

GAHC020002012023



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

Case No. : WP(C)/90/2023

SHRI. A. NEANGBA KONYAK
PROPRIETOR OF A. NEANGBA KONYAK,
CONTRACTOR AND SUPPLIERS, REPRESENTED
BY HIS ATTORNEY SHRI. K. KAPFO, S/O LATE MESENYI KAPFO,
RESIDENT OF H/NO.1, 4TH MILE,
DIPHUPAR - B VILLAGE, DISTRICT - DIMAPUR, NAGALAND.

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND, KOHIMA, NAGALAND

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
NAGALANDWORKS AND HOUSING DEPARTMENT
NAGALAND KOHIMA

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND DEPARTMENT OF PWD(R AND B)
NAGALAND KOHIMA

4:THE CHIEF ENGINEER
NPWD(R AND B)
NAGALAND KOHIMA

5:THE EXECUTIVE ENGINEER
PWD (R AND B) NOKLAK
NAGALAND

Advocate for the Petitioner : SARIF AHMED

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

11.12.2023

Heard Mr. Sarif Ahmed, learned counsel appearing on behalf of the petitioner and Mr. Moa Imchen, learned Senior Government Advocate for the State respondents.

2. The instant writ petition had been taken up for disposal at the admission stage.

3. A perusal of the materials on record reveals that pursuant to a re-tender Press Notice bearing No. CE/PMGSY/TENDER/PH-VIII/2008-09 dated 06.01.2012 issued by the Chief Engineer, PWD (R&B), Nagaland, bids were invited from contractors for construction of a road from Phokpur to Thongsongyu Village including maintenance of 5 (five) years after construction of Phase-II work under the PMGSY Phase-VIII. Along with the petitioner, various bidders participated but the petitioner's bid having been found to be suitable a Letter of Acceptance was issued on 29.03.2012 for execution of the said work. It is relevant to mention that the work value of the said work was Rs. 277.41/- Lakhs (rupees two crores seventy seven lakhs forty one thousand) and Rs. 6 Lakhs (rupees six lakhs) for maintenance work. Pursuant to the Letter of Acceptance the notice to proceed with the work was issued on 09.04.2012. Thereupon an agreement was entered into between the petitioner and the Chief Engineer (R&B) and the empowered Officer, PMGSY, NGRDA, Government of Nagaland on 07.05.2012. The said work was completed in the year 2016. However, inspite of the construction of the 8 Kms road a further 2 Kms road was required to be constructed in order to connect the Thongsongyu Village. In such circumstances the said aspect of the matter was duly informed by the petitioner to the Chief Engineer (R&B), Nagaland, Kohima. Thereupon the Chief Engineer (R&B), Er. D. Mero, Executive Engineer of Noklak, verbally instructed the petitioner to

complete this 2 Km road. The petitioner duly completed the said extra 2 Kms road and a Completion Certificate was issued on 30.05.2017. The petitioner claims that the amount to which the petitioner was entitled in respect to the said extra 2 Kms road was Rs. 1,77,54,000/- (rupees one crore seventy seven lakhs fifty four thousand). However, the said amount was not released even after proper completion. The petitioner had approached the respondent authorities time and again. It is further the case of the petitioner that though the respondent authorities duly admit the fact that the petitioner had duly completed the extra 2 Kms, but on account of fund constraint the said amount could not be paid to the petitioner. It is under such circumstances that the instant writ petition was filed before this Court on 22.05.2023.

4. Record reveals that this Court, by an Order dated 01.06.2023 issued notice. Thereupon a joint affidavit-in-opposition was filed by the respondent Nos. 1, 2 & 3 through the Chief Engineer in the Department of PWD (R&B), Nagaland on 04.10.2023. This Court finds it pertinent to take note of paragraph 5 of the said affidavit and for the sake of convenience the same is reproduced herein below:-

"5. That with regard to the statements made in paragraphs 21 to 28 of the writ petition, the answering deponent respectfully states that the total length of road from Phokpur to Thongsongyu is 10:00 Km. However, the work order issued to the petitioner for that particular stretch of road issued during 2015 under PMGSY Ph-VIII was only 8 (eight) Km and there was a shortfall of 2 9two) Km towards Thonsonyu. Therefore, to complete the connectivity from Phokpur to Thongsongyu, the then Chief Engineer, PWD (R&B) had instructed the petitioner. However, due to fund constraint, the payment for the additional work of 2:00 Km amounting to Rs. 177.54 lakhs could not be made. Thus, the Department had submitted proposal to the Government vide letter NO.CE (R&B)/TB-III/ESTIMATES/2018-19 dated 02.05.2019 for placement of fund under additionality.

However, the government vide letter NO>WH/R&B-10/2019/Estimate dated 25.07.2019 had conveyed the observation of the Finance Department as follows:

Quote "The mater had been examined however in view of resource constraint additional fund is not possible at this stage. The Department may accommodate from within the allocated budget." Unquote

However, as there was no budgetary provision to

accommodate the expenditure within the allocated outlay by the Department, the matter was re-submitted to the Government vide letter NO.CE(R&B)/TB-III/ESTIMATES/2018-18 dated 02.02.2022 the estimate was re-submitted to the Government for placement of fund under additionality.

In the meantime, the Department had received a legal notice dated 09.10.2021 from the petitioner's counsel and another representation dated 09.02.2022 from the petitioner. This vide letter NO.CE(R&B)/TB-III/ESTIMATES/2018-19 dated 02.02.2022 the estimate was re-submitted to the Government for placement of fund under additionality.

Thus as and when the Government releases the additiionality fund as proposed the petitioner bill will be cleared."

The above reproduced paragraph 5 of the affidavit-in-opposition clearly indicates that there is due admission on the part of the respondent authorities in respect to the awarding of the contract of the extra work of 2 Kms as well as the entitlement of the petitioner. It further also shows that it is on account of the financial and budgetary constraint that the payment could not be made to the petitioner.

5. This Court has also heard the learned counsels appearing on behalf of the parties.

6. Mr. Moa Imchen, learned counsel appearing on behalf of the respondents submits that as the matter is taken up in exercise of power under Article 226 of the Constitution of India, this Court ought to issue direction to the respondent authorities to first make a proper verification as to whether the petitioner had duly completed the work in question and also as regards the petitioner's entitlement to the amount. He further submits that if on verification it is found that the petitioner is entitled to the claimed amount as part thereof, the payment be made to him within a time frame.

7. This Court upon hearing the learned counsels for the parties is of the opinion that if the petitioner has done the work which prima facie appears to be admitted in view of the joint affidavit so filed by all the respondents, the petitioner should be paid his dues. Be that as it may, this Court is of the view that the respondent authorities should also make necessary verification as to what amount the petitioner is entitled

to. Therefore, this Court dispose of the instant writ petition with a direction to all the respondents, more particularly, the respondent Nos. 3 & 4 to carry out the necessary verification as regards the entitlement of the petitioner. The respondent No. 2 is further directed to ensure that the respondent Nos. 3 & 4 also takes such steps as directed herein. This Court further directs that upon making such verification if it is found that the petitioner is found to the entitlement so claimed or part thereof, the same be paid to the petitioner. The above exercise be completed within a period of six (6) months from the date a certified copy of this Order is served upon the respondent No. 3.

Sd/-
JUDGE

Comparing Assistant