

GAHC010238742018



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

Case No. : WP(C)/7535/2018

ARUP KUMAR GHOSH
S/O LATE JATINDRA NATH GHOSH
N.S. ROAD,
WARD NO. 3,
P.O. AND P.S. BILASIPARA
DIST. DHUBRI, ASSAM,
PIN -783348.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPARTMENT (BUILDING AND NH), DIPSUR, GUWAHATI-
6.

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT
(BUILDING) CHANDMARI
GUWAHATI-3.

3:THE SUPERINTENDENT ENGINEER
PWD

GUWAHATI BUILDING CIRCLE-I
FANCY BAZAR
GUWAHATI -1.

4:THE EXECUTIVE ENGINEER

PWD
DHUBRI BUILDING DIVISION

DIST. DHUBRI
ASSAM
PIN - 783348.

5:THE DEPUTY COMMISSIONER

DHUBRI
DIST. DHUBRI
ASSAM
PIN-783348.

6:THE SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPTT. DISPUR
GUWAHATI-6.

7:THE SECRETARY TO THE GOVT.OF ASSAM

FINANCE DEPARTMENT

DISPUR
GUWAHATI-6

For the applicant (s) : Mr. M. Hussain, Advocate

For the respondent (s) : Mr. B. Gogoi, SC, Finance
Mr. B. Choudhury, SC, PWD,
Ms. U. Das. Addl. Sr. Govt. Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

25.09.2023

The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to release the outstanding amount of Rs.7,11,700/- to the petitioner along with the interest.

2. It reveals from the records that pursuant to an invitation for bid dated 11.01.2011 issued for construction of Circle Officers Assam Type

Quarter, Deep Tube Well, Boundary wall etc. at Bilasipara Revenue Circle by the Superintending Engineer, PWD (Guwahati Building Circle No.1), the petitioner participated in the said contract and was issued a Letter of Acceptance dated 23.02.2011 at the tendered value of Rs.23,79,629/-. The petitioner had also submitted a performance security of Rs.1,19,000/-.

3. It further reveals that the petitioner started the work in question on the basis of a notice to proceed with the work dated 25.02.2011 and has submitted a running bill amount of Rs.7,11,700/-. The respondent authorities thereafter measured the work and gave completion certificate. It also reveals from the record that the respondent No.4, i.e. the Executive Engineer, PWD, Dhubri, Building Division has written a letter to the Superintending Engineer, PWD submitting the demand for the fund of the work of the Circle Officers Assam Type Quarter at Bilasipara Revenue Circle. Along with the said letter, an utilization certificate, the completion certificate for an amount of Rs.7,11,700/- was also submitted. However, the said bill remained unpaid and overdue for which the petitioner had to abandon his work. The petitioner thereupon has been pursuing with the respondent authorities for payment of the amount of Rs.7,11,700/-. But the respondent authorities have not paid the said amount for which the instant writ petition has been filed for a direction upon the respondent authorities to pay the amount of Rs.7,11,700/- to the petitioner along with interest.

4. It reveals from the record that the respondent No.6, i.e. the Secretary to the Government of Assam, Revenue and Disaster Management had filed an affidavit on 14.03.2019 wherein it has been

mentioned that as per the report of the Deputy Commissioner, Dhubri, the work relating to construction of Circle Officers Assam Type Quarter, Deep Tube Well, Boundary wall etc. at Bilasipara Revenue Circle Office was executed under the Executive Engineer, PWD (B) Dhubri under the scheme of Assam Vikash Yojana for the year 2010-11. It was further mentioned that the Deputy Commissioner, Dhubri vide the letter dated 09.03.2015 along with the connected papers/documents had placed the requirement of fund for the work/construction of Circle Officers Assam Type Quarter, Deep Tube Well, Boundary wall etc. There was request made to the Executive Engineer, PWD (B), Dhubri to clarify the matter by the Deputy Commissioner, Dhubri. But there was no response received from the Deputy Commissioner, Dhubri. It was further stated that the administrative approval No.B-3/2010/26 dated 16.02.2010 for an amount of Rs.25 lakhs was accorded by the Government in the Public Works Department for construction of the Circle Officers Assam Type Quarter, Deep Tube Well, Boundary wall etc. at Bilasipara Revenue Circle under the Capital Account No.4216-CO on Housing Assam Vikash Yojana during the year 2010-11. Accordingly, the work was undertaken by the Public Works Department (Building), Revenue and Disaster Management Department was not communicated about it. It was further mentioned that there was no instruction/proposal in that regard received by the Revenue and Disaster Management Department and there was no record of any administrative approval as such. Under such circumstances, in the said affidavit-in-opposition filed by the respondent No.6, it was mentioned that the payment of any amount of the petitioner by the Revenue and Disaster Management Department does not arise.

5. It further reveals from the record that an additional affidavit was filed by the petitioner on 23.08.2023 wherein amongst others, administrative approval given by the Public Works (Building) Department in respect to the work in question has been enclosed as Annexure-A.

6. I have heard the learned counsels for the parties. On 11.09.2023, Mr. R. Dhar, the learned counsel who was representing the PWD had informed this Court on the basis of an instruction issued by the Chief Engineer, PWD (Building) that administrative approval was accorded for the work in question by the PW (B & NH) Department. The said instruction was kept on record and marked with the letter "X".

7. Under such circumstances, this Court finds no reason as to why the petitioner should be kept deprived of the amount of Rs.7,11,700/- in as much as from the documents on record it is clear that the petitioner had duly completed the work in respect to the said amount.

8. This Court further finds it relevant to take note of another communication issued by the Chief Engineer, PWD (Building), Assam to the Deputy Commissioner, Dhubri dated 09.03.2015 wherein it has been duly mentioned that the physical progress has been achieved to the tune of 31% and the financial liabilities on the State was Rs.7,11,700/- and the payment could not be made to the contractor on account of the lack of fund. This Court has also taken note of that as the petitioner in the instant case was awarded the contract by following the due process and the petitioner having completed the 31% of the work was entitled to the amount of Rs.7,11,700/-. It was on account of the lack of funds in the year 2015 that the petitioner had not been paid the said amount. Delaying the payment of the petitioner without any certainty affects the rights of

the petitioner to carry on his business, and as such, the said action on the part of the respondent authorities in not making the payment of Rs.7,11,700/- to the petitioner violates the mandate of Articles 14 & 19 of the Constitution.

9. Accordingly, this Court disposes of the instant writ petition directing the Chief Engineer, PWD, Building & NH Division to disburse to the petitioner the amount of Rs.7,11,700/- within a period three months from the date a certified copy of the instant order is served upon Chief Engineer, PWD, Building & NH Division.

10. This Court further makes it clear that if the said amount is not disbursed to the petitioner within the time-frame stipulated herein, the petitioner not only would be entitled to resort to other remedies on the ground of non-compliance with the direction passed by this Court but also would be entitled to interest at the rate of 12% per annum on the said amount from the date of default.

JUDGE

Comparing Assistant