

GAHC010199452022



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

Case No. : WP(C)/6454/2022

ABDUR RAHMAN
S/O- LATE AZAFAR ALI,
RESIDENT OF VILLAGE- LENGRIBORI,
P.O.- SAHARIAGAON,
DISTRICT- MORIGAON, ASSAM,
PIN- 782126.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
WATER RESOURCES DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
CHANDMARI
DISPUR
GUWAHATI-6.

3:THE ASSISTANT EXECUTIVE ENGINEER
JAGIROAD WATER RESOURCE SUB-DIVISION

JAGIROAD

MORIGAON
ASSAM

PIN- 782410.

4:THE EXECUTIVE ENGINEER

MORIGAON WATER RESOURCE DIVISION

MORIGAON
ASSAM
PIN- 782105.

5:THE ACCOUNTS OFFICER
MORIGAON WATER RESOURCES DIVISION

MORIGAON
ASSAM
PIN- 782105

Advocate for the Petitioner : MD. A HASSAN

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 16.03.2023

Heard Mr. A. Hassan, learned counsel for the petitioner and Ms. J. Gogoi, learned counsel appears for all the respondents.

2. It is submitted by the learned counsel for the petitioner that in response to the work order for construction of R/S to T/dyke along both banks of Kopili river from Charaihagi to Tuklaitup (L/B), Basundhari to killing Kopili junction (L/B) and Chaparmukh to Ahatguri Amsoi PWD Road (R & B) including anti erosion measures at different reaches, the petitioner was awarded the work and as per the schedule of the work order the work was duly completed to the satisfaction of the respondent authorities. The following work orders were

allotted to the petitioner for execution:-

1. MGWRD/W-275/Pt-Vi/2012-13/144-213 Dated 15.09.2012,
2. No. MGWRD/W-275/Pt-VI/2014-15/2419 (i-viii), Dated 19.01.2015,
3. No. MGWRD/W-3/Pt-I/2014-15/67-73 Dated 07.0.2015 AND
4. No. MGWRD/CS-9/2013-14/1 Dated 28.03.2014

which were duly executed. However the payment for works executed have not yet been released.

3. It is stated by Ms. J. Gogoi, learned counsel for all the respondents submits that an affidavit-in-opposition has been filed today admitting the claims of the petitioner.

Paragraph 6, 8, 9 and 10 of the affidavit-in-opposition are extracted below:-

"6. That the deponent begs to state that the petitioner is a registered contractor of Water Resources Department, and the Work was allotted to him vide work order 1. MGWRD/W-275/Pt-Vi/2012-13/144-213 Dt. 15.09.2012, 2. No. MGWRD/W-275/Pt-VI/2014-15/2419 (i-viii), Dt. 19.01.2015, 3. No. MGWRD/W-3/Pt-I/2014-15/67-73 Dt. 07.0.2015 and 4. No. MGWRD/CS-9/2013-14/1 Dt 28.03.2014 against the Scheme "R/S to T/dyke along both banks of Kopili river from Charaihagi to Tuklaitup (L/B), Basundhari to killing Kopili junction (L/B) and Chaparmukh

to AhatguriAmsoi PWD Road (R&B) including anti erosion measures at different reaches” after observing all necessary formalities by the respondent authorities.

8. That the deponent begs to state that the aforesaid scheme is under FMP(Flood Management Programme) under XI Plan for which the administrative Approval was accorded by the Government and Technical Sanction was issued by the then Chief Engineer, Water Resources Department, Assam vide no. WR(C) 2/2011/7 Dt.17.08.2011 and WR(ED) Tech/6044/09/53 Dt.26.02.2011respectively.

9. That the deponent begs to state that the estimated amount of the scheme was Rs.11062/- Lakhs out of which 90% was supposed to borne by the Government of India under Central Share and remaining 10% was supposed to be borne by the Government of Assam under state share. Accordingly a sum of Rs.2914.20 Lakhs has been received as Central Share and Rs.1335.844 has been received as State share respectively.

10. That the deponent begs to state that the total bill value of the petitioner against all of his work order is Rs.15,25,709.00/- and out of which proportionate payment of Rs.2,84,017.00/- has been made to the petitioner till date. However full payment could not be made to the petitioner as full amount of fund is yet to be received from the Central Government. The concerned department is taking all the possible steps for release of fund from the Government. There is no discrimination from the part of the deponent in making payment to the petitioner. ”

4. Since the affidavit filed by the department is not connected to the case records, the copy of the same is as furnished by the learned standing counsel is kept as a part of the case record.

5. Registry is directed to trace out the affidavit stated to be filed and connect it to the case record.

6. The learned counsel for the petitioner referring to Paragraph 6, Page-7-8 of the writ petition submits that out of the total outstanding bill of Rs.15,25,709/- (Rupees fifteen lakhs twenty five thousand seven hundred nine) only, an amount of Rs.3,22,396/- (Rupees three lakh twenty two thousand three hundred ninety six) only was made to the petitioner and now balance of Rs. 12,03,313/- (Rupees twelve Lakhs three thousand three hundred thirteen) only has been left outstanding which has not been paid on account of the certain works allotted to him by the respondents. Although he had successfully completed the works allotted to him but the respondent authorities have not paid the aforesaid amount, which according to the petitioner, is an admitted amount. Being aggrieved, the present petition has been filed.

7. Perusal of the affidavit reveals that the department does not dispute the allotment of works to the petitioner as well as the execution of the works allotted by the petitioner. It is also seen that the department has admitted to proportionate

payment of Rs.2,84,017.00/- as against the total value of Rs.15,25,709.00/-. It is seen from the affidavit that the full payment could not be made as the share of the Central Government fund has not been received by the department. Upon receipt of such funds from the Central Government, the payments will be made.

8. Upon hearing the learned counsels for the parties and upon perusal of the pleadings, this Court is of the view that this matter can be disposed of in terms of the directions contained in *Tamsher Ali and Ors Vs. State of Assam and Ors* reported in *2008 (4) GLT 1*, with a direction to the respondents, more particularly, respondent No. 2 to release the balance payments due to the petitioner as admitted by the Department.

9. Accordingly, this writ petition is disposed of with a direction to respondent no.2 Chief Engineer, Water Resources Department, Chandmari, Dispur, Guwahati-6, Assam to verify the claims of the petitioner as per the Liability Statement stated to have been issued by the Executive Engineer, Morigaon Water Resources Division, Morigaon, Assam.

10. Upon due verification, if the claims of the petitioner are found to be admissible, the department will take steps to release the payments in terms of the guidelines issued by this Court in *Tamsher Ali (Supra)*. The respondent No.1 will pursue the matter with the Central Government for release of the

share of the Central Government fund and upon receipt of the same the payments shall be released to the petitioner in terms of the directions of this Court.

11. Writ petition is accordingly disposed of in terms of the above.

12. No order as to cost.

13. The entire exercise shall be completed by the respondent no.2 within a period of 90 (Ninety) days from the date of receipt of the certified copy of this order.

JUDGE

Comparing Assistant