

GAHC010170312021



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

**Case No. : WP(C)/5579/2021**

SUKUMAR DEKA  
S/O LATE RAMANI KANTA DEKA,  
R/O CHANDMARI, WARD NO. 19,  
P.O. AND P.S. TEZPUR,  
DIST. SONITPUR, ASSAM,  
PIN-784001

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
PUBLIC HEALTH ENGINEERING DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING

HENGRABARI  
GUWAHATI-36.

3:THE EXECUTIVE ENGINEER (PHE)  
TEZPUR DIVISION NO. 1 TEZPUR  
ASSAM-78400

**Advocate for the Petitioner : MR. A R TAHBILDAR**

**Advocate for the Respondent : SC, P H E**

**BEFORE  
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**ORDER**

**04.03.2024**

Heard Shri A.R. Tahbildar, learned counsel for the petitioner. Also heard Shri Bhargav Das, learned counsel appearing for the Public Health Engineering Department who submits that affidavit-in-opposition has also been filed on 17.03.2022.

Considering the subject matter and as agreed to by the learned counsel for the parties, the instant writ petition which is of the year 2021 is disposed of at the admission stage.

The petitioner has approached this Court with a prayer for release of contractual amount. It is the projected case of the petitioner that he is a Class-II Contractor and had successfully completed two works namely; EE/PHE/TEZ-I/W-456/2008-09/5915 dated 21.02.2009 and EE/PHE/TEZ-I/W-456/2008-09/7067 26.03.2009.

Shri Tahbildar, the learned counsel has submitted that there are no cogent reasons to withhold the amount in question. The learned counsel has referred and relied upon the judgment of ***Tamsher Ali & Ors. Vs. The State of Assam & Ors.***, reported in **2008 (4) GLT 1** wherein a Full Bench of this Court has laid down a scheme / mechanism for dealing with matters of non-payment of contractual bills.

On the other hand, Shri Das, the learned counsel for the Department by referring to the affidavit-in-opposition filed by the Department has submitted that the claim is not maintainable inasmuch as the works in question were not completed and there are number of complaints in this regard on records. He has also submitted that no part of the claim is admitted.

By referring to the case of ***Tamsher Ali*** (supra) the learned counsel for the Department has submitted that the facts of the present case are distinguishable inasmuch as the decision of the Full Bench pertains to claims which are admitted by the Department, that too by an Officer of a particular rank which does not exist in the

present case. The learned counsel further submits that the facts projected are disputed and may not be the subject matter of adjudication by a writ court.

The rival contentions have been considered.

This Court has noticed that the writ petitioner did not file any rejoinder affidavit to the affidavit-in-opposition of the Department. Further, Shri Tahbildar, the learned counsel fairly submits that he is also presently not in touch with the clients.

This Court has noticed that the facts of this case are distinguishable from the facts which were taken into consideration by the Full Bench of this Court in the case of ***Tamsher Ali*** (supra) wherein a pre-condition was of an admission of the liability by the Department, that too by an Officer not below the rank of the Chief Engineer.

This Court has also noticed that there are disputed questions of fact which cannot be gone into by a Writ Court.

This Court has also noticed that though the works were of the year 2009, this writ petition was filed in the year 2021. Though an explanation has been given of filing an earlier writ petition in the year 2012, the fact of the delay will however not be obliterated.

Under the aforesaid facts and circumstances, this Court is of the opinion that no case for interference is able to be made out by the petitioner for invoking the writ jurisdiction and accordingly the petition is dismissed.

The petitioner is however at liberty to approach the Civil Court which, if done will have to meet the rigours of the law of limitation.

**JUDGE**

**Comparing Assistant**