

GAHC010117972019



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

Case No. : WP(C)/3605/2019

SHREE GAUTAM CONSTRUCTION CO. LTD.
A PUBLIC LTD. COMPANY INCORPORATED UNDER THE COMPANIES ACT,
1956 HAVING ITS REGD. OFFICE AT BILASIPARA, DIST- DHUBRI AND ITS
CORPORATE OFFICE AT 4TH FLOOR, AMAZE TOWER, A.T. ROAD, PALTAN
BAZAR, GHY-1, BEING REP. BY ITS AUTHORIZED REPRESENTATIVE AND
ONE OF ITS DIRECTOR, NAMELY, UMED KUMAR SINGHI S/O- LT
JAICHAND LAL SINGHI, AGED ABOUT 67 YEARS, RESIDING AT H.NO. 24,
TARUN NAGAR, BYE LANE NO.6, GHY-5

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SPECIAL SECY., PWD (ROADS) TO THE GOVT. OF
ASSAM, DISPUR, GHY-06

2:THE CHIEF ENGINEER
PWD (ROADS)
ASSAM
CHANDMARI
GHY-3

3:THE EXECUTIVE ENGINEER
PWD
BONGAIGAON RURAL ROAD DIVISION
BONGAIGAON
ASSAM

4:THE SUPERINTENDING ENGINEER
PWD (ROADS)
WESTERN ASSAM CIRCLE
GOALPARA
ASSA

For the petitioner (s) : Mr. G. N. Sahewalla, Sr. Advocate

Ms. A. Agarwal, Advocate

For the respondent (s) : Mr. P. Nayak, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

02.02.2024

The instant writ petition has been filed by the petitioner being aggrieved by the inaction on the part of the respondent authorities in not making payment of the admitted contractual dues to the tune of Rs.8,51,43,439/- along with interest at the rate of 18% from the date of completion of the work, i.e. from 25.09.2008 till the payments are duly made.

2. From a perusal of the materials on record, it reveals that the petitioner was awarded a contract for construction of Railway Overbridge at Bongaigaon on North Salmara Chapaguri Road. The value at which the contract was awarded was Rs.8,89,51,600/-.

3. It is the case of the petitioner that as on the date on which the petitioner completed the work, a certificate was issued by the Executive Engineer, PWD, i.e. on 25.09.2008 that the revised estimate in respect to the construction of the work was Rs.14,84,85,439/-. It is the further case of the petitioner that though the Executive Engineer, PWD had certified on 25.09.2008 that the revised estimated value was Rs.14,84,85,439/- but the said revised estimated value thereupon further increased to

Rs.15,07,15,594/- and thereupon further to Rs.15,32,58,190/-. It is on the basis thereof the petitioner therefore claims that the petitioner is entitled to the amount of Rs.8,51,43,439/-. It is also the case of the petitioner that as on 29.06.2017, i.e. almost after another 9 years, the Executive Engineer, PWD, Bongaigaon Road Division had informed the petitioner that the revised estimate amounting to Rs.15,07,15,594/- has been submitted to the higher authority on 12.01.2010 for sanction but no sanction has been received. It was mentioned that as per the revised estimate, the balance amount payable to the petitioner is Rs.8,51,43,439/-. It is therefore the case of the petitioner that the petitioner is entitled to the said amount for which the instant writ petition has been filed.

4. Pursuant to the filing of the instant writ petition on 27.05.2019, this Court had issued notice vide an order dated 03.06.2019. An affidavit-in-opposition has been filed by the Additional Chief Engineer (P), PWD (Roads) stating inter-alia that the sanction estimate for the work in question was Rs.889.516 lakhs and the construction work was done by both the Railways and State PWD. It was further mentioned that the Viaduct and ROB position was allotted to the petitioner at Rs.6,82,89,260/-. It is also categorically stated at paragraph No.8 that the revised estimate had been prepared and submitted to the higher authority on 12.01.2010, but no sanction is accorded till date. So the question of the balance amount to be payable to the petitioner on the revised estimate of Rs.15,07,15,594/- does not arise. It was further mentioned that the petitioner would be paid as per the accepted tender amount on receipt of the fund from the Government and as per demand for the fund submitted vide communication dated 02.06.2009 for the balance amount

of Rs.391.91 lakhs which includes the price escalation as per tender Clause 47.2 claimed by the contractor and which may be the base amount for further calculation.

5. This Court has duly heard the learned counsels for the parties and given anxious consideration to the submission so made. From the above materials on record, it reveals that an amount of Rs.391.91 lakhs has been duly admitted. Upon hearing the learned counsels for the parties and perusing the materials on record and more particularly to paragraph No.8 of the affidavit-in-opposition, it reveals that the respondent authorities have duly admitted that the petitioner would be paid as per the accepted tender amount on receipt of the fund as per the demand of the fund submitted vide office letter dated 02.06.2009 for the balance amount of Rs.391.91 lakhs which includes the price escalation as per tender Clause No.47.2 claimed by the petitioner which may be the base amount for further calculation.

6. Under such circumstances, in respect to the amount of Rs.391.91 lakhs, this Court directs the respondent authorities to make necessary verification and upon verification if it is found that the petitioner is entitled to the said amount or any part thereof, the same be paid to the petitioner within a period of 6 (six) months from the date of a certified copy of the instant order is submitted.

7. However, as regards the amount which the petitioner had claimed on the basis of the revised estimate, it is the opinion of this Court that the revised estimate having not been approved by the higher authority who as per the tender conditions would have revised the estimate, no writ can be issued under such circumstances.

8. However, this Court grants the liberty to the petitioner to avail such remedies as available under law before the competent Civil Court for adjudication on the revised estimate.

9. This Court has also taken note of that the petitioner has been pursuing the instant litigation before this Court bonafidely and diligently and as such the period of limitation from the date of filing of the instant writ petition till today be excluded while computing the period of limitation, if the petitioner files a suit in respect to the revised estimate.

10. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant