India) Ltd. [(1996) 6 SCC 22].

5. Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Ors. Vs. Sahngoo Ram Arya and Anr. [(2002) 5 SCC 521].

13. Rejoining his submissions, Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that the petitioner is very much interested in completing the works. He submits that interest of justice can be done if the petitioner is given a reasonable time of around nine months for completing the work.

14. With regard to the preliminary objection regarding the maintainability on the ground of availability of an arbitration clause, Shri Choudhury, the learned Senior Counsel places reliance upon the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors reported in (1998) 8 SCC 1** wherein the Hon'ble Supreme Court has held that under certain circumstances, availability of an alternative remedy by itself will not close the doors of a Writ

Court.

15. He has also cited the case of ***Union of India and Ors. Vs. Tania Construction Private Limited reported in (2011) 5 SCC 697***. Reliance has also been placed upon the case of ***Bareilly Development Authority and Anr. Vs. Ajai Pal Singh and Ors. reported in (1989) 2 SCC 116*** to bring home the concept that under Article 226 of the Constitution of India, wide powers can be exercised against actions done by any authority.

16. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this court have been duly perused.

17. Let us first take up the preliminary objection on the maintainability of the writ petition. It is normally correct that as and when an alternative remedy is available, a Writ Court may not burden itself to examine a *lis*. However, as explained by the Hon'ble Supreme Court in the case of ***Whirlpool Corporation*** (supra) under certain circumstances and in the interest of justice, such objection may be overlooked and in the instant case, the circumstances are such that the preliminary objection can be overlooked.

18. In the case of ***National Highways Authority of India*** (supra), the Hon'ble Supreme court has laid down that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India.

19. In the case of ***Nirma Ltd*** (supra), the Supreme Court reiterated that if an efficacious alternative remedy is available, the same should be directed to be availed.

20. The cases of ***Kurien E. Kalathil*** (supra), ***Bridge & Roof Company*** (supra) and ***Sahngoo Ram Arya*** (supra) has been cited for the same purpose regarding disputes which arise from a contract and the limitation of a writ court.

21. The case laws relied upon by the petitioner are not applicable on the facts and circumstances of the present case and would not therefore come to the aid of the petitioner.

22. To examine the grounds of challenge and the justification given, it would be necessary to note certain dates. The Notice Inviting Tender was dated 22.11.2016 wherein it was specifically given that the term of completion of the work was 24 months. The work order was allotted on 06.02.2017 and the records reveal that on 22.02.2017, there was an instruction to proceed. Even if the petitioner is given the benefit of doubt, the period of two years for completion of the work in question would reckon from 22.02.2017 which would expire in February, 2019.

23. This Court finds force in the argument of the learned Standing Counsel of the Council that pandemic in this case would not have much relevance as the declaration of pandemic was done only in March, 2020, which is more than a year after the due date of completion. Therefore, in the opinion of this Court, the reasons set forth for the delay are not good enough. In any case it is seen

from the records that extensions were granted either in written or tacitly and the impugned order of termination was issued only on 05.09.2020. Though it may appear that the termination was done at the period when the pandemic was on full swing, one cannot lose sight of the fact that the work should have been completed in March 2019 itself and the termination has been done almost after 1½ years from the scheduled date of completion of the work juxtaposed with the fact that the completion term is 24 months.

24. As regards the contention raised on behalf of the petitioner on the jurisdictional issue namely that the termination order was issued by the Executive Engineer whereas the authority is of the Chief Engineer, the same issue was the subject matter of dispute in a writ petition namely, ***WP(C)/2243/2021 (Shri Monsur Ahmed vs. The State of Assam & Ors.)*** wherein this Court vide judgment and order dated 30.11.2022 has rejected the said plea. The following observations would be relevant.

“42. With regard to the second ground of challenge namely, the authority of the Executive Engineer to issue the termination order, it is the contention of the petitioner that such power is vested upon the Chief Engineer of the Department. It is further contended that the letter from which such powers have been sought to be delegated is not a part of the contract and therefore, could not have been taken into account. On the other hand, the records of the case would show that all along the correspondence with the petitioner was being made by the Executive Engineer including the show-cause notice dated 28.09.2020. The decision to terminate the contract is not a decision of a particular officer but of the Department and in this case it is seen that the said decision has been conveyed by the Executive Engineer. In the considered

opinion of this Court, though the same may be held to be deviation, such deviation would not go to the root of the case inasmuch as, it is the decision of the Department which has been conveyed. This Court cannot also ignore the communication dated 25.02.2010 issued by the Chief Engineer, PWD Roads giving authority to the Executive Engineer to issue termination notice. Another pertinent factor is that the said communication dated 25.02.2010 is with regard to all PMGSY works and the present work is also under the PMGSY and therefore, it cannot be said that the said communication is wholly out of context."

25. As regards, the plea of influence of external factors namely the Personal Assistant to the Chief Executive Member, in the opinion of this Court, the interference of a peoples' representative cannot *per se* be faulted with unless the same is accentuated by malice and *mala fide*. The work in question, namely the constructions of the Media Centre was of immense public importance over which the entire area was eagerly waiting.

26. In that view of the matter, delay in execution of the same would naturally be a cause to be aggrieved of and even otherwise, this Court has found that factually there were good grounds for proceeding with the impugned action.

27. While adjudicating the above issue, one cannot lose sight of the fact that the issue involved concerns immense public importance. As indicated above, the work is a construction of a Media Centre at Haflong which is for the benefit of the entire district of NC Hills which is otherwise remote and backward.

28. In that view of the matter, this court is of the unhesitant opinion that the

present writ petition lacks merits and is accordingly dismissed.

29. The interim order passed earlier stands vacated.

30. It is made clear that there is no embargo to complete the balance work or any part thereof by the authorities by adhering to the due process of law.

JUDGE

Comparing Assistant