

GAHC010196712017



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

Case No. : WP(C)/3149/2017

M/S. CLASSIC INDIA
A PARTNERSHIP FIRM REP. BY ITS PARTNER SRI SUSHIL DAS, THERMAL
TINIALI, PO-MAKUM PATHAR, MARGHERITA, DIST. TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM, PWD
ROADS DEPTT.

2:THE CHIEF ENGINEER

PWD
ROADS
ASSAM
CHANDMARI
GUWAHATI-781003

3:THE CHIEF ENGINEER

PWD
NEC WORKS
CHANDMARI
GUWAHATI-781003
ASSAM

4:THE SUPERINTENDING ENGINEER

PWD ROAD
JORHAT NEC CIRCLE
JORHAT
ASSAM

5:THE EXECUTIVE ENGINEER

TINSUKIA
STATE ROAD DIVISION
TINSUKIA
ASSA

Advocate for the Petitioner : MR.S K CHAKRABORTY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

03.06.2024

1. Mr. S.K. Chakraborty, learned counsel appears for the petitioner, while Mr. B. Gogoi, learned counsel appears for the PWD (Roads) Department.

2. The petitioner has prayed for payment of his contractual dues amounting to Rs.59,80,540.94 in respect of the work of construction/improvement of Digboi Pengeri Bordungsa Road (1st to 5th K.m.) (Package No.J-6) under NEC's 10th five year programme, which had commenced in the year 2007. The bill amount of Rs.59,80,540.94 is for payment of the price adjustment bills of the petitioner.

3. The petitioner's counsel submits that the petitioner completed his contract work after clearance of the road site on 30.06.2012. He submits that the price adjustment bill relates to the price escalation, for the delay in completion of the contract work.

4. Mr. B. Gogoi, learned counsel for the PWD (Roads) submits that the

petitioner had completed only 49.30% of the contract work and the claim for escalation for work done could not be entertained, as the work was not completed within the stipulated time of completion.

5. Paragraph nos.4, 5 & 7 of the affidavit-in-opposition of the respondent no.5 states as follows :

“4. That with regard to the statement made in paragraph 3 of the writ petition, the deponent states that the work allotted from 1st to 5th Km. the site from 3rd to 5th Km was free from any encumbrance.. In the 1st & 2nd Km IOCL water lines and AGC gas lines and electric posts were present on the side berms.. The main road was free but the contractor did not carry out the main road work on the pretext of presence of hindrance on the side berms..

5. That with regard to the statement made in paragraph 4 of the writ petition, the deponent states that the contractor claims that he has completed 3 Km of Road out of 5 Km Road i.e. 60% of total work within December, 2009. But as per progress report of March, 2010 Physical progress of work is 49.30%.

7. That with regard to the statement made in paragraph 7 of the writ petition, the deponent states that price Adjustment Bill No.1, 2 and 3 is for work done within the stipulated time of completion. Hence claim for escalation for work done within the stipulation time of completion cannot be entertained.”

6. On perusing the averments made by the respondent no.5 in his affidavit, this Writ Court is not equipped to come to any decision, as to whether the petitioner is entitled to any price adjustment, as these are disputed questions of facts. Further, paragraph-4 of the affidavit of the respondent no.5 states that in the 1st & 2nd Km IOCL water lines and AGC gas lines and electric posts were present on the side berms. The main road was free, but the contractor did not carry out the main road work, on the pretext of presence of hindrance on the

side berms. In paragraph-5 it has been stated that physical progress of work was 49.30%, while the petitioner has taken the stand that he has completed the contract work. It is also not disputed that while the stipulated date of completion of contract work was 16.12.2008, the petitioner had completed the work on 06.06.2012 only. Paragraph-7 of the affidavit-in-opposition states that the petitioner's claim for escalation for work done within the stipulated time of completion could not be entertained.

7. The above averments made by the State respondents, if disputed, would have to be put to challenge before an appropriate forum by recording evidence, which this Court is not equipped to do.

8. The above being said, letter no.F-14/pt/09/187/278 dated 07.02.2014 issued by the Superintending Engineer, PWRD, Jorhat NEC Circle, Jorhat, which is at Annexure-M of the writ petition is to the following effect :-

*“To,
The Chief Engineer, PWD, Assam,
Border Roads and NEC Works,
Chandmari, Guwahati-3.*

Sub:- Price escalation bill for Package No. J-6 (Ch..0 to 5,000 M.) of Digboi Pangree Road.

*Ref:- Executive Engineer's letter No.TSK/SRD/07/W-34/(NEC)/134;
dt.29.01.2014.*

Sir,

I have the honour to submit herewith a price escalation bill received from the Executive Engineer, PWD, Tinsukia State Road Division for the executed

work of Digboi-Pangaree-Bordumsa Road in respect of Package No. J-6 with all enclosures and the letter of the Executive Engineer in original.

The work was started on 17/09/2007 and stipulated date of completion was 16/12/2008. But the work was completed on 6/6/2012 with time extension up to 30/06/2012 but without price adjustment.

It is observed from the all correspondence made to the contractor and Inspection Report of PWD officials during execution of work, the work was delayed mainly for two reasons –

(I) Insufficient effort of the contractor in respect of machineries and labours.

(II) Non clearance of the road site in 1st. and 2nd. Km. for the existence of the belongings of Assam Gas Company. Duliajan and one private- shop M/s Poddar Store by name. The shop was not removed from the road formation up to 01/07/2010 as per Executive Engineer's letter addressed to 3.D.O. (Civil), Margherita. (Annexure- XXVI) From the above observations it may be concluded that the contractor deserves price. escalation for delay in execution only for the 1st. and 2nd. Km, of road length, the remaining 3rd to 5th. Km. was clear of all incumbency.

All documents are enclosed herewith for favour of your kind disposal.

- 1. Executive Engineer's letter with all enclosures.*
- 2. Price escalation bill in triplicate.*

Yours faithfully,

Sd/-

Superintending Engineer, PWRD,

Jorhat NEC Circle, Jorhat

9. The above letter dated 07.02.2014 shows that the contractor could be given price escalation for delay in execution only for the 1st and 2nd Km of road site. However, the same has been negated by the respondent no.5 in his affidavit dated 07.09.2017.

10. As there are disputed questions of fact, the petitioner is given the liberty to approach the appropriate forum, including the Civil Court, for redressal of his grievance. However, the respondent nos.3, 4 & 5 may once again look into whether the petitioner deserves price escalation for the 1st and 2nd Km of the road site, in terms of the letter dated 07.02.2014 issued by the Superintending Engineer, PWRD, Jorhat NEC Circle, Jorhat. The exercise to be undertaken by the respondent nos.3, 4 & 5 should be concluded expeditiously and preferably within a period of 4 (four) months from the date of receipt of a certified copy of this order, along with the copy of the writ petition. The decision taken by the respondent nos.3, 4 & 5 should thereafter be communicated to the petitioner.

11. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant