

GAHC010244452024



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

Case No. : WP(C)/6117/2024

UNITED INFRACON

A PARTNERSHIP FIRM HAVING ITS OFFICE AT BABUPARA, FALAKATA,
ALIPURDUAR-735211 IN THE STATE OF WEST BENGAL AND IS
REPRESENTED BY ITS DULY AUTHORIZED SIGNATORY SHRI DHIRAJ
SHARMA, SON OF HARENDRA SHARMA, R/O- SM PANDIYA, HOUSE NO.
74, P C ROAD, NEAR WATER TANK ,WARD NO. 4, P.O. RANGAPARA, DIST.
SONITPUR, ASSAM-784505.

VERSUS

UNION OF INDIA AND 8 ORS

REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF RAILWAYS, NEW DELHI-110001.

2:NORTHEAST FRONTIER RAILWAY

REPRESENTED BY ITS GENERAL MANAGER

N.F. RAILWAY

MALIGAON

GUWAHATI-781011.

3:THE PRINCIPAL CHIEF ENGINEER/WORKS

N.F. RAILWAY

MALIGAON

GUWAHATI-781011.

4:THE DIVISIONAL RAILWAY MANAGER (WORKS)

N.F. RAILWAY

TINSUKIA

ASSAM

5:THE SENIOR DIVISIONAL ENGINEER/CO-ORDINATION

N.F. RAILWAY

TINSUKIA DIVISION

TINSUKIA
ASSAM

6:THE SENIOR DIVISIONAL ENGINEER/I
N.F. RAILWAY
TINSUKIA DIVISION
TINSUKIA
ASSAM

7:THE ASSISTANT DIVISIONAL ENGINEER
N.F. RAILWAY
MARIANI
JORHAT
ASSAM

8:THE SENIOR SECTION ENGINEER/IN-CHARGE
N.F. RAILWAY
FURKATING
ASSAM

9:THE SENIOR SECTION ENGINEER/ INCHARGE
N.F. RAILWAY
MARIANI
ASSA

Advocate for the Petitioner : MR G N SAHEWALLA, MR M SAHEWALLA,MS. S. TODI,MS G DUGAR

Advocate for the Respondent : DY.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 27-11-2024

Heard Mr. GN Sahewalla, learned senior counsel for the petitioner. Also heard Mr. K Gogoi, learned CGC appearing for the respondents.

2. The petitioner is aggrieved by the impugned letter dated 16.08.2024, wherein the respondents have stated that the final bill and final variation earlier

prepared vide letter dated 11.02.2023 shall remain unchanged. The petitioner's counsel submits that the petitioner had been selected for execution of the work "Balance work of Provision of additional opening by provision of 3 x 6.1 M R.C.C. Box at km. 386/2-3 and 2 x 6.1. M R.C.C. Box at km 387/3-4 in NCH-SLX to avoid water logging" in pursuant to the notice inviting tender being Tender No. 01-TSK-ENGG-13-2020. A letter of acceptance was thereafter issued to the petitioner on 10.12.2020 and the petitioner was to complete the work within 6 (six) months i.e., by 10.06.2021. Due to non completion of the work by the petitioner, which according to the petitioner was due to the fault of the respondents, the contract was terminated by the Divisional Engineer, vide letter dated 06.02.2023.

3. The petitioner's counsel submits that the measurement of the work done/final measurement made in terms of the letter dated 11.02.2023 issued by the respondents, was not acceptable to the petitioner, as the same was made *ex-parte*. Thereafter, the respondent No. 5, vide letter dated 08.01.2024, had advised that there should be a joint record/measurement of the work done. The final variation prepared in the presence of the petitioner was thereafter forwarded for consideration and approval of the respondent authorities. However, vide the impugned letter dated 16.08.2024 the final earlier bill, MBs, final variation made in terms of the letter dated 11.02.2023 issued to the respondent No. 8 was accepted to be the final variation. The petitioner's grievance is that the final variation made in terms of the letter dated 11.02.2023 is not justified. The petitioner's counsel thus prays that the petitioner may be allowed to submit a representation against the impugned letter dated 16.08.2024, which should be decided by the respondent No. 5.

4. Mr. K Gogoi, learned CGC submits that the termination of the contract by the respondents was due to the fault of the petitioner, as he was not able to complete the contract work in time. He also submits that there is no infirmity with the making of the final variation of the work done in terms of the letter dated 11.02.2023. He also submits that any challenge to the final variation can be made only before a Civil Court, as the same could require evidence to be recorded.

5. On considering the submissions made by the parties, this court is of the view that the petitioner should be given the liberty to file a representation against the impugned letter dated 16.08.2024 and if he is still aggrieved by the same, the petitioner may approach the Civil Court, if so advised, inasmuch as, the issue pertains to questions of fact.

6. In view of the reasons stated above, the petitioner is given the liberty to file a representation against the impugned letter dated 16.08.2024 issued by the respondent No. 5, within a period of 2 (two) weeks from today, to be addressed to the respondent No. 5. The respondent No. 5 shall thereafter take a decision on the petitioner's representation within a further period of 4 (four) weeks.

7. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant