

GAHC010166742022



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

Case No. : WP(C)/5417/2022

M/S HAWKS LABORATORY
REP. BY ITS PROPRIETOR SMTI. BANDANA SHARMA, AGED ABOUT 73
YEARS,
W/O LATE DILIP SHARMA,
R/O BATAHGHULI, PANJABARI, GUWAHATI, KAMRUP (M), ASSAM, PIN-
781037.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, INDUSTRIES AND
COMMERCE DEPTT., ASSAM SECRETARIAT, DISPUR, GUWAHATI- 781006.

2:THE ASSAM SMALL INDUSTRIES DEVELOPMENT CORPORATION
LIMITED
REP. BY ITS MANAGING DIRECTOR
M.R.D. ROAD
BAMUNIMAIDAM
GUWAHATI- 781021.

3:THE COMMISSIONERATE OF INDUSTRIES AND COMMERCE
ASSAM
REP. BY THE COMMISSIONER
INDUSTRIES AND COMMERCE
ASSAM
UDYOG BHAWAN
BAMUNIMAIDAM
GUWAHATI- 781021.

4:THE HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT OF ASSAM

REP. BY ITS PRINCIPAL SECRETARY
3RD FLOOR
CM BLOCK
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006.

5:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036
ASSAM

Advocate for the Petitioner : MR. U K NAIR, MR A CHAKRABORTY,MR. A BORO,MS N
NEWME

Advocate for the Respondent : SC, INDUSTRIES AND COMMERCE, SC, HEALTH,SC, ASIDC

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri M.P. Sharma, Advocate

Advocate for the respondents : Shri B. Gogoi, SC, Health & Family Welfare Department.
Shri S. Das, Advocate.

Date of hearing : **12.09.2024**

Date of judgment : **12.09.2024**

Heard Shri M.P. Sharma, learned counsel for the petitioner. Also heard Shri B. Gogoi, learned Standing Counsel, Health & Family Welfare Department and Shri S. Das, learned counsel for the respondent no. 2.

2. The instant petition has been filed with the following prayer:

”In the premises aforesaid, it is most humbly prayed that Your Lordships may be pleased to issue Rule, Call for the records and upon hearing the parties as to the cause and / or causes and on perusal of the records be pleased to grant the petitioners the following relief /reliefs:

(i) To issue a writ in the nature of Mandamus and / or any other writ, order or direction of like nature towards directing the respondent authorities to forthwith pay to the petitioner the outstanding amount of Rs.70,54,745/- (Rupees Seventy Lakhs Fifty-Four Thousand Seven Hundred and Forty-Five Only) along with interest thereon at the rate of 12% (Twelve Per-cent) per annum from the date on which such payment and due and payable to the petitioner, i.e., 21.01.2021 till the date of actual payment.

(ii) And/or pass such further order/orders as Your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. As per the facts projected, the petitioner which is a proprietorship firm had supplied certain ayurvedic medicines to the Health Department in the period 1993-94 to 1994-95. Such supply was made through the ASIDC as the petitioner was a Small Scale Industry. Owing to the aforesaid supply, there was a due of an amount of Rs.1,75,490/- (Rupees One Lakh Seventy Five Thousand Four Hundred Ninety). Since the amount was not paid, the petitioner had approached the Facilitation Council as envisaged under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (herein after the Act). The said Council had passed an Award on 19.12.2006. The amount involved in the Award not being paid, the petitioner had approached this Court

by filing WP(C)/907/2015 which was disposed of by this Court on 05.05.2015. As the order was not complied with, the petitioner had filed Cont. Cas (C) No. 161/2016. In the said case, this Court had passed an order dated 15.10.2020 whereby the parties were directed to settle the matter in a parley. In terms of the said order, Joint Meeting was held in presence of the petitioner on 17.10.2020 and 21.12.2020. In the meantime, an amount of Rs.42,07,465/- (Forty Two Lakh Seven Thousand Four Hundred Sixty Five) was deposited in the Registry of this Court. In the meeting dated 21.12.2020, it was found that an amount of Rs.39,92,941/- (Rupees Thirty Nine Lakh Ninety Two Thousand Nine Hundred Forty One) was due. There was also a request recorded in the Minutes of Meeting that the petitioner would not claim further interest in near future.

4. Be that as it may, the amount of Rs. 39,92,941/- (Rupees Thirty Nine Lakhs Ninety Two Thousand Nine Hundred Forty One) was paid to the petitioner and accordingly on 08.01.2021, the contempt petition was closed. This Court while closing the said contempt petition had made the following observation.

“Heard Mr. S. Dutta learned counsel for the petitioner and Mr. B. Gogoi, learned Standing Counsel Health Department.

Mr. Gogoi produced a copy of a letter dated 24.12.2020 issued by the Director of Health Service with a request to the Registrar General of this court and the contents including the request is reproduced hereinbelow:

“Hence, the Hon’ble Court is requested that the amount of Rs. 39,92,941/- (Rupees thirty nine lakhs ninety two thousand nine hundred forty one) only which was deposited to the account of the Registrar General, Gauhati High Court and remaining amount of Rs 2,14,524/-(Rupees two lakhs fourteen thousand five hundred twenty four) only may be returned to the undersigned

for deposit in the Govt. Revenue.

It is also requested kindly to deduct the income tax@ of 10% on the interest amount to be paid to the income tax Deptt. At the time of payment to Mrs. Bandana Sarma , Proprietor, M/s Hawks Laboratory, Guwahati.

Encl:

- 1. Copy of the Minutes of Joint meeting*
- 2. Copy of calculation sheet of ASIDC Ltd.*
- 3. Copy of letter from ASIDC Ltd"*

The said letter dated 24.12.2020 also annexed the minutes of meeting held on 21.12.2020 in presence of all the parties including the petitioner. In view of the request by the Director, Health Services, this contempt petition stands closed with a further direction to the Registry of this court to comply as per the request of the Director of Health Service.

Copy of the letter dated 24.12.2020 issued by the Director of Health Service is kept as a part of the record."

5. After closure of the contempt petition, the present writ petition has been filed claiming an amount of Rs.70,54,745/- (Rupees Seventy Lakhs Fifty Four Thousand Seven Hundred Forty Five) along with 12% interest.

6. The learned counsel for the petitioner has submitted that under the Act of 1993, interest is payable and accordingly the petition has been instituted. It is submitted that though the amount was paid after the second meeting dated 21.12.2020, the adjudication was made in the year 2006 and in spite of the

order of this Court dated 08.05.2015, there was delay.

7. Shri Gogoi, the learned Standing Counsel of the Department has however submitted that after the matter was settled in terms of the order dated 15.10.2020 of this Court directing the parties to sort out the same in a parley, the instant petition is not even maintainable. He has also referred to the Minutes of the Meeting dated 21.12.2020 where there was a specific recording of the request made to the petitioner not to claim further interest. Reference has also been made to the order dated 08.01.2021 of this Court passed in Cont. Cas (C)161/2016 which was closed in presence of the learned counsel for the petitioner whereby this Court had recorded the contents of the letter dated 24.12.2020 issued by the Director of Health Service.

8. Drawing the attention of this Court to the Act of 1993, more specifically, Section 6 thereof it is submitted that under 6 (2), in case of a dispute being referred to the Industry Facilitation Council, such dispute would be adjudicated as per the Arbitration and Conciliation Act, 1996. He submits that under the Arbitration and Conciliation Act, 1996, there is a provision for enforcement of such an Award. He submits that though the aforesaid submission was also available to the Department in the adjudication of the earlier writ petition, the Department would not be precluded from raising the same as the instant petition is also towards enforcement of the Award passed by the Facilitation Council.

9. Shri Sharma, the learned counsel for the petitioner however submits that the meeting dated 21.12.2020 had only recorded a request and there was no

undertaking by the petitioner and therefore, the petitioner should not be precluded from raising the instant claim.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. It is not in doubt that an amount of Rs.1,75,490/- (Rupees One Lakh Seventy Five Thousand Four Hundred Ninety) was due to the petitioner which was not paid and ultimately on 19.12.2006, an Award was passed by the Facilitation Council. The said Award was admittedly under the Act of 1993. No doubt, in the intervening period, WP(C)/ 907/2015 was filed and entertained which also resulted in filing of the subsequent Cont. Cas (C) 161/2016. The said proceeding had culminated in an order dated 08.01.2021 passed by this Court when the contempt petition was closed. While closing the contempt petition, no liberty was either sought for by the petitioner or granted by this Court to raise further grievance. The order of this Court dated 15.10.2020 passed in the contempt petition also gives a clear indication that the idea was to finally resolve the matter which apparently was done in the second meeting held on 21.12.2020. Thereafter, when the amount found due of Rs.39,92,941 (Rupees Thirty Nine Lakh Ninety Two Thousand Nine Hundred Forty One) was paid to the petitioner, the instant petition has been filed in this Court claiming another amount of Rs.70,54,745/- (Rupees Seventy Lakh Fifty Four Thousand Seven Hundred Forty Five) with further interest.

12. Without even going to the aspect of *bona fide* in instituting the present claim by way of a writ petition, this Court is of the opinion that in view of the

provision in the Act of 1993, r/w the Arbitration and Conciliation Act of 1996 which provided for the mechanism for enforcement of an Award, this Court is not inclined to enter into the merits of the dispute, more so, when the same would involve assessment of interest and factual disputes which is not within the domain of this Court.

13. The writ petition accordingly stands dismissed. The petitioner may however take recourse to the mechanism provided by law, as indicated above.

JUDGE

Comparing Assistant