

GAHC010150542021



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

**Case No. : Review.Pet./107/2021**

THE STATE OF ASSAM AND 2 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
FISHERY DEPARTMENT  
DISPUR  
GUWAHATI-6

2: THE SECRETARY TO THE GOVT. OF ASSAM  
FISHERY DEPARTMENT  
DISPUR  
GUWAHATI-6

3: THE DIRECTOR OF FISHERIES  
ASSAM  
MEEN BHAVAN  
GUWAHATI-781016  
VERSUS

JITEN KALITA  
S/O LT. GOBINDA KALITA  
R/O. BASISTHAPUR BYE LANE NO.2  
RASARAJ PATH  
P.O. BELTOLA  
P.S. HATIGAON  
DIST. KAMRUP (M)  
ASSAM-781028.

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Advocate for : SR. GA  
ASSAM  
Advocate for : MR. N J GOGOI appearing for JITEN KALITA

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**04.03.2024**

1. Heard Mr. D. Nath, learned Addl. Sr. Government Advocate, appearing for the review petitioners and Mr. N.J. Gogoi, learned counsel for the writ petitioner.

2. This petition for review of the order dated 22.04.2021, passed in WP(C) No. 7813/2018 has been made by the review petitioners on the ground that the direction passed by this Court to release the security deposit of Rs.13,22,006/-, to the petitioner for the contract work "Upgradation of J.B. Garh Fish Farm, Raha, Nagaon district under RIDF-XIX" made vide the impugned order dated 22.04.2021, had inadvertently not taken into consideration the 5<sup>th</sup> last paragraph of the "status report on enquiry against the alleged misappropriation of government fund under the RIDF-XIX", which was forwarded vide Letter dated 19.04.2021, issued by the Joint Secretary to the Government of Assam, Fishery Department.

3. The review petitioners' counsel submits that in the impugned order dated 22.04.2021, this Court had directed the release of the security deposit of Rs.13,22,006/- to the petitioner only by considering the 4<sup>th</sup> last paragraph of the "status report on enquiry against alleged misappropriation of government fund under the RIDF-XIX", (hereinafter referred to as the "report") by inadvertently not considering the last 5<sup>th</sup> paragraph of the said "report". He submits that in terms of the 5<sup>th</sup> last paragraph of the report, there was no occasion for this Court to have allowed the release of security deposit to the writ petitioner.

4. Mr. N.J. Gogoi, learned counsel for the writ petitioner, on the other hand, submits that in terms of the order dated 09.03.2021 passed by this Court, some works were carried out by the petitioner and other contractors. Further, there were no materials to show any imputation against the petitioner. He accordingly submits that no case of review has been made out.

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

6. In the impugned order dated 22.04.2021, this Court had allowed the release of the security deposit to 3 other persons, on the ground that the "report" of the government had not found their involvement in the misappropriation of money. However, in respect of the petitioner No.1, direction to release the security deposit of the petitioner amounting to Rs.13,22,006/- had been made due to the stand taken by the respondent No.1, i.e., the State of Assam.

7. However, on perusing the "report", which is annexed to the Letter dated 19.04.2021, issued by the Joint Secretary to the Government of Assam, Fishery Department, it has been clearly stated that necessary steps for recovery of excess payment from the petitioner should be made. There is nothing to show that the petitioner is in the same boat as the three other persons to whom security deposits were to be released.

8. It appears that in the impugned order dated 22.04.2021, release of the security money to the petitioner has been made without noticing the fact that the respondent No.1's report is not in favour of the petitioner.

9. This Court in the impugned order dated 22.04.2021 had only incorporated

the 4<sup>th</sup> last paragraph of the "report". However, the last 5<sup>th</sup> & 6<sup>th</sup> paragraphs of the "report" shows that money has to be recovered from the petitioner. As such, the direction to release the security deposit to the writ petitioner seems to have been made only on account of the 4<sup>th</sup> last paragraph of the report, which does not pertain to the writ petitioner. The last paragraph Nos. 4 to 6 of the "report" are reproduced hereinbelow as follows-

*"Now, in view of latest development, Director of Fisheries was requested to submit a factual report on the matter in the light of report/findings of Accountant General(Audit) Assam. It appears from the report of the Technical Cell of Directorate vide letter No AF(Ee) 637/Ee.637/PT/2019-20/13 dated 3.4.2021 that the said works were allotted to only one Contractor namely Jiten Kalita out of 4 contractors engaged for execution of the whole project.*

*i). From the report of Technical cell, it appears that the said Contractor, Jiten Kalita was paid total amount of Rs 1,80, 52,550.00 for works as per 2 (Two) work allotment orders dated 1.1.2015 for Group A and Group D works including Rs 78, 09, 171.50 against 3( Three) Sub Estimates held under objection by AG, Assam for excess payment of Rs 44.39 L. The Director of Fisheries has already adjusted Security Deposit of Rs 13,22,006.00 (Group A & Group D ) against the contractor from the excess amount of Rs 44.39L and further held up the EMD for Group A & Group D Works for Rs 3,75,165.00. Thus, the balance amount of Rs 27,41,829.00 (Rs 44,39,000.99- Rs 16,97,371.00) is now to be recovered.*

*ii) It is further seen from the report of the Technical Cell that the other 3 (Three) Contractors who have filed cases before the Hon'ble High Court vide WP© No 7783/2018( M/S Brahmaputra Associates), WP© No 7807/2018 (M/S Sadguru Engineers & Allied Services Pvt Ltd) & WP© No 7829/2018 (Ajay Jalan) for release of Security Deposit did not execute the works under 3 Sub Estimates held under objection by AG Assam and as such there should not be any objection on the part of Govt now to release*

*the Security Deposits of the said 3 (Three) Contractors.*

*Based on above, the Director of Fisheries, Assam has already been directed to take immediate steps for recovery of the excess amount vide letter No FISH 52/2019/ 172 (eCF No 104260) Dated 8th April 2021 from the defaulting Contractor Sri Jiten kalita (Writ Petitioner in WPO No7813/2018) in the light of observation/direction of the Principal Accountant General (Audit) Assam vide letter under reference without any prejudice to pending writ petition relating to release of Security Deposit of the said defaulting contractor Jiten Kalita.*

*As regards security Deposit of other 3 (Three) Contractors cum writ petitioners in Link Cases mentioned above against their names, M/S Brahmaputra Associates, M/S Sadguru Engineers & Allied Services Pvt Ltd and Ajay Jalan, it is submitted that in view of report of Technical Cell of the Directorate of Fisheries, Govt Respondent has no objection to release the security and any other such Deposits held under objection now."*

10. In view of the fact that a mistake/error apparent on the face of the record has occurred in the impugned order dated 22.04.2021 vis-a-vis the "report" made by the State government, a case for review petition has been made out.
11. Accordingly, the impugned order dated 22.04.2021 passed in WP(C) No. 7813/2018 is hereby recalled and the writ petition is restored to file.
12. The review petition is accordingly allowed.
13. Registry to list the writ petition after 3(three) weeks.

**JUDGE**