

GAHC010180932020



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

WP(C)/5720/2020

PRADIP KUMAR AGARWALLA
S/O- LT. SURAJMAL AGARWALLA
R/O- USHAGALI
A.T.ROAD
BHARALUMUKH
GHY-9
DIST.- KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT (GENERAL) DEPTT.
DISPUR

GHY-6

3:THE CHIEF ENGINEER
WATER RESOURCES DEPTT.
CHANDMARI

GHY-3

4:THE ADDL. CHIEF ENGINEER
UPPER ASSAM ZONE
W.R. DEPTT.

DIBRUGARH

5:THE SUPERINTENDING ENGINEER
LAKHIMPUR W.R. CIRCLE
NORTH LAKHIMPUR

6:THE EXECUTIVE ENGINEER

DHAKUAKHANA W.R. DIVISION
DHAKUAKHANA
7:THE DISTRICT COMMISSIONER
LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-787001.

Advocate for : MRS. K DEVI

Advocate for : SC

WATER RESOURCE appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

22-05-2024

Heard Ms. D. Angana learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Govt. Advocate for the respondent no. 7 and Ms. N. Bordoloi, learned Standing Counsel, Revenue Department (respondent no. 2) and Ms. D. Jain, learned Standing Counsel, Water Resources Department.

By filing this petition under Article 226 of the Constitution of India, the writ petitioner is seeking release of the outstanding contractors bill of the petitioner amounting to Rs.9,16,467/- (Rupees Nine Lakh Sixteen Thousand Four hundred Sixty Seven) only against the work orders executed by the petitioner.

The case of the petitioner in brief is that pursuant to work order issued to the petitioner under the Executive Engineer, Dhakuakhana WR Division, Dhakuakhana, Assam, the petitioner completed the works allotted to the full satisfaction and within the time. However, despite of completion of the work, the bills of the petitioner has not been paid. Accordingly, the present writ petition had to be filed.

It appears from the affidavit-in-opposition filed on behalf of the

respondent no. 7 that the bill of the petitioner have been admitted by the concerned Department. It further appears that due to non-receipt of fund from the Revenue and Disaster Management Department, the bills of the petitioner stands outstanding.

Paragraphs 4 & 6 of the affidavit-in-opposition dated 17.05.2024 is reproduced herein below for ready reference:-

“ 4. That with regards to the averments made in paragraphs 8 and 9 of the writ petition the deponent states that the Bill of the petitioner amounting to Rs. 9,16,467.00 (Rupees Nine Lakh Sixteen thousand four hundred sixty-seven) only being the sub-estimate have not been released due to non-receipt of fund from Revenue and DM (G) Department till date. The petitioner completed the works allotted to him and accordingly concerned Section Officer had submitted the Bill.

It may be mentioned herein that subsequently demand was received from the Executive Engineer, Dhakuakhana W.R Division for a total amount of Rs. 1.79,99,851.00 (Original works 1.61.40.438.00 + Sub Estimate 18,59,413.00) for both original estimate & sub-estimate for the scheme "Immediate measures to protect the Jugisuti area from the flood devastation of river Brahmaputra under SDRF for 2017-18".

The amount of the original estimate amounting to Rs. 1,61,40,438.00 was released as fund received from the Govt. and for the sub-estimate could not be made due to non-receipt of fund from Revenue & D.M (G) Department till date.

6. That with regards to the averments made in paragraph 17 of the writ petition the deponent states that the sub-estimate for the scheme namely "Immediate measures to protect the Jugisuti area from the flood devastation of river Brahmaputra under SDRF for 2017- 18" was executed as per the demand of the site situation from the overall rate savings of the scheme which was available due to difference between estimated rate and allotted rate. The higher official of W.R. Department also instructed to execute the additional works to strengthen the works executed from the main scheme from overall rate savings of the scheme after observing all formalities. Later, the scheme also approved in the DDMA meeting held on 18.08.2020 vide No.: LDM(R)27/NC/2020/12-A Dated 13.09.2020.

Moreover, it is also to mention here that the payment of SDRF scheme is made after fund released from the Revenue & D.M (G) Department, Dispur, Guwahati-6 through finance. Again, the payment of Sri Pradip Kr. Agarwalla against the works executed in

the sub estimate could not be made due to non-release of the fund from the Revenue & DM (G) Department till date, even though the demand for the same was submitted to Principal Secretary to the Govt. of Assam.”

Reading of the aforesaid averments indicates that the outstanding dues of the petitioner is admitted. It further appears that the Rs.9,16,467/- (Rupees Nine Lakh Sixteen Thousand Four hundred Sixty Seven) only is only the sub-estimate which is not yet released due to non-availability of fund. It further appears that the amount of the original estimate amounting to Rs.1,61,40,438/- (One Crore Sixty One Lakh Forty Thousand Four Hundred Thirty Eight) only was released as fund received from the Government. The balance for the sub-estimate amounting to Rs.9,16,467/- (Rupees Nine Lakh Sixteen Thousand Four hundred Sixty Seven) only could not be made due to non-receipt of fund from the Revenue and Disasters Management Department.

It is regrettable that despite the petitioner having performed the subject work to the full satisfaction of the respondent way back in the year of 2019, the admitted bills of the petitioner are still pending. It is the bounden duty of the state authorities to release the admitted dues of the contractors. Non-availability of the fund cannot be a ground for depriving the legitimate dues of the contractors. Such deprivation amounts to violation of Article 21 of the Constitution of India.

As such, the respondents are directed to release the outstanding dues of the petitioner against the subject bill within a period of 3 (three) months from the date of receipt of the certified copy of the order.

With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant