

GAHC040004462022



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

Case No. : WP(C)/154/2022

BITUMIX INDIA LLP

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Represented by its Director Sri Gaurav Agarwal.

VERSUS

THE STATE OF AP and 6 Ors.

Represented by The Secretary to the Govt. of Arunachal Pradesh, Rural Works
Department, Itanagar. 2:The Chief Engineer

Age: 0

Occupation :

Western Zone

Rural Works Department

Sagalee

Dist. Papum Pare

3:The Executive Engineer

Age: 0

Occupation :

Rural Works Department

Sagalee Division

Dist. Papum Pare

Pin 791112

4:M/s TG.G.Enterprises Sagalee

Age: 0

Occupation :

Gohpur Itanagar Road

Gohpur Tiniali

Itanagar

5:M/s T.K and Sons Enterprise

Age: 0
Occupation :
Sagakee 02
01 Floor Sagalee Road
Sagalee
Dist Papum Pare
PIN 791112

6:PD Corporation
Age: 0
Occupation :
Sonali Path
Bhetapara Road
District Kamrup (M)
Pin Code 781028
Guwahati
Assam.

7:M/s North India Engineering
Age: 0
Occupation :
Emchi 1
Doimukh
Arunachal Pradesh
79110

Advocate for the Petitioner : J Das,

Advocate for the Respondent : Gimi Tarak, SC(RWD)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.09.2024

Heard Mr. J. Singh, learned counsel for the petitioner. Also heard Mr. G. Tarak, learned standing counsel for the PWD, representing respondent nos. 1 to 3. There is no representation from the respondent nos. 4, 6 and 7 although notice was served in a substituted manner.

2. The learned standing counsel for the RWD has submitted that

this is essentially a civil dispute and questions the maintainability of writ petition. It is submitted that the goods (Bitumen)(Hot Mix) was supplied to the various contractors and the bills were also raised by petitioner on the contractors and therefore, the State has no liability towards the petitioner.

3. The case of the petitioner is that the petitioner is a company who is engaged in a business of supply of bitumen products. The petitioner was given a Work Order bearing no. EE/RWD/SGL/PMGSY/SUPPLY/01/2019-20 dated 25.01.2021 issued by the Executive Engineer, Rural Works Division, Sagalee, the requiring supplies of Bitumen (Hot Mix) material to 11 sites, on one month credit, for a quantity of 77 MT, calculated @ Rs.51,500/- per MT, amounting to a total sum of Rs.5,24,35,500/-, issued by the Executive Engineer/ DPIU-II. Accordingly, the petitioner has made the supplies.

4. The learned counsel for the petitioner has submitted that as per the contents of the work order, the petitioner was to give one month credit for the supply against each 11 works mentioned therein and that the said work order contains three terms and conditions which are as follows:- (1) the materials shall be supplied at site and proper challan-invoice bill should be produced as per direction of Engineer-In-charge, (2) the defective materials should be replaced without any conditions, and (3) the payment shall be made in the 1(one) month time as and when contractor payment was made.

5. It is submitted that few of the bills were raised in the name of the consignee i.e. the Executive Engineer, Rural Works Division, Sagalee, indicating the name of the buyer and in some of the invoices, the same has been raised in the name of the concerned contractors. It is stated that the petitioner had exhausted all his effort to have payment released from the contractors, but as the Rural Works Division has made payment to the

contractors and he was not paid in terms of clause 3 of the Work Order, upon service of notice on the respondent no.3 and on non-receipt of payment, the present writ petition has been filed under Article 226 of the Constitution of India.

6. Per contra, apart from raising the preliminary issue, the learned standing counsel for the RWD has submitted that the Stat respondents have no liability for payment of the bills raised by the petitioner as the work order clearly indicated that the material was to be supplied to the various contractors. It is submitted that the said work order does not contain any clause that the payment would be made by the State Government and moreover as bills were issued in the name of contractors, the State has no liability to make payment to the amount claimed by the petitioner.

7. Insofar as the preliminary objection is concerned, we find from contains of the work order dated 25.01.2021 issued by the Executive Engineer/DPIU-II, office of the Executive Engineer, Rural Works Division, Sagalee that the said supply order is issued in the name of the petitioner, requiring supply of Bitumen (Hot Mix/Cold Mix Emulsion). The said work order clearly mentions about discussions held by the Executive Engineer concerned with the representatives of the petitioner and as per the said work order, the Executive Engineer (respondent no.3) had accepted the petitioner's commercial terms and conditions for supply of bitumen materially on one month credit from the date of supply of material at site towards lump sump advance payment and accordingly, the petitioner was directed to start supplying the material against which he works as soon as he receive the said supply order. The three conditions contained in the said work order does not clearly spell out that the liability of making payment was on the contractors.

8. Ther respondent no.3 did not specifically disown liability to make payment. Rather, clause 3 of the terms and conditions indicate that the payment shall be made in the (one) months' time as and when contractors payment was made. Here also it is not indicated that the payment of the petitioner should be realized from the contractors. Therefore, the Court inclined to hold that the preliminary objection towards the maintainability of the writ petition is not sustainable. The work order issued by the respondent no.3 would bind the Govt. of Arunachal Pradesh in the Rural Works Division on account of vicarious liability of the State on account of representation made by the Executive Engineer (respondent no.3).

9. The Court is unable to accept the stand of the respondent nos. 1 to 3 that the Executive Engineer was not authorized to issue the work order for supply of bitumen. In this regard, it may be mentioned that in paragraph 4(ii) of the affidavit-in-opposition, which is signed and sworn by the Under Secretary to the Govt. of Arunachal Pradesh, Rural Works Division, it has stated that the private respondent nos. 4 to 7 was awarded the contract work under PMGSY by the State Government under Rural Works Division, Sagalee and on good faith, the Executive Engineer, RWD, Sagalee issue a supply order for supply of bitumen in favour of the private respondent nos. 4 to 7 which is within the knowledge of the petitioner.

10. Nothing is brought on record by said respondent nos.1 to 3 that bitumen was a restricted item and cannot be supplied to a contractor without a work order by the Executive Engineer. The payment for the supply was intended to be made after payment to the contractor. Therefore, in view of the representation made in clause 3 of the terms and conditions of the work order dated 25.01.2021, it was incumbent on part of the Executive Engineer to ensure

that the said terms and conditions of the supply order was complied with.

11. Accordingly, the Court is of the unhesitant opinion that the petitioner had made supply to the contractors purely in terms of the work order dated 25.02.2021 and the said work order constitutes a binding agreement upon the State respondent nos. 1 to 3 to honor the supply order issued by the respondent no.3 because of the vicarious liability the State would have for the actions of the respondent no.3 in issuing the supply order and assuring to the petitioner that the payment shall be made within 1(one) month as and when the contractors' payment is made. The said clause 3 amounts to acceptance by the Executive Engineer/ DPIU-II of the liability on the State to make payment.

12. A mere omission part of the petitioner to raise all the bills on the Executive Engineer will not entitle the State respondent nos. 1 to 3 to wriggle out from the contract which is inherent in the supply order dated 25.01.2021.

13. It is not the case of the respondents that the contract work could not be undertaken by the contractors due to lack of bitumen and non-supply of bitumen by the petitioner. Therefore, if the petitioner has done his part of the contract, the State respondents would have to comply with their part of the contract in making payment in terms of the said work order. We are inclined to hold that it is the liability of the State to pay the contractual dues to the petitioner.

14. Accordingly, the objection raised by the learned standing counsel for the RWD is not accepted.

15. Accordingly, the State respondent nos. 1 to 3 are granted 4(four) months' time to make payment of the contractual dues to the petitioner,

commencing from the date on which certified copy of this order is served/ furnished to the respondent no.3, i.e. the Executive Engineer, RWD, Sagalee Division.

16. Accordingly, this writ petition stands allowed.

17. There shall be no order as to cost.

18. It is needless to say that upon such payment being made, the State would naturally have all the power and liberty to realize such payment from the contractors in the event payment on account of bitumen is also released to them.

JUDGE

Comparing Assistant