

GAHC010095572022



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

Case No. : WP(C)/3365/2022

SUKTARA KHANAM LASKAR
W/O- BAHARUL ISLAM BARLASKAR, VILL.- SATKARAKANDI PART-I, P.O.
SATKRAKANDI, P.S. SONAI, DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, SOIL CONSERVATION DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR

SOIL CONSERVATION
ASSAM
BHUMI SANGRASHAN BHAWAN
R.G. BARUAH ROAD
GUWAHATI-05.

3:THE DIVISIONAL SOIL CONSERVATION OFFICER
CACHAR SOIL CONSERVATION DIVISION
SILCHAR
P.O. SILCHAR
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : SC, SOIL CONSERVATION DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

15.07.2024

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Ms. R.S. Deuri, learned Standing Counsel, Soil Conservation Department, Assam.

2. This petition under Article 226 of the Constitution of India has been filed seeking direction for release of the balance amount of the petitioner amounting to Rs.83,483/- for the two works being (i) R.C.C. Check Dam at Gorerbond-I and (ii) R.C.C. Check Dam at Malidhar Grant under Haticherra G.P. Cluster and the security deposit amount of Rs.1,32,496/-.

3. The case of the petitioner is that pursuant to a tender process, the petitioner was awarded the aforesaid two works and the same were completed on 18.03.2020, which was also physically verified by the concerned authorities. However, despite completion of the work, the bill of the petitioner was not paid, for which the instant writ petition was filed.

4. Mr. M. Islam, learned counsel for the petitioner submits that though the physical verification report clearly indicated that 100% of both the works were completed, the bill of the petitioner was not released.

5. Ms. R.S. Deuri, learned Standing Counsel, Soil Conservation Department, on the other hand, submits that the petitioner completed only 95% of the work, for which payments have now been released and the remaining 5% of the work was completed after the time period for which no extension was taken and as

such, no amount stands due to the petitioner for the works done.

6. Heard the parties and perused the materials available on record.
7. It appears from the report of the physical verification that the progress and achievement of the two works in question have been completed satisfactorily. It further appears that the respondent No.2, Director of Soil Conservation, Assam and the respondent No.3, Divisional Soil Conservation Officer, Cachar Soil Conservation Division, Silchar by filing an affidavit-in-opposition on 16.09.2022 clarified that the 100% completion recorded in the aforesaid report indicates approximate completion of the work and not full completion of the work.
8. Para 6 and 7 of the said affidavit-in-opposition are reproduced hereunder for ready reference-

“6. That with respect to the averments and statements made in paragraph 6, 7 and 8 of the writ petition, the answering deponent does not admit anything which is/ are contrary to and/or are inconsistent with the records of the case. The answering deponent further states that on 02/09/2020, the Assistant Commissioner, Cachar, the Divisional Officer, Cachar Soil Conservation Division, Silchar and the District Development Commissioner, Cachar had conducted a physical verification with respect to the RCC Check Dam at Gorerbond- I and the RCC Check Dam at Murlidhar Grant. The answering deponent herein states that on 4/9/2020, a report was submitted wherein it was stated that:

"The progress and achievement of project are completed and satisfactory.1) R.C.C. Check Dam at Gorerbond-I (100%),2) RCC Check Dam at Murlidhar Grant (100%)", but, in the physical verification report dated 3/9/2020 with respect to RCC Check Dam at Gorerbond-I, it was stated that about 100% work is completed and in the physical verification report dated 3/9/2020 with respect to RCC Check Dam at Murlidhar Grant, it was stated that about 100% work is

completed. It is needless to state herein that about 100% work is not equivalent to 100% completion of work.

7. That with respect to the averments and statements made in paragraph 9 and 10 of the writ petition, the answering deponent does not admit anything which is/ are contrary to and/or are inconsistent with the records of the case. The answering deponent herein states that the respondent no. 3, Divisional Soil Conservation Officer, Cachar Soil Conservation Division, Silchar, Junior Engineer, Cachar Soil Conservation Division, Silchar and Centre Officer, SC Independent Centre, Silchar in its completion report submitted as per PWD format with respect to RCC Check at Gorerbond- I, it was stated that the work had commenced on 1/2/2020 and the petitioner had completed the work on 5/3/2020. It was further certified that the work had been executed as per specification, drawings and agreements and 95% work was completed by the petitioner. The answering deponent further states that the respondent no. 3, Divisional Soil Conservation Officer, Cachar Soil Conservation Division, Silchar, Junior Engineer, Cachar Soil Conservation Division, Silchar and Centre Officer, SC Independent Centre, Silchar in its completion report submitted as per PWD format with respect to RCC Check Dam at Murlidhar Grant, it was stated that the work had commenced on 1/2/2020 and the petitioner had completed the work on 10/7/2020. It was further certified that the work had been executed as per specification, drawings and agreements and 95% work was completed by the petitioner.

The answering deponent herein states that the total time allotted for completion of work with respect to R.C.C. Check Dam at Gorerbond-I and RCC Check Dam at Murlidhar Grant was 45 days. The answering deponent herein states that aforementioned works were allotted on 1/2/2020 and as such the works should have been completed by the petitioner within 17/3/2020, but, a perusal of the completion report makes it clear that the petitioner had completed only 95% of the works within the stipulated time of 45 days, accordingly, with respect to the 95% work which was completed by the petitioner, the payment was cleared to the petitioner.

Further, the answering deponent states that vide letter dated 12/1/2021 bearing Memo No. CHR/FOC1/2020-21/1413, the respondent no. 3, Divisional Soil Conservation Officer, Cachar Soil Conservation Division, Silchar had informed

respondent No. 2 that the FOC for RCC Check Dam at Gorerbond-I was submitted on 2/9/2020, however, the construction works were not completed during the submission of FOC proposal and as such FOC was submitted for 95%. It was further stated that the remaining 5 % of the work was completed during the month of December, 2020 and the FOC proposal for the remaining 5% will be submitted shortly.

The petitioner further states that vide letter dated 12/1/2021 bearing Memo No. CHR/FOC-1/2020-21/1414, the respondent no. 3, Divisional Soil Conservation Officer, Cachar Soil Conservation Division, Silchar had informed the respondent No. 2 that the FOC for RCC Check Dam at Murlidhar Grant was submitted on 2/9/2020, however, the construction works were not completed during the submission of FOC proposal and as such FOC was submitted for 95%. It was further stated that the remaining 5 % of the work was completed during the month of December, 2020 and the FOC proposal for the remaining 5% will be submitted shortly."

9. It further appears that the respondent No.2 had filed an additional affidavit on 01.04.2024, wherein it has been categorically averred that the petitioner had completed 95% of the work within the stipulated time of 45 days and the remaining 5% work was completed by the petitioner after 8 months from the date of permitted date of completion, i.e., 17.03.2020 and therefore, the petitioner had completed 95% work, for which payment has been made and since the remaining 5% work was done by the petitioner without any extension of work completion time, the bill against the said 5% work was not considered for payment and FOC was not processed.

10. Para 2 of the said additional affidavit is reproduced hereunder for ready reference-

"2. That the answering deponent begs to state that the petitioner had completed 95% work within the stipulated time of 45 days as per the work order and tender agreement. The answering deponent further begs to state

that the remaining 5% work was completed by the petitioner after 8 months from the date of permitted, date of completion i.e. 17/03/2020, hence, the petitioner had completed 95% work on 5/3/2020 and the remaining 5%work was completed by the petitioner in the month December 2020.

It is noteworthy to mention herein that 5% work was done by the writ petitioner without any extension of work completion time, as such the bill against 5% work completion time, as such the bill against 5% work was not considered for payment and FOC was not processed.”

11. The petitioner has filed the instant petition for releasing of the balance amount against the aforesaid two works in question. Out of the total bill amount, 95% has been admittedly released to the petitioner. However, as regards the balance 5% of the bill amount, since a dispute has been raised by the respondent, this Court is of the considered view that the same cannot be gone into by this Court under Article 226 of the Constitution of India. As such, this Court finds no merit in this writ petition.

12. Accordingly, the writ petition stands dismissed.

13. It is needless to clarify that as regards the 5% of the subject bill, the petitioner is at liberty to approach before the appropriate forum in accordance with law. It is further needless to clarify that the respondents shall release the security deposit of the petitioner in accordance with law.

14. No cost.

JUDGE

Comparing Assistant