

GAHC010170602022



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

Case No. : WP(C)/5939/2022

SONITPUR DHATRI SEWA SAMITY
REPRESENTED BY ITS DIRECTOR TAPAN SEN GUPTA, AGED ABOUT 48
YEARS, SON OF MANORANJAN SEN GUPTA, RESIDENT OF WARD NO. 4,
A.C.M.S. BHAWAN, L.O.K.D. ROAD, P.O. AND P.S. DHEKIAJULI, DISTRICT-
SONITPUR, ASSAM, PIN- 784110.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SKILL EMPLOYMENT AND ENTREPRENEURSHIP
DEPARTMENT, BLOCK D, 3RD FLOOR, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-6.

2:ASSAM SKILL DEVELOPMENT MISSION
REPRESENTED BY ITS MISSION DIRECTOR
KATABARI DPS ROAD
NH-37 GARCHUK
GUWAHATI- 781035

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER

08.01.2024

Heard Mr. S.K. Das, learned counsel for the petitioner; Ms. S. Sarma, learned Junior Government Advocate, Assam for the respondent no. 1; and Mr. K. Khanna, learned counsel for the respondent no. 2.

2. The petitioner has preferred the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities to disburse an amount of Rs. 2,09,206/- with the allegation that the said amount has been arbitrarily and illegally withheld by the respondent authorities.

2.1. The petitioner has claimed that it is a registered organization and a Training Partner [TP], empanelled for imparting training and providing placements as per the policy of the Assam Skill Development Mission [ASDM], subject to fulfillment of the terms and conditions laid down in that connection. It is the case of the petitioner that as a Training Partner [TP], it entered into an agreement with the respondent no. 2 on 19.03.2018 for implementing the Assam Skill Development Programme with a target of training the youth of Assam and imparting Short Term Modular Skill Development Training so that the candidates have gainful employment thereafter. After the execution of the agreement, the petitioner submitted a proposal under the Assam Skill Development Mission and the respondent no. 2 had issued a Sanction Order/Allocation Advice on 20.03.2018 thereby granting approval for a Job Role : Self Employed Tailoring under Placement Linked State Funded Scheme vide ID no. ASDM4202018B4 for 380 hours for the period w.e.f. 03.05.2018 to 03.09.2018. It is the further case of the petitioner that during the execution of the job, the petitioner used to raise bills and the respondent no. 2 after receipt of the bills, used to sanction the bills.

2.2. It is also case of the petitioner that when an amount of Rs. 5,96,785/- was not disbursed to the petitioner, the petitioner had approached this Court earlier by way of a writ petition, W.P. [C] no. 732/2022 seeking *inter alia* a direction to the respondent authorities, more particularly, the respondent no. 2 to reimburse the said amount amounting to Rs. 5,96,785/- incurred towards training costs for the courses under the ASDM. After hearing the learned counsel for the parties, the writ petition, W.P.[C] no. 732/2022 was disposed of, by an order dated 01.04.2022, by granting liberty to the petitioner to approach the respondent no. 2 by way of a fresh representation as regards its grievance pertaining to non-disbursement of the amount of Rs. 5,96,785/-. It was further observed that in the event of submission of such representation by the petitioner, the respondent no. 2 would consider the same as per the entitlement of the petitioner in and accordance with law by taking into account the services rendered by the petitioner if no

impediment was found as regards the release, within a period of 6 [six] weeks from the date of receipt of a copy of the order dated 01.04.2022.

2.3. An amount of Rs. 3,87,579/- out of the claimed amount of Rs. 5,96,785/- was released by the respondent no. 2 to the petitioner pursuant to submission of a representation and consideration of the said representation in deference to the Order dated 01.04.2022 [supra]. The petitioner has preferred the instant writ petition on the ground that an amount of Rs. 2,09,206/- out of the total Rs. 5,96,785/- has been withheld by the respondent no. 2 till date arbitrarily and illegally and as such, a direction for release to the respondent no. 2 for sanctioning and disbursing the said amount of Rs. 2,09,206/- is called for.

3. The learned counsel appearing for the respondent no. 2 has referred to the statements and averments made in the counter affidavit filed on behalf of the respondent no. 2 to contend that the bills were required to be submitted as per the mandate contained in Clause 15 of the Process & Cost Norms. He has further submitted that after receipt of the representation pursuant to the order dated 01.04.2022, the claim of the petitioner for the entire amount of Rs. 5,96,785/- was examined and verified with the records available at the end of the respondent no. 2 and after finding the entitlement of the petitioner to the extent of Rs. 3,87,579/-, the said amount was released. It has been contended in the said counter affidavit that the claim as regards the remaining amount of Rs. 2,09,206/- cannot be considered for release as there are many disputed questions involved. He has further contended that since the said remaining amount of Rs. 2,09,206/- is disputed, a direction to release the said amount of Rs. 5,96,785/- cannot be made in the present writ petition.

4. I have considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings.

5. A full bench of this Court in Writ Appeal no. 484/2005 [Tamsher Ali and others vs. State of Assam and others], and similar other 194 writ petitions, reported in 2008 [4] GLT 1 [FB], has observed that a writ petition involving contractual liability can be considered only in the event there is admission of liability.

6. A writ petition is ordinarily decided on the basis of affidavits. In the course of the writ proceedings, the Court has to consider as to what facts are in dispute and what facts are not in dispute and such a stage comes only after the exchange of pleadings in the form of affidavits amongst the parties is complete. From the discussion above, it is clear, in the absence of any admission of liability by the respondent no. 2, that the claim of the petitioner as regards the amount of Rs. 2,09,206/- or any other amount has not been crystallized with any admission of liability. The said claim has been refuted by the respondent no. 2 on the ground that the petitioner had failed to submit the required documents in terms of the mandate contained in Clause 15 of the Process & Cost Norms. Thus, it is for the petitioner to establish that he is entitled to the remaining amount of Rs. 2,09,206/-. In the above fact situation obtaining in the case, this Court is of the considered view that a number of disputed questions of fact are involved in the process of adjudication of the writ petition. This Court does not generally embark upon determination of questions of fact which demand elaborate examination of evidence to establish the right to enforce which the writ is claimed. As these factual disputes have fallen for determination, the same would require appreciation of evidence, both oral and documentary, in a full-fledged trial proceedings. Such disputed questions of rival claims of the parties with regard to disbursement or non-disbursement of the amount of Rs. 2,09,206/- are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit or in arbitration, if provided for in the contract, rather than by this Court in its writ jurisdiction.

7. It is also apposite to refer to the following observations made by the Hon'ble Supreme Court of India in the case of Union of India and others vs. Puna Hinda, reported in [2021] 10 SCC 690 :-

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised.”

8. For the said reasons, the writ petition is found not to be entertainable and it is accordingly, not entertained. It is, however, made clear that non-entertainment of the writ petition shall not preclude the writ petitioner in initiating appropriate proceedings before a civil court or by way of arbitration, if provided for by the contract, for the amount claimed and/or damages/losses, if any, suffered by him and in the event any such proceedings is initiated by the petitioner the same is to be considered in accordance with law and on its own merits and on the basis of the evidence to be led.

9. As a question of release of a performance guarantee is also involved, the petitioner may approach the respondent no. 2 by way of a representation seeking release of the said performance guarantee and if such a representation is filed, the respondent no. 2 shall examine and consider as to whether the said performance guarantee is entitled to be released as per the terms and conditions of the agreement entered into by the parties.

JUDGE

Comparing Assistant