

GAHC010197392017



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

Case No. : WP(C)/3467/2017

KUSHESWAR CHAMUAH and ANR.
S/O LATE GAJEN CHAMUAH, R/O HOUSE NO. 89, AMULAPATTY, PO/PS-
DHAKUAKHANA, DIST. LAKHIMPUR, ASSAM, PIN-787055

2: SHRI RABINDRA BARUAH
S/O SHRI TARANATH BARUAH
R/O HOUSE NO.55
WARD NO. 5
RATANPUR
PO/PS-DHEMAJI
DIST. DHEMAJI
PIN-78705

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
WATER RESOURCE DEPTT., DISPUR, GUWAHATI, ASSAM, PIN-781006

2:THE CHIEF ENGINEER
WATER RESOURCE DEPTT.
CHANDMARI
GUWAHATI
ASSAM
PIN-781003

3:THE ADDITIONAL CHIEF ENGINEER
UPPER ASSAM ZONE
WATER RESOURCE DEPTT.
DIBRUGARH
ASSAM
PIN-786001

4:THE SUPERINTENDING ENGINEER

LAKHIMPUR WATER RESOURCE CIRCLE
NORTH LAKHIMPUR
ASSAM
PIN-787001

5:THE EXECUTIVE ENGINEER
LAKHIMPUR WATER RESOURCE CIRCLE
NORTH LAKHIMPUR
ASSAM
PIN-787001

6:THE JUNIOR ENGINEER

LAKHIMPUR WATER RESOURCE CIRCLE
NORTH LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR.P K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-02-2023

Heard Mr. P.K. Das, learned counsel for the petitioners; Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Mr. P. Kakoti, learned counsel for all the respondents.

2. Both the petitioners are registered Contractors under the respondent Water Resources Department, Government of Assam. The petitioner no. 1 was awarded two contract works :- [1] Construction of retirement at 19th K.M. of B/dyko from Sissikalghar to Tekeliphuta near Matmaraph.I vide a Work Order

no. SEL/W/Dh/19/06-07/117 [‘the subject-work no. 1’, for short] & [2] Construction of retirement at 19th K.M. of B/dyko from Sissikalghar to Tekeliphuta near Matmaraph.I [re-allotment of balance B/work] vide Work Order no. W-9/19KM Rett./IK/08/177-78 [‘the subject-work no. 2’ for short]. The petitioner no. 2 was also awarded a contract work viz. ‘Construction of retirement at 19th K.M. of B/dyko from Sissikalghar to Tekeliphuta near Matmara’ vide Work Order no. SE[L]/M/Dh/19/2005-06/36 [‘the subject-work’, for short]. The petitioners have claimed that they had successfully executed the three subject-works to the satisfaction of the respondent authorities. The petitioner no. 1 had submitted final bills for an amount of Rs. 1,10,300/- against the subject-work no. 1 and an amount of Rs. 58,594/- against the subject-work no. 2. The petitioner no. 2 had submitted a final bill amounting to Rs. 1,90,192/- against the subject-work no. 3. When despite repeated approaches for disbursal of the said amount the respondent authorities had not taken any discernible action for release of the same, the petitioners have stated to have approached this Court by filing this writ petition seeking, *inter alia*, a direction to the respondent authorities to release the final bill amounts against the three subject-works.

3. In response, the respondent no.2 i.e. the Chief Engineer, Water Resources Department, Assam has filed an affidavit-in-opposition on 15.09.2022. It has been averred therein that the subject-works, which were awarded to the petitioners, were not technically and administratively sanctioned by the competent authority and no fund allotment had been made by the State Government for which the outstanding dues of the petitioners could not be paid. It is averred that due to non-sanction of funds by the concerned authority, the bill amounts of the petitioners could not be cleared but the respondent

authorities have been taking necessary steps to release the bill amounts of the petitioners.

4. Mr. Goswami, learned Additional Advocate General, Assam has fairly submitted that the subject-works were said to have been completed by the petitioners but the amounts against the final bills, submitted by the petitioners, could not be released due to reasons indicated in the affidavit-in-opposition. Considering the fact that the bills are being considered, Mr. Goswami has further submitted that the writ petition can be disposed of with a direction to the respondent no. 2 to examine the claims of the two petitioners and thereafter, to process the claims of the petitioners to the extent of admitted liabilities, in terms of the principles laid down in the Full Bench judgment of this Court, rendered on 29.09.2008 in Writ Appeal No.484/2005 [*Tamsher Ali & Ors. vs. State of Assam & Ors.*], reported in 2008 [4] GLT 1 [FB] and similar other 194 writ petitions.

5. In view of the above submissions made by the learned counsel for the parties, this writ petition is disposed of at the admission stage itself with a direction to the respondent no.2 i.e. the Chief Engineer, Water Resources Department, Assam to examine the claim of the petitioners within a period of 45 [forty five] days from the date of receipt of a certified copy of this order and then, the respondent authorities will process the claim of the petitioners to the extent of the admitted liabilities in accordance with law and in the light of the directions contained in *Tamsher Ali* [supra].

6. The petitioners after obtaining a certified copy of this order shall place the same before the respondent no.2 i.e. the Chief Engineer, Water Resources Department, Assam for doing the needful from his end.

7. The writ petition stands disposed of in terms of the above directions.

JUDGE

Comparing Assistant