GAHC010107432024

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

Case No. : WP(C)/2815/2024

BHABA KANTA NATH
SON OF LATE SUNDER NATH, RESIDENT OF 243 SURAVI PATH NEAR D.P.I. KAHILIPARA ROAD, GUWAHATI DISTRICT- KAMRUP

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GUWAHATI-06

2:SECRETARY
GOVT. OF ASSAM W.R. DEPARTMENT DISPUR
GUWAHATI-06

3:DEPUTY SECRETARY
GOVT. OF ASSAM REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI

4:DEPUTY COMMISSIONER
BARPETA
ASSAM

5:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
GOVT. OF ASSAM CHANDMARI
GUWAHATI-03

6:THE EXECUTIVE ENGINEER
BARPETA W.R. DIVISION
BARPET

Advocate for the Petitioner : J SHARMA, MR. P THAKURIA,G. DAS

Advocate for the Respondent : GA, ASSAM, SC, REVENUE,SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

05.08.2024

1. Heard Mr. J. Sharma, learned counsel for the petitioner and Ms. A. Lodha, learned counsel appears for the respondent nos.2, 5 & 6. Mr. G. Bokalial, learned counsel appears on behalf of the respondent nos.1 & 4, while Mr. H. Handique, learned counsel appears for the respondent no.3.

2. The petitioner's case is that he is a registered contractor in the Water Resource Department, Government of Assam and had executed various works, pursuant to the work orders issued by the Water Resource Department, Barpeta Water Resource Division.

3. The petitioner had completed the work orders under the Water Resource Division, Barpeta for protection of Bahari Satra Fulbari Bhogerpar and it's adjoining areas from the effects of erosion of the river Brahmaputra for 2007–2008 under Calamity Relief Fund (CRF). As the contractual bills of the petitioner amounting to Rs.76,96,302/- was not being paid, the petitioner approached this Court, vide WP(C) 877/2014.

4. WP(C) 877/2014 was disposed of, vide order dated 19.02.2014, by

directing the respondents to consider the case of the petitioner in the light of the judgment of the Full Bench of this Court in the case of ***Tamsher Ali vs. State of Assam & Others***, reported in ***2008 (4) GLT 1***. However, as nothing was being done by the State respondents in terms of the direction passed by this Court in WP(C) 877/2014, the petitioner filed Contempt (Civil) Case No.465/2023. Due to the delay in filing the contempt petition, the contempt petition was closed as withdrawn, with liberty being given to the petitioner to file a fresh writ petition.

5. Accordingly, the petitioner has filed the present writ petition, praying for payment of his contractual dues amounting to Rs.76,96,302/-.

6. The affidavit of the Chief Engineer, Water Resources Department which was filed in the month of July, 2024 shows that the Chief Engineer has admitted that Rs.76,96,302/- is due to the petitioner as the unpaid contractual bill amount.

7. In view of the fact that the Chief Engineer has admitted that the petitioner is liable to be paid Rs.76,96,302/-, the requirement of the head of office admitting the payment of an outstanding due amount, in terms of the judgment in ***Tamsher Ali (Supra)*** has been complied with. As such, there can be no justification for the State respondents to deny payment of the due amount to the petitioner.

8. Further, in the affidavit-in-opposition filed by the Chief Engineer, Water Resource Department, it has been stated that the Executive Engineer, Barpeta

Water Resources Division had sent necessary documents for payment of the said scheme to the Deputy Commissioner, Barpeta, vide letter no. BWRD/Esti/58/Pt-IV/2010/646 dated 04.11.2015.

9. The letter no. BWRD/Esti/58/Pt-IV/2010/646 dated 04.11.2005 issued by the Executive Engineer, Barpeta Water Resources Division, Barpeta to the Deputy Commissioner, Barpeta is reproduced hereinbelow, as follows :

"*To*
The Deputy Commissioner,
Barpeta

Sub: Submission of documents in respect of the scheme "Immediate measures to protect Bahari Satra Fulbari-Bhogerpar and its adjoining areas from the erosion of river Brahmaputra under CRF for 2007-08".

Sanctioned Amount = Rs. 7,03,00,800/-

Ref: Your letter No. BRR-59/2007/219 dated: 09-09-2014

Madam,

With reference to above, I have the honour to submit herewith the following documents in respect of the above mentioned scheme after obtaining necessary Technical Sanction, accorded vide Chief Engineer, WRD's letter No. WR (EDRT) 281/2012-13/12 dated: 28-10-2014 for Rs. 7,03,00,800/- and necessary Technical Approval towards the working estimate of the scheme, accorded vide Chief Engineer, WRD's letter No. WR (EDRT) 281/2012-13/21 dated: 17-09-2015 for Rs. 7,03,00,700/- & after verification of relevant documents & authentication of the bills thereof.

1) Copy of Technical Sanction.
2) Copy of technical approval of the working estimate.

3) Copy of formal work orders.
4) Copy of tender agreement.
5) Authenticated copies of bills = 222 Nos
6) Relevant photographs
7) Progress report

This is for favour of your kind disposal."

10. Ms. A. Lodha, learned counsel for the respondent nos.2, 5 & 6 submits that the amount due to the petitioner is to be paid by the office of the District Commissioner, Barpeta, as the Water Resources Department was only the executing agency.

11. Mr. G. Bokalial submits that the fund for payment of the dues of the petitioner has to be released by the Revenue Department, Government of Assam.

12. Mr. J. Handique, learned counsel for the Revenue Department submits that as soon as all the necessary documents are furnished by the Water Resources Department and the District Commissioner's office, to the Revenue Department, necessary funds would be furnished to the Deputy/District Commissioner's office for payment, if all the things are in order.

13. On considering the submissions made by the counsels for the parties and the fact that it is admitted that the petitioner is to be paid the outstanding amount of Rs.76,96,302/-, the respondents shall start the proposal for payment of the admitted amount and conclude the said exercise within a period of 3 (three) months from the date of receipt of a certified copy of this order.

14. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant