

GAHC020003102021



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

Case No. : WP(C)/125/2021

M/S M.C. ONGBOU CHANG
GOVT. REGISTERED CLASS - 1, CONTRACTOR AND SUPPLIER, NPW/CLASS
-1/8752, REPRESENTED BY ITS PROPRIETOR SHRI. M.C. ONGBOU CHANG,
AGED ABOUT 43 YEARS, S/O SHRI. CHONGBA CHOLLEN CHANG, R/O
NOKSEN, TUENSANG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY, GOVT. OF NAGALAND, NAGALAND,
KOHIMA 2:THE FINANCE COMMISSIONER

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF NAGALAND

4:THE DIRECTOR

5:THE EXECUTIVE ENGINEE

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 24-03-2023

Heard Mr. M. Solo, learned counsel for the petitioner who submits that by filing this writ petition the petitioner who is a class-I Contractor is praying for release of additional funds to complete the work in terms of the Work Order issued to him on 26.11.2014. The learned counsel submits that the petitioner was allotted and awarded Work Order for construction of Veterinary Health Center at Noksen under State Plan 2013-2014 and the value of the work was Rs. 14,78,000/- (Rupees Fourteen Lakh Seventy Eight Thousand). The period of completion of the work was stipulated as 12 months. Although the petitioner started the work by leveling the site and for which, a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) was released, the State respondents failed to release the remaining amount and for which reason, the petitioner approached the Directorate of the Veterinary and Animal Husbandry Department, Government of Nagaland.

2. The Director, *vide* letter dated 30.08.2019 submitted proposal for additional fund for the pending work to the tune of Rs. 20.75 Lakhs to the Commissioner and Secretary to the Government of Nagaland, Animal Husbandry and Veterinary Services Department. However, despite the said proposal the State Government has not released additional funds. The petitioner has also approached the Commissioner and Secretary to the Government of Nagaland, Animal Husbandry and Veterinary Services Department by submitting representation dated 03.05.2021. As the same has not been considered, the petitioner is before this Court

through the instant writ petition.

3. The learned counsel for the petitioner submits that since the petitioner was allotted the work for construction of Veterinary Health Center at Noksen and was given a sum of Rs. 1.5 Lakh for site-leveling, the respondent authorities concerned should be directed to release the remaining amount for completion of the work.

4. Mr. Moa Imchen, learned senior Government Advocate on the other hand by referring to the Affidavit-in-Opposition filed by the respondent nos. 3, 4 and 5 on 15.11.2021 submits that as per the terms and conditions of the allotment of the work, it was clearly stipulated that no mobilization advance would be given and no enhancement of rate would be considered by the Department. Further, it was also provided that the payment is subject to availability of fund by the State Government. The petitioner was released a sum of Rs. 1.5. Lakh, as per the fund available in the budgetary provision which was spent towards site leveling. However, since the State is facing severe financial crunch, and moreover, the work was proposed to be executed through the State budget, the State Government could not provide further additional fund to carry out the project. Therefore, the project that was proposed has been abandoned by the State Government. He submits that whatever has been spent by the petitioner for site leveling, the same has already been released to him and therefore under the circumstance the petitioner cannot insist for release of further fund considering the financial status of the State.

5. From the above projection made by the parties what can be

noticed is that as per the Work Order issued to the petitioner, the following terms and conditions was stipulated in the Work Order itself the same may be abstracted hereunder for ready perusal:

"Terms & Conditions:

1. *No mobilization advance will be given.*
2. *No enhancement of rate will be considered by the Department.*
3. *Nagaland sales tax act will be applicable as per Government notification.*
4. *Stipulated time for completion is 12 (Twelve) months from the date of issue of this work order.*
5. *Payment is subjected to availability of fund by the State Government of Nagaland."*

6. From the above abstract it may be seen that the condition for allotment of the work importantly is that no mobilization advance will be given and that payment is subject to availability of fund by the State Government. The petitioner claims that site leveling was carried out and for that purpose a sum of Rs. 1.5 Lakh was released. However, due to the reasons stated by the State respondents, further fund could not be released due to paucity of fund. Under the circumstance, the State Government apparently appears to have abandoned the project for the same reason the petitioner cannot insist that the additional fund required or the remaining balance of fund required should be released to him in view of the fact that the project work is guided by the terms and conditions as stipulated in the Work Order. Therefore, the petitioner having accepted the terms and conditions of the Work Order cannot at this stage insist for release of further fund. As such, I do not find it to be a fit case for issuing direction to the State respondents in terms of the prayer made by the petitioner.

7. In view of above, the writ petition is dismissed.

Sd/-
JUDGE

Comparing Assistant