

GAHC010154012022



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

Case No. : WP(C)/5081/2022

MOINUL HAQUE CHOUDHURY
S/O LT. AFTAR HUSSAIN CHOUDHURY,
VILL.- KACHUTOLI, P.O.- DIGARU, P.S.- SONAPUR, DIST.- KAMRUP(M),
ASSAM, PIN- 782401.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
'WATER RESOURCE (W.R) DEPARTMENT', DISPUR, P.O. AND P.S.- DISPUR,
DIST.- KAMRUP(M), ASSAM, PIN- 781006.

2:THE CHIEF ENGINEER
'WATER RESOURCE(W.R) DEPTT.'
ASSAM
5QMC AND JRR
KRISHNA NAGAR
P.O. AND P.S.- CHANDMARI
DIST.- KAMRUP(M)
ASSAM
GUWAHATI- 781003.

3:THE ASST. CHIEF ENGINEER
'WATER RESOURCE(W.R) DEPTT.'
ASSAM
5QMC AND JRR
KRISHNA NAGAR
P.O. AND P.S.- CHANDMARI
DIST.- KAMRUP(M)
ASSAM
GUWAHATI- 781003.

4:THE SUPERINTENDING ENGINEER
SOUTHERN ASSAM 'WATER RESOURCE(W.R) CIRCLE
P.O AND P.S.- CHANDMARI
DIST.- KAMRUP(M)
ASSAM
GUWAHATI- 781003.

5:EXECUTIVE ENGINEER
GUWAHATI EAST 'WATER RESOURCE(W.R) DIVISION
88
DR. BK KAKATI ROAD ULUBARI
ASSAM
GUWAHATI- 781003.

6:ASSISTANT EXECUTIVE ENGINEER (A.E.E)
GUWAHATI EAST 'WATER RESOURCE(W.R) DIVISION
88
DR. BK KAKATI ROAD ULUBARI
ASSAM
GUWAHATI- 781003

Advocate for the Petitioner : MR. A H ALAMGIR

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 10.06.2024

Heard Mr.A.H. Alamgir, learned counsel for the petitioner. Also heard Mr.R.M. Das, learned Standing Counsel, Water Resource Department.

2. This writ petition is filed by the writ petitioner seeking a direction of the Court for release of his bills or works executed in respect of "Construction of F/E along L/B of River Digaru from national highway to Kurkuria hill under the Water Resources Department". The learned counsel for the petitioner submits that the petitioner was allotted the work order dated 02.03.2012 for the "Construction of F/E and of L/B of River Digaru from national highway to Kurkuria hill under the

Water Resources Department". In pursuance to the works allotted the petitioner deposited the earnest money, as required. The petitioner claims to have completed the work but the bills raised after completion of the work amounting to Rs.2,43,412/- (Rupees two lakhs forty three thousand four hundred twelve) only with interest has not been paid against the works executed. Being aggrieved, the petitioner has filed the present writ petition.

3. The respondents have filed an affidavit making a categorical averment that there are no records available in the Office of the Executive Engineer, Guwahati East Water Resources Department in the district of Kamrup (Metro) in respect of the works undertaken or completed by the petitioner. The respondents however, stated in their affidavit that against the work allotted the petitioner had deposited 2% of the tender amount as earnest money, in favour of the Executive Engineer, Guwahati East, Water Resources Division and which the petitioner is at liberty to withdraw at anytime from the said Office.

4. In view of the disputed questions of fact raised, this Court by earlier dated 24.11.2022 directed the respondents to produce the measurement book. The learned Standing Counsel, Water Resource Department has produced the Measurement Book before this Court.

5. Having heard the learned counsels for the parties and upon careful perusal of the pleadings on record, it is seen that the respondents have not admitted to the execution of the works undertaken by the petitioner. The respondents admit that the petitioner has been allotted the work, and he had accordingly deposited the earnest money as required but the works allotted were not executed by him and therefore the payments claimed cannot be released to him.

6. The measurement book, produced before the Court and as pointed out by

the learned counsel for the respondent, does not show the work executed by the petitioner have been recorded in the measurement book. Although the affidavit filed by the respondents reflect that the petitioner although allotted the contract work, did not execute the same, however, the affidavit does not bring on record, as to whether the said work was subsequently required to be executed by issuance of a fresh tender, or by allotting the work to some other contractor or even that the work was never executed. It is also seen that the respondents have admitted that the work was allotted to the petitioner, but he failed to execute the same and at the same time they state that the petitioner is at liberty to withdraw the earnest money from the Office of the Executive Engineer.

7. Having heard the learned counsels for the parties and upon careful perusal of the pleadings on record it is seen that the work stated to have been executed by the petitioner is not admitted to by the department. The measurement book produced before the Court also did not reflect any measurement of works stated to have been executed by the petitioner. What is, however noticed is that there are no particulars in the affidavit before this Court as to whether the work allotted to the petitioner was executed through some other contractor, or was it abandoned. If the work is allotted to any other contractor, ordinarily as per Contract agreements executed, on the failure of the contractor to execute the contract in the event the contractor abandoned the work after being allotted, the earnest money is forfeited. However, the affidavit clearly reflects that the petitioner is given liberty to withdraw the earnest money from the office of the deponent.

8. Under such circumstances, this Court deems it proper to direct the Chief Engineer, Water Resources Department to cause a proper enquiry into the

claims of the writ petitioner and if the writ petitioner had executed the works allotted to him or had partially executed the words, then any amount payable to the petitioner in terms of the contract shall be released after due and proper verification of the same.

9. The entire exercise be completed by the Officer of the Chief Engineer, Water Resources Department within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

10. Writ petition, is accordingly, disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant