

GAHC010254722023



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

Case No. : WP(C)/6527/2023

SAHIL AKHTAR
S/O MD. ATOWAR RAHMAN, R/O VILL-KARDAITOLA, P.O.-BHADRA, DIST-
NALBARI, P.S.-NALBARI, NALBARI-781334

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM, PUBLIC WORKS (ROADS) DEPARTMENT,
JANATA BHAWAN, DISPUR, GUWAHATI-781006, ASSAM

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
ASSAM
CHANDMARI
GUWAHATI-781003

3:THE EXECUTIVE ENGINEER
PUBLIC WORKS ROADS DEPARTMENT (PWRD)
SOUTH KAMRUP TERRITORIAL ROAD DIVN.
MIRZA
PALASHBARI-78112

Advocate for the Petitioner : MR. S S S RAHMAN

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

Date : 10.11.2023

Heard Mr. S.S.S. Rahman, learned counsel for the petitioner and Mr. B. Gogoi, learned counsel for the respondents in the PWD of the Government of Assam.

2. Upon participating in a tender process, the petitioner Sahil Akhtar was issued a notice to proceed with work dated 07.03.2019 in respect of construction of road from Dekachang to Jaokatadia including cross-drainage works and routine maintenance works for five year under PMGSY package No. AS-11-681. The amount of the contract as per the work order is Rs. 2,52,18,350/- whereas the maintenance amount is Rs. 25,29,000/-, the total being Rs. 2,77,47,350/- and the completion time is provided to be nine months. Rightly or wrongly by the notice dated 29.07.2023 in exercise of powers under Clause No. 52.2(a)(e) of the GCC, the work allotted to the petitioner was terminated. Subsequent to the termination of the contract with the petitioner, a detailed notice inviting tender dated 31.10.2023 was issued in respect of the balance of the work pertaining to the work order that was issued to the petitioner. The petitioner assails the subsequent detailed notice inviting tender dated 31.10.2023 and also states that today i.e. 10.11.2023 is the last date of submission of tender.

3. Merely because 10.11.2023 is the last date of submission of tender no prima facie case can be made out in favour of the petitioner for staying the detailed notice inviting tender dated 31.10.2023.

4. Mr. S.S.S. Rahman, learned counsel for the petitioner has raised a

contention that the petitioner had completed almost 85% of the work and it is for certain inadvertent reasons that he could not complete the same and therefore he should be given an opportunity to do so.

5. However, it is noticed that the notice of termination dated 29.07.2023 had not been assailed by the petitioner either before the authorities or before any Court of law. In the absence of the notice of termination being assailed, we do not notice any infirmity in the detailed notice inviting tender dated 31.10.2023 requiring its interference. Further, in view of the submission of the petitioner that he had completed 85% of the work and that the rest of the work can be completed through him and also taking note that the notice of termination dated 29.07.2023 had not been assailed before any forum, we while dismissing the writ petition in respect of the detailed notice inviting tender dated 31.10.2023 being assailed, we further provide that the writ petitioner, if so advised, may file a representation before the authorities against the notice of termination dated 29.07.2023 and raise any kind of contention that he may desire against the notice of termination dated 29.07.2023.

6. Although an ancillary prayer has been made in the writ petition assailing the notice of termination dated 27.09.2023, but that has been made at a belated stage to enable the writ Court to issue any notice on such prayer and accordingly, we are of the view that the appropriate recourse of the petitioner would be to file a representation before the Chief Engineer, PWD (Border Roads), Assam. In the event of any such representation being submitted, the Chief Engineer, PWD (Border Roads), Assam shall give a due consideration by passing a reasoned order.

7. We are clarifying that the expression 'consideration' should not be construed to be a direction from the Court to restore the contract to the

petitioner and what we intend to mean by the word 'consideration' is that the Chief Engineer will pass a reasoned order on the entitlement of the petitioner, as may be claimed based upon the materials available on record.

Writ petitions stands closed as indicated above.

JUDGE

Comparing Assistant