

GAHC010201012021



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

Case No. : WP(C)/6424/2021

KAILASH BARMAN
S/O LATE LANKESWAR BARMAN, RESIDENT OF VILLAGE NARANGI
PATHARQUARY, PS NOONMMATI, GUWAHATI 71

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC HEALTH ENGINEERING (PHE) DEPARTMENT, DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER
PHE WATER
ASSAM CU ADDL. MISSION DIRECTOR (TECH.)
HENGRABARI
GUWAHATI 36
ASSAM

3:THE ADDITIONAL CHIEF ENGINEER
PHE
LOWER ASSAM ZONE
BAMUNIMAIDAM
GUWAHATI 21
ASSAM

4:THE SUPERINTENDING ENGINEER
PHE

GUWAHATI CIRCLE
BAMUNIMAIDAM GUWAHATI 21

5:THE EXECUTIVE ENGINEER

PHE

GUWAHATI DIVISION NO. II
GUWAHATI 21

6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT

Advocate for the Petitioner : MS. A TALUKDAR

Advocate for the Respondent : SC, P H E

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

14.08.2023

The instant writ petition has been filed by the petitioner being aggrieved by the inaction on the part of the respondent authorities in not making the payment of Rs.37,17,279/- to which the petitioner claims to be entitled to.

2. This Court had issued notice on 24.08.2022. It reveals from the records that on 29.05.2023, the counsel appearing on behalf of the PHE had submitted that the Departmental Authorities have found records as regards non-disbursal of an amount of Rs.20,31,817/-.

3. Today, the learned counsel appearing on behalf of the PHE Department has produced an instructions issued by the Executive Engineer, PHE, a copy of which was also sent to the Chief Engineer, PHE, Assam. From the said instructions, it reveals that after Departmental verification it has been found that only an amount of Rs.20,31,817/- is

payable to the petitioner. However, it is mentioned that on account of non-availability of the funds against proper Head, payment could not be made in due course. It was further mentioned that the fund demand had already been placed vide letter No.PHEE/G-II/Actt-194/2022-23/674 dated 25.05.2022 without budgetary provision. It has been further mentioned in the said instructions that the petitioner has also agreed at the time of receiving the work order that the payment would be received subject to availability of the fund against the proper Head of Account only. The said instructions is kept on record and marked with the letter "X".

4. The learned counsel for the petitioner, however, submitted that the petitioner is entitled to an amount of Rs.37,17,279/- and the total entitlement of the petitioner was not ascertained by taking into consideration the relevant materials by the respondent authorities.

5. I have heard the learned counsels for the parties and perused the materials on record including the instructions.

6. From the materials on record, more particularly, the documents kept on record and marked with the letter "X", it transpires that the respondents in the PHE Department have duly admitted that the petitioner is entitled to an amount of Rs.20,31,817/-. However, the said amount has not been paid to the petitioner on account of non-availability of the fund.

7. This Court finds it relevant to observe that non-availability of fund cannot be a reason to deprive the petitioner for long as a long and delayed deprivation of the legitimate admitted dues violates the mandate of Article 14 of the Constitution.

8. Accordingly, this Court, therefore, directs the respondent Nos.2 & 3

to make arrangements seeking necessary budgetary allocation so that the petitioner is paid the amount of Rs.20,31,817/- within the period of six months from the date a certified copy of the instant order is served upon the respondent No.2.

9. This Court further finds it relevant to observe in view of the submission of the learned counsel for the petitioner that the petitioner is entitled to the amount of Rs.37,17,279/-. Taking into account that the respondent authorities have upon verification found that only an amount of Rs.20,31,817/- is payable to the petitioner, this Court cannot adjudicate as to whether the petitioner is entitled to further amount beyond Rs.20,31,817. In that view of the matter, this Court is not inclined to pass any directions in respect to the amount beyond Rs.20,31,817/-. However, liberty is given to the petitioner to approach the appropriate Court wherein the disputed question of facts can be adjudicated as regards the remaining entitlement of the petitioner beyond Rs.20,31,817/-.

10. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant