

GAHC010022062023



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

Case No. : WP(C)/578/2023

SUNIT HAZARIKA
S/O- BIMAL HAZARIKA,
R/O- DHING CHARIALI, P.O. AND P.S. DHING,
PIN- 782123,
DIST.- NAGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME
DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
NAGAON
DIST.- NAGAON
ASSAM

3:THE SUPERINTENDENT OF POLICE
NAGAON
DIST.- NAGAON
ASSAM

4:OFFICER COMMANDING
A/20 CRPF
DHING
DIST.- NAGAON
ASSA

Advocate for the Petitioner : MR. B CHETRI

Advocate for the Respondent : SR. GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 20.05.2024

Heard Mr. B. Chetri, learned counsel for the petitioner and Mr. M. Chetia, learned Government Advocate, Assam for the respondents.

2. By way of this writ petition, the petitioner is seeking release of payment of bill amount of Rs. 8,62,830/-, in terms of the work order dated 08.04.2020 issued by the respondent No. 3.

3. The brief fact of the case is that in terms of the work order dated 08.04.2020, issued by the respondent No. 3 (Superintendent of Police, Nagaon), the petitioner installed/supplied Digital Generator set along with Halogen etc. to the Covid-19 Security Centre, CRPF Camp, Dhing, Nagaon. It is the further case of the petitioner that the petitioner submitted the original bill amount to the respondent No. 3 with the utilization certificate obtained from the respondent No. 4 in phase wise manner for payment of the bill. In this regard, the respondent No. 3, by letters dated 09.06.2021, 30.11.2021 and 25.08.2022, forwarded the original bill amount to the Deputy Commissioner, Nagaon for taking appropriate measures with regard to the payment of the bill amount to the petitioner. Since no response was forthcoming, the petitioner submitted representation dated 07.01.2022 to the Deputy Commissioner, Nagaon, Assam, which is also pending till date.

4. Aggrieved by the non-payment of the aforesaid bill amount, the instant writ petition has been filed.

5. Mr. B. Chetri, learned counsel for the petitioner submits that the petitioner, upon verbal instructions from the concerned S.P., executed the work till formal orders were issued in the year 2021. He accordingly submits that the petitioner, having successfully executed the work in question, is entitled to the dues.

6. Mr. M. Chetia, learned Government Advocate, Assam, on the other hand, submits that the work order has been fraudulently obtained by the petitioner and an investigation is being carried on.

7. I have heard the learned counsels for the parties and perused the averments available on record.

8. At the outset, it appears that the work order, which is annexed as Annexure-A, dated 08.04.2020 issued by the Superintendent of Police, Nagaon in favour of the petitioner for installation of temporary Digital Generator at the CRPF Covid-19 Camp, Dhing Paper Mill, appears to be backdated in view of the submission made by the learned counsel for the petitioner.

9. Reference is also made to the relevant paragraph Nos. 4, 5, 10 & 12 of the affidavit-in-opposition filed on behalf of the respondent No. 3, which is as follows:-

“4. That with regard to the statements made in paragraph 3 of the petition, I say that the instant work order dated 08/04/2020 was not issued by the competent authority and as per procedure. It was prepared fraudulently by the petitioner and in connivance with the dealing assistant Shri Sanjib Borah for wrongful gain of the petitioner. In this regard Nagaon P.S. Case no. 195/23 U/S 120 (B) /420 IPC dtd 23/02/2023 was registered against the petitioner and the dealing assistant Sanjib

Borah. The case is now under The work order which was fraudulently obtained has been cancelled vide Memo No. G/Accts/NGN/2023/1051 dtd 24/02/2023. It is pertinent to mention herein that the writ petitioner intentionally tried to mislead the honourable court by annexing the work order dated 08/04/2020 in the writ petition which was obtained fraudulently by the petitioner.

5. That with regard to the statements made in paragraph 4 of the petition, I say that the aforesaid work order was obtained fraudulently and with a criminal conspiracy hatched by the Petitioner and Dealing Assistant Shri Sanjib Borah of SP Office Nagaon showing the date as 08/04/2020 and signed by Shri Tridip Kumbang, APS, Dy. SP (HQ), Nagaon. However, it may be noted that the said officer joined in Nagaon district as Dy. SP (HQ) on 03/06/2021 and as per his knowledge he had not given out any such work order. The back dated work order was initialized by Shri Sanjib Borah who alone dealt with the file in question. In this regard a case vide Nagaon PS Case No. 195/23 U/S 120(B)/420 IPC was registered based on the FIR submitted by Shri Tridip Kumbang, APS, Addl. SP (HQ), Nagaon. The case is under investigation. As stated above, the work order was cancelled vide Memo NO. G/Accts/NGN/2023/1051 dtd 24/02/2023 as it was obtained fraudulently. In fact, in a letter addressed to the Superintendent of Police, Nagaon which was Nagaon vide Memo No. G/Accts/NGN/2022/4444 CRPF, Katimari, Nagaon dtd. 18/10/2022 and forwarded to the Deputy Commissioner, Nagaon on 25/10/2022 vide No. D.III-1/2022-ops-34 dtd. 25/10/2022, the petitioner mentions clearly that he had supplied the items on the verbal request of the then SP, Nagaon and O/C, Dhing PS on 09/04/2020. It is to be stated herein that the petitioner in no correspondence had mentioned the existence of any written work order.

10. That with regard to the statements made in paragraph 9 of the petition, the Deponent begs to state that the petitioner had submitted the representation to the Deputy Commissioner, Nagaon on 07/01/2023 and had enclosed the fraudulently obtained work order and a copy of a forwarding letter issued by the Superintendent of Police, Nagaon dated 25/08/2022. This was the first correspondence made by

the petitioner which mentions the existence of a work order. Basing on the strength of the fraudulently obtained work order, the petitioner had directly submitted his application to the Deputy Commissioner unlike previous correspondence which were addressed to the Superintendent of Nagaon. Though it is marked that a copy of the letter was sent to the Superintendent of Police, Nagaon, but it was not submitted to the Superintendent of Police, Nagaon. As the Work order under was fraudulently obtained, it was cancelled, vide Memo No. G/Acctts/ NGN/2023/1051 dtd 24/02/2023 and a criminal case was registered against the petitioner and two others for obtaining the back dated work order by deceit and fraudulent means with an intention for wrongful gains.

12. That with regard to the statements made in paragraph 13 of petition, I say that the work order under reference was obtained with a view to cheat the authority by the petitioner. The work order was cancelled and a criminal case was registered against the petitioner and two others vide Nagaon PS case no. 195/23 U/S 120(B) /420 IPC dtd 23/02/2023. The case is under investigation. For his involvement in the case, Senior Assistant Sanjib Borah of SP Office, also an accused in the aforementioned criminal case, was placed under suspension by Superintendent of Police, Nagaon vide Memo no. E/NGN/2023/944-49 dtd 23/02/2023.

10. In view of the averments made in the aforesaid affidavit-in-opposition filed by the respondent No. 3, it is abundantly clear that the amount in question is disputed by the State respondents. It further appears that the respondents are also questioning the veracity of the work order issued in favour of the petitioner itself for which a criminal investigation is also pending.

11. A petition under Article 226 of the Constitution of India is not a medium for realization of disputed contractual bill.

12. Thus, the aforesaid amount, being a disputed amount, the writ petitioner has failed to make out a case warranting release of the contractual bills through the instant writ petition.

13. As such, this writ petition stands dismissed.

14. No costs.

JUDGE

Comparing Assistant