



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

Case No. : WP(C)/449/2023

Shri Likha Maj
Son of Lt. Likha Tak, R/o- Pachin Colony, P.O-Naharlagun, District- Papum Pare,
Arunachal Pradesh.

...PETITIONER

VERSUS

1. The State of AP and Anr.
Represented by its Secretary, Food and Civil Supplies Department, Government of
Arunachal Pradesh, Itanagar. 791111
2: The Director,
Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun, 791111.

...RESPONDENTS

Advocate for the Petitioner : Mr. D. Mazumdar, Sr. Cl.
Mr. S K Deori

Advocate for the Respondent : Mr. S. Tapin, Sr. G.A. (A.P.)

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Judgment & Order : 24.01.2024

JUDGMENT & ORDER

Heard Mr. D. Mazumdar, learned Senior Counsel assisted by Mr. S. K. Deori, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondent.

2. This writ petition has been filed praying for release of petitioner's outstanding bills amounting to Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) payable against the Hills Transport Subsidy bills claim of the petitioner for transportation of PDS goods from FCI Godown, Bhalukpong, Arunachal Pradesh to East Kameng, West Kameng and the Tawang Districts of Arunachal Pradesh pursuant to work Orders dated 10.12.2002, 23.03.2002, 16.03.2003, 26.06.2003, 17.10.2003, 26.04.2004 and 26.06.2003.

3. The brief facts of the case is that the Government of Arunachal Pradesh under the Hill Transport Subsidy (for short 'HTS') Scheme appointed the petitioner as carriage contractor vide various work orders for transportation of PDS Goods by the District Supply Officer, on behalf of the Governor of Arunachal Pradesh to carry PDS Goods from FCI Godown, Bhalukpong, Arunachal Pradesh

to the Districts of East Kameng, West Kameng and Tawang District of Arunachal Pradesh for the period of 2004, 2005 & 2006. The petitioner is the proprietor of M/S Sahil Enterprise, M/S Miya Tom Enterprise and M/S Sahil Transport Corporation and the Power of Attorney Holder of M/S Sela Transport, Tawang and M/S Rinchin Kharu, Bomdila and through these firms, he carried on the business of transport and carriage contracts. It is the case of the petitioner that in pursuant to the aforesaid appointment orders, Deed of Agreements were executed by the petitioner with the Deputy Commissioner of respective Districts with certain terms and conditions stipulated therein. Accordingly, the petitioner transported the PDS Goods and handed over the said PDS Goods to the satisfaction of the authorities of 3 (three) Districts. Thus, the petitioner submitted the bills which were verified and cross-checked by the concerned Deputy Commissioners and forwarded to the Directorate of Food and Civil Supply, Government of Arunachal Pradesh for release of the payment.

4. The petitioner further stated that although he was entitled to get the payment of the bills, but the same were not cleared without any valid reason and the authorities did not consider the burden on the petitioner for repayment of the loan to banks from which the loan was availed by the petitioner for execution of the work order of transportation of PDS Goods. The interest of the loan amount has been rising high and due to failure on the part of the petitioner to repay the loan, the bank has initiated proceedings against the petitioner before the Debt Recovery Tribunal, Guwahati vide OA No. 104/2011 and accordingly recovery certificate amounting to Rs. 6,46,94,134/- with interest @ 13.5% per annum from 2011 for recovery against the petitioner was issued by the Tribunal. Finding no other alternative, the petitioner approached this Court by filing a writ petition, being WP(C) No. 170/2018, and this Court was pleased to dispose of the said writ petition on 05.12.2018 with a similar view as was

taken by the Court in the common judgment dated 17.11.2017, passed in WP(C) Nos. 638/(AP)2017, 639(AP)/2017, 640(AP)/2017 & 641(AP)/2017, with a direction to the respondent authorities to make payment of the principal bills amount amounting to Rs. 44,82,03,503 (Rupees forty four crore eighty two lakhs three thousand five hundred three) only within a period of 4 (four) months from the date of receipt of the certified copy of the order. But the authority concerned did not pay any heed and wilfully did not comply with the order passed by this Court. However, the respondent authorities have already paid bills to the similarly situated contractors who had approached this Court in the said WP(C) Nos. 638/(AP)2017, 639(AP)/2017, 640(AP)/2017 & 641(AP)/2017. Thereafter, the petitioner, claiming the dues calculated on the basis of principal amount along with an interest @ 20% per annum, submitted the representation dated 09.12.2020 requesting the respondent authority to release the outstanding liabilities so calculated. After getting the said representation dated 09.12.2020, the respondent authorities admitted their fault and deliberate negligence in the performance of the contractual obligation in timely manner. However, the respondent authority directed to evaluate the outstanding bills of the petitioner with interest @ 13% per annum from the date of filing of the bill till date and to issue certificates.

5. The respondents accordingly filed bills of HTS outstanding principal amount of Rs. 44,82,03,503/- (Rupees forty four crore eighty two lakhs three thousand five hundred three) only @ 13% interest per annum from the date of filing and accordingly admitted payable amount accrued to Rs. 1,41,59,21,976/- (One hundred forty one crore fifty nine lakhs twenty one thousand nine hundred and seventy six) only against the 5 (five) firms of the petitioner. Thereafter also, the various representations were addressed to several authorities from time to time for more than 15 years, but the respondent authorities neglected to clear

the bills and finally they sanctioned the payment of Rs. 6,72,30,000/- (Rupees six crore seventy two lakhs thirty thousand) only on 28.08.2021 and another amount of Rs. 38,09,76,503/- (Rupees thirty eight crore nine lakhs seventy six thousand five hundred three) only was sanctioned vide order dated 21.03.2022 by the respondent authority and after sanctioning of the said amount, the remaining admitted balance amount is Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only and the same has not been paid till date to the petitioner. However, the petitioner came to know that the similarly situated HTS PDS Contractors have been paid with interest and thus, the respondent authority adopted a pick and chose method in making payment to the contractors of their choice with interest. Thereafter, the petitioner filed an application under RTI Act, 2005 on 26.04.2023 seeking details of the respondent No. 2 about the total outstanding payable dues by the respondent authorities to the petitioner and also to issue certificate of payable amount. Accordingly, vide letter dated DFCS/RTI-02/2022, dated 02.05.2023, the respondent No. 2 furnish the details in the form of certificate of outstanding payable dues against each firm of the petitioner which is also Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only. Thus, the respondent authorities also admitted the outstanding dues which is not paid to the petitioner till date and as such, the action of the respondent authority is arbitrary and unreasonable and hence, the present petition has been filed by seeking a direction in nature of mandamus to the respondent authority to clear the said outstanding bill of the petitioner.

6. Mr. D. Mazumdar, learned Senior Counsel for the petitioner, submits that it is a fit case where this Court can interfere in exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India by issuing a writ in the

nature of mandamus directing the respondent authorities to release the outstanding admissible amount of Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only. Mr. Mazumdar, learned Senior Counsel, further submitted that the respondent authorities has already admitted the bill amount in their affidavit-in-opposition and also annexed the certificate issued by the government authorities wherein the outstanding bill amount is shown as Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only.

7. Mr. S. Tapin, learned Senior Government Advocate, submitted in this regard that the government has already admitted the outstanding bill amount of Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only and on the instruction received, the claim of the petitioner is not opposed. But it is submitted that due to lack of funds, the amount could not be released on time to the petitioner and the respondent authority is ready to pay the outstanding dues to the petitioner in instalment basis within 6 (six) months.

8. In view of the submissions made above, it is seen that the outstanding dues of the petitioner in respect of 5 (five) firms is undisputed and accordingly this Court is of the opinion that the petitioner is entitled for a direction for release of the outstanding bill amount against the 5 (five) firms of the petitioner, which is as follows:

Sl. No.	Name of the Firm	Total pending HTS bills amount (in Rs.)	Total HTS bills received out of Total Pending	Total pending HTS bills Payable

			HTS amount Rs.)	bills (in Rs.)	Balance Amount (in Rs.)
1.	M/s Sahil Enterprises	73,41,60,512	22,84,78,655	50,56,81,857	
2.	M/s Miya Tom Enterprises	5,37,95,199	1,73,35,670	3,64,59,529	
3.	M/s Sahil Transport Corporation	14,83,64,736	4,78,11,000	10,05,53,736	
4.	M/s Sela Transport	40,20,18,389	13,04,83,830	27,15,34,559	
5.	M/s Rinchin Kharu	7,75,83,140	2,40,94,348	5,34,88,792	
	Total	141,59,21,976	44,82,03,503	96,77,18,473	
	Total pending HTS bills Payable balance admitted Amount:			96,77,18,473	

9. However, considering the submissions made by the learned Senior Government Advocate, Mr. S. Tapin, I find it justified to direct the respondent authorities to clear the outstanding dues in instalment basis.

10. In view of above, the instant writ petition is disposed of by directing the respondent authorities to take immediate steps for release of the outstanding bills of Rs. 96,77,18,473/- (Rupees ninety six crore seventy seven lakhs eighteen thousand four hundred and seventy three) only in 4 (four) equal instalments from the date of receipt of the certified copy of this order. In default of payment of the outstanding dues by the State authorities, the petitioner will be at liberty to approach the appropriate forum for payment with further interest.

11. With the above observation and direction, this writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant