

GAHC010221642018



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

Case No. : WP(C)/6932/2018

JITEN KALITA
SON OF LATE GOBINDA KALITA, RESIDENT OF BASISTHAPUR BYE LANE,
NO. 2, RASARAJ PATH, P.O. BELTOLA, P.S. HAITGAON, DISTRICT-
KAMRUP(M), ASSAM, PIN- 781028.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
ASSAM
CHANDMARI
GUWAHATI- 781003.

4:THE ADDITIONAL CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (ROADS)
EASTERN ZONE
DIBRUGARH- 786001
DISTRICT- DIBRUGARH
ASSAM.

5:THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT (ROADS)
JORHAT ROAD CIRCLE
DISTRICT- JORHAT

ASSAM. PIN- 785001.

6:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT (ROADS)
GOLAGHAT RURAL ROADS DIVISION
DISTRICT- GOLAGHAT
ASSAM. PIN- 785621

7:THE ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
DERGAON RURAL ROADS SUB-DIVISION
DERGAON
DISTRICT- GOLAGHAT
ASSAM. PIN- 785621

Advocate for the Petitioner : MR. N J GOGOI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 23-08-2023

Heard Mr. J. Kalita, learned counsel for the petitioner; Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent no. 1; and Mr. S. Sarma, learned Standing Counsel, Public Works Department [PWD] for the respondent nos. 2 – 7.

2. The petitioner has asserted that he is a registered Class I contractor with the respondent Public Works Department [PWD], Government of Assam. It is the case of the petitioner that he was awarded two contract-works : [i] "Imp. of U/M Na-Bhanga Mirigaon Road, Group no. 4" [the Contract-Work no. 1', for short] for a contract value of ₹ 7,94,002/- vide a formal work order dated 26.12.2005 [Annexure-1A] and [ii] "Imp. of U/M Chakalaghat Charumirigaon Ali, Group no. 5" [the Contract-Work no. 2', for short] for a contract value of ₹ 8,91,792/- vide formal work order dated 26.12.2005 [Annexure-2A].

3. The petitioner has claimed that he had executed both the Contract-Works successfully and after completion of two Contract-Works, he submitted final bills. But, an amount of ₹

16,85,794/- against the said two Contract-Works has not been disbursed till date. Stating that the said amount was not disbursed to the petitioner despite repeated approaches made by him with the respondent authorities, the petitioner has preferred the instant writ petition seeking *inter alia* a direction to the respondent authorities to disburse the amount of ₹ 16,85,794/- in his favour.

4. An affidavit-in-opposition has been filed by the respondent no. 6 on behalf of the respondent nos. 3, 4 & 5. The respondent no. 3 is the Chief Engineer, Public Works Department [PWD], Assam. As the statements made in the paragraph 7 & 8 are of import, the same are extracted hereinunder :-

7. That with regard to the statements made in paragraph 8 of the writ petition, the deponent begs to state that the petitioner could not completed the work for improvement of U/M Na-Bhanga Mirigaon Road [Heavy dressing & wearing course] under TSP Area for 2005-06 and accordingly the petitioner is entitled only for the said work actually executed by him is Rs. 5,74,063.00. The petitioner is entitled for the work for improvement of Chakalaghat Charumirigaon Ali [Heavy dressing & wearing course] under TSP Area for 2005-06 is Rs. 8,16,374.00. As such the petitioner is entitled the total bill amounting to [Rs. 5,74,063.00 + Rs. 8, 16,374.00] Rs. 13,90,437.00 [Rupees thirteen lacs ninety thousand four hundred thirty seven] only.

8. That with regard to the statements made in paragraphs 11, 12 and 13 of the writ petition, the deponent begs to state that the respondent authorities have taken all necessary steps for payment of the petitioner outstanding bill, but no payment has been made to the petitioner by the deponent due to non-receipt of the estimated fund from the Govt. As such allegation made by the petitioner is incorrect and misleading and hence the same are denied by the deponent.

5. Ms. Sarma, learned Standing Counsel, PWD by referring to the statements made in paragraph 7 & 8 of the affidavit-in-opposition, has submitted that the payment could be disbursed to the petitioner due to non-receipt of estimated fund from the Government. Ms. Sarma has further submitted that in view of the aforesaid fact situation, this writ petition can

be disposed of with a direction to the respondent no. 3 i.e. the Chief Engineer, PWD, Assam to examine the claim of the petitioner and thereafter, to process the claim of the petitioner for disbursement to the extent of admitted liability, 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.

6. 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. 3 i.e. the Chief Engineer, PWD, Assam to examine the claim of the petitioner with regard to his claim of ₹ 13,90,437/- within a period of 45 [forty-five] days from the date of receipt of a certified copy of this order and thereafter, to process the claim of the petitioner to the extent of the admitted liability for disbursement in accordance with law and in the light of the directions contained in Tamsher Ali [supra].

7. The petitioner after obtaining a certified copy of this order, shall place the same before the respondent no. 3 i.e. the Chief Engineer, PWD, Assam, Assam for doing the needful from his end.

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

JUDGE

Comparing Assistant