

GAHC010172422023



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

Case No. : WP(C)/4536/2023

M/S BHABANI PERFORMER AND 2 ORS
PANDU, P.O. PANDU, P.S. JALUKBARI, DIST. KAMRUP(M), ASSAM,
REPRESENTED BY ITS PARTNER SRI DEBASHIS BHATTACHARJEE, S/O-
LATE RATHINDRA BHATTACHARJEE, R/O- PANDU, P.O. PANDU, P.S.
JALUKBARI, DIST. KAMRUP(M), ASSAM

2: DEBASHIS BHATTACHARJEE
S/O- LATE RATHINDRA BHATTACHARJEE
R/O- PANDU
P.O. PANDU
P.S. JALUKBARI
DIST. KAMRUP(M)
ASSAM

3: DEBOJIT BHATTACHARJEE
S/O- LATE RATHINDRA BHATTACHARJEE
R/O- PANDU
P.O. PANDU
P.S. JALUKBARI
DIST. KAMRUP(M)
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY, WATER RESOURCES DEPARTMENT,
DISPUR, GUWAHATI-781006, ASSAM

2: THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

3:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
CHANDMARI
GUWAHATI-781003.

4:THE EXECUTIVE ENGINEER
NAGAON WATER RESOURCES DIVISION
NAGAON
ASSAM

5:THE TREASURY OFFICER
NAGAON TREASURY
NAGAON
ASSAM

6:MINISTRY OF JAL SHAKTI
UNION OF INDIA
E-GOVERNANCE CELL
6TH FLOOR CABIN
SHRAM SHAKTI BHAWAN
RAFI MARG
NEW DELHI-11000

Advocate for the Petitioner : MS. RUKMINI BARUA

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

14.06.2024

1. Heard Ms. P. Baruah, learned counsel for the petitioners. Also heard Ms. D. Jain, learned counsel for the respondent Nos. 1, 3 & 4; Mr. A. Chaliha, learned counsel for the respondent Nos. 2 & 5 and Ms. N.N. Sarma, learned CGC for the respondent No.6.

2. The petitioners' case is that the petitioner Firm is a registered Class-1(A)

contractor with the Water Resources Department, who was given contract work pursuant to Tender No.SEN/TENDER/NG-MG/2011-12/1 dated 07.12.2011 pertaining to "R/S to T/Dyke along both banks of Kopili River from Charalhagi to Tuklaitup (L/B) Basundhari to Killing-Kopili Junction L/B and Chaparmukh to Ahatguri Amsoi P.W.D. Road (R/B) including Anti-erosion Measures at Different Reaches)." The petitioner Firm thereafter completed the contract work and submitted their contract bill amounting to Rs.90,65,759/-. However, the same not being paid, the present writ petition has been filed.

3. Ms. D. Jain, learned counsel for the Water Resources Department submits that though the petitioner Firm had completed the contract work, the contractual dues of Rs.90,65,759/- could not be paid to the petitioners, as no funds had been received from the Government of India, Ministry of Jal Shakti. She further submits that the funds for the Flood Management Programme required the Central Government to contribute 90% share of the funds, while the State share was limited to 10%. She submits that though some funds were given initially, all the funds have not been released by the Centre.

4. Ms. N.N. Sarma, learned CGC for the respondent No.6 submits that she has no comments to make on this matter as the contract was awarded by the Water Resources Department and payment of bills have to be made by the Water Resources Department.

5. I have heard the learned counsels for the parties.

6. The affidavit filed by the respondent No.3, who is the Assistant Chief Engineer, Water Resources Department, Assam is to the effect that the

petitioner Firm has completed their contract work and is to be paid the amount of Rs.90,65,795/-. However, the department is not in a position to pay the same as the Government of India, Ministry of Jal Shakti has not released it's share of the funds. Once the Central share of the funds is received by the State government, the State respondents can release the contractual dues of the petitioners.

7. This Court, in a series of cases, the leading case being WP(C) 4734/2021 (*Nazim Hussain -vs- The State of Assam and 8 others*), while disposing of similar matters, had passed the following direction, which are as follows:- "(1) Within 15 (fifteen) days from today, the concerned official of the State Government of Assam will communicate the supplementary budget passed in the last Assembly Session pertaining to the scheme to the competent authority of the Ministry of Jal Shakti, Government of India. (2) Within 60 (sixty) days from the date of receipt of such communication, the Ministry of Jal Shakti to release the amount due under the schemes to the concerned Department of the Government of Assam. (3) Upon receipt of the amount, bills of the writ petitioners shall be processed and cleared within a further period of 45 days"

8. On considering the fact that the respondents have admitted the amount of Rs.90,65,795/- payable to the petitioners, the State respondents are directed to pay the same to the petitioners within a period of 5(five) months from the date of receipt of a copy of this order. The State Government shall take steps for receiving the required funds from the Centre, if the Centre has not released it's share of the funds. The respondent No.6 is directed to ensure that funds are released for payment of dues of the contractor/petitioners.

9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant