

GAHC010079362022



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

Case No. : WP(C)/2766/2022

M/S MOYNUL ENTERPRISE
REP. BY ITS PARTNER NAMELY MOYNAL HAQUE
AGE-32 YRS
S/O- AKBAR ALI
VILL AHMEDPUR
P.O- BHAWRAGURI
P.S- GOSSAIGAON
DIST- KOKRAJHAR BTR (ASSAM)
PIN-783370

VERSUS

THE UNION OF INDIA AND 11 ORS.
REP. BY THE MINISTRY OF TRIBAL AFFAIRS, GOVT. OF INDIA,
NEW DELHI-110020

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
WPT AND BC DEPTT.
DISPUR
GUWAHATI-6
DIST.- KAMRUP
ASSAM.

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-6
DIST.- KAMRUP
ASSAM.

4:THE DIRECTOR
WPT AND BC
ASSAM
RUKMINI NAGAR
GUWAHATI-06

5:THE CHIEF ENGINEER
PWD (BUILDING)
ASSAM
CHANDMARI

GUWAHATI-03

6:THE SECRETARY
BODOLAND TERRITORIAL REGION (BTR)
KOKRAJHAR
ASSAM

P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BYTR
ASSAM
PIN-783370

7:THE DEPUTY COMMISSIONER
KOKRAJHAR
BTR
ASSAM

P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783370

8:THE ADDL. CHIEF ENGINEER
PWD
BODOLAND TERRITORIAL REGION
KOKRAJHAR
BTR
ASSAM

P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783370

9:THE EXECUTIVE ENGINEER
PWD (BUILDING)
BODOLAND TERRITORIAL REGION
KOKRAJHAR
BTR
ASSAM

P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783370

10:THE SUPERINTENDENT ENGINEER
PWD
(R AND B) CIRCLE
BODOLAND TERRITORIAL REGION
KOKRAJHAR
BTR
ASSAM

P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783370

11:THE ASSISTANT EXECUTIVE ENGINEER
PWD
GOSSAIGAON BUILDING SUB DIVISION
GOSSAIGAON
P.O AND P.S- GOSSAIGAON
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783360

12:JITEN NARZARY
S/O NIJEN NARZARY
R/O VILL.-RAMDEO
P.O-KHASIABARI
P.S- GOSSAIGAON
DIST- KOKRAJHAR (BTAD)
ASSAM
PIN- 783360

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : SC, WPT AND BC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

23.07.2024

1. Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned counsel for the respondent nos.2 & 4, Mr. S.R. Barua, learned counsel for the respondent no.7, Mr. B. Choudhury, learned counsel for the respondent nos.6, 8, 9, 10 & 11, Mr. P. Nayak, learned counsel for the respondent nos.3 & 5 and Mr. H. Baruah, learned counsel for the respondent no.12.

2. The petitioner's case is that the petitioner, a Partnership Firm, constituted by the First Partner Moynul Hoque (L) and the 2nd Partner Moynal Hoque was awarded a contract work viz. 'Construction of RCC [two storied] Residential Building for Girl's Hostel at Gossaigaon College, Kokrajhar under SCA to TSP sanctioned by the Government of India, Ministry of Tribal Affairs during the year 2016-2017 for implementation during 2017-2018' ['the Contract Work', for short], by a work order dated 09.08.2018. Thereafter, a contract agreement was executed in respect of the contract work between the petitioner and the respondent no. 10 on 09.08.2018. After being awarded the Contract Work, the petitioner had proceeded to execute the work. According to the petitioner, who is represented by the 2nd Partner Moynal Hoque, it had duly completed the contract work.

3. As per the work order, the contract value of the Contract-Work was Rs.45,08,977/-. During the execution of the contract work, the petitioner was paid a part of the contract value amounting to Rs.18,94,563/- after deduction of tax from the first running bill amount of Rs.21,04,034/-. According to the petitioner, despite execution of the contract work to the satisfaction of the respondent authorities, the respondent authorities have not yet disbursed an amount of Rs.24,04,943/-

4. Mr. H. Baruah, learned counsel for the respondent no.12 submits that as the respondent no.12 had been given a General Power of Attorney on 13.02.2020 by the First Partner of the Partnership Firm, Moynul Hoque, the respondent no.12 was to complete the construction of RCC (Two storied) residential building for Girls Hostel at Gossaigaon College, Kokrajhar under SCA to TSP sanctioned by the Government of India, Ministry of Tribal Affairs during the year 2016-2017 for implementation during 2017-2018, Package No.106/1.

5. Mr. H. Baruah submits that Moynul Hoque, the First Partner in the Partnership Deed expired on 25.08.2021. In the Partnership Deed dated 20.04.2017, it was agreed between Moynul Hoque and Moynal Hoque that the First Partner would be the key person and solely authorized by the Partnership Firm to perform all works in connection with the firm. Further all charges, bills of exchange or promissory notes, documents and papers relating to the business of the Partnership Firm and affairs of the Partnership Firm, shall be signed, drawn or accepted or endorsed by the first partner i.e. the deceased Moynul Hoque.

6. The counsel for the respondent no.12 submits that on account of the

Power of Attorney executed by the first partner in favour of the petitioner on 13.02.2020, the respondent no.12 completed the remaining portion of the contract work and accordingly the respondent authorities had issued the Completion Certificate and Progress Report showing that the contractor was the respondent no.12. He accordingly submits that the remaining contractual bills for the construction work amounting to Rs.23,94,396/-, has to be paid to the respondent no.12. The counsel for the respondent no.12 further submits that as the respondent no.12 was not made a party in the writ petition, the respondent no.12 had himself impleaded in the writ petition, on the basis of the order dated 16.09.2022 passed by this Court in I.A.(C) 2769/2022.

7. Mr. M. Hussain, learned counsel for the petitioner submits that the contract work had initially been done by the petitioner and thereafter completed by the Second Partner Moynal Hoque.

8. The petitioner's counsel submits that the Power of Attorney given to the respondent no.12 by the deceased First Partner was shown to be executed on 13.02.2022. However, the First Partner Moynul Hoque had submitted an application for extension of time for completion of the contract work on 08.11.2020 and 08.04.2021. Thus the Power of Attorney appeared to be a fabricated document. He further submits that a Criminal case has been filed by the 2nd Partner Moynal Hoque against the respondent no.12 on 30.04.2024, before the Judicial Magistrate, Gossaigaon, stating that the Power of Attorney relied upon by the respondent no.12 was a fake document. He further submits that the said criminal case i.e. CR No.31/2024 is still pending before the said Court. He further submits that the Power of Attorney executed by the first partner which has been done in his personal capacity, does not bind the

Partnership Firm.

9. Mr. R. Dhar, learned counsel for the respondent nos.2 & 4 submits that there are many disputed questions of fact involved and that there is nothing to show that the writ petitioner is the rightful claimant to be given the balance bill amount, for the balance construction work done. He submits that due to there being disputed questions of fact, the matter should be decided by a Civil Court, as recording of evidence is necessary.

10. I have heard the learned counsels for the parties.

11. The submissions made by the counsels for the parties show that there are disputed questions of fact. Further, the respondent authorities have reflected the name of the respondent no.12 as the person who had completed the contract work, in terms of the Completion Certificate dated 23.02.2021 issued by the Executive Engineer, PWD, Kokrajhar Building Division, showing the respondent no.12 as the Power of Attorney holder of the partnership firm i.e. M/s Moynul Enterprise. The Progress Report annexed to the affidavit-in-opposition filed by the respondent no.12 issued by the Executive Engineer, PWD, Kokrajhar Building Division also shows that the name of the contractor of the said contract work to be the respondent no.12, as the Power of Attorney holder of M/s Moynul Enterprise. The question as to whether the First Partner Moynul Hoque could have issued a Power of Attorney to the respondent no.12 and as to who had constructed the remaining portion of the building and as such, who should get the balance amount for the contract are disputed questions of fact, which would require evidence to be recorded. As such, this Court is of the view that the matter should be decided by a Civil Court.

12. In view of the reasons stated above, the writ petition is dismissed due to there being disputed questions of fact. However, liberty is given to the parties to approach the Civil Court for redressal of their grievance.

JUDGE

Comparing Assistant