

GAHC010249572024



2024:GAU-AS:11860

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

Case No. : WP(C)/6304/2024

RAJEN DAS
S/O DEBAKANTA DAS, AGED ABOUT 43 YEARS, R/O HOUSE NO. 60,
UDAYGIRI, NARENGI, P.O.-NARENGI, P.S.-NOONMATI, GUWAHATI, DIST-
KAMRUP (M), ASSAM, PIN-781026

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, DEPARTMENT
OF HOUSING AND URBAN AFFAIRS, GOVT. OF ASSAM, ASSAM
SACHIVALAYA, DISPUR, GUWAHATI-06

2:GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY ITS COMMISSIONER
GANESHGURI
GUWAHATI-781006

3:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GANESHGURI
GUWAHATI-78100

Advocate for the Petitioner : MR. S BIKASH,

Advocate for the Respondent : GA, ASSAM, SC, GMC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

29.11.2024

Heard Mr. S. Bikash, learned counsel for the petitioner, who submits that the petitioner had been awarded the contract work for Cleaning, Desilting and Maintenance of All City Drains in Guwahati City for the year 2020-21 by the Guwahati Municipal Corporation (GMC) along with other contractors, vide 71 packages pertaining to different locations in Guwahati. Though the petitioner had started the desilting work in terms of the contract, the contract work was terminated by the respondent authorities, prior to the work being completed. The petitioner being aggrieved by not being given his contractual dues had filed WP(C) No.3397/2021. As a similar writ petition had been filed by another contractor, i.e., WP(C) 3164/2021, this Court disposed of WP(C) No.3164/2021 and WP(C) No.3397/2021 vide a common order dated 20.12.2022, by directing the respondent authorities to undertake a verification exercise of the work done by the petitioners. This Court also directed that payments should thereafter be made on the basis of the verification made by the authorities, which should be done in the presence of the petitioner or his representatives.

2. The petitioner's counsel submits that the State respondents have not complied with the direction passed by this Court in WP(C) No.3397/2021 till date and that the petitioner has not filed any contempt petition due to noncompliance of the direction, as the limitation period has expired.

3. Mr. S. Bora, the learned counsel for the GMC submits that the similarly placed person as the petitioner in WP(C) No.3164/2021 had filed Cont. Cas(C) No.145/2023 for noncompliance of the direction of this Court for verification of the contract work done and payment to be made. He submits that as verification was not possible due to efflux of time and due to the fact that monsoon occurred every year, the contempt petition had been closed, with a direction by the Court to pay to the petitioner therein, the contractual dues for the work already done and recorded by the authorities.

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

5. The direction passed by this Court in WP(C) No.3164/2021 and WP(C) No.3397/2021, vide order dated 20.12.2022, is as follows:-

“In view of the aforesaid facts and circumstances, both these writ petitions are disposed of by directing the GMC and GDD to undertake a verification exercise which would include the measurements of the works done. It is needless to mention that such measurements have to be done in presence of the representative of the petitioners so that no prejudice is caused to either of the parties. It is clarified that the measurements have to be done independently for the individual works.

The aforesaid exercise be completed within a period of 2 (two) months from the date of receipt of the certified copy of this order.

After such verification the payments be made expeditiously as indicated above and no forfeiture clause should be invoked as the challenge of the termination itself is not pursued in these writ petitions. This will however not be a precedent for other works.”

6. The petitioner in WP(C) No.3164/2021 had filed Cont. Cas(C) No.145/2023

for noncompliance of the order passed in WP(C) 3164/2021. The Cont. Cas(C) No. 145/2023 was disposed of vide order dated 09.09.2024, in terms of the settlement arrived at between the parties, wherein the GMC had taken a stand that the petitioner would be paid the contractual dues for completion of 30% of the contract work. The extract of the order dated 09.09.2024 passed in Cont. Cas(C) No. 145/2023 is reproduced hereinbelow as follows:-

“An affidavit has been filed by the respondent GMC and they have taken a stand that the petitioner has only completed 30% of the work awarded and therefore, after calculation and verification, it was arrived at a value of Rs. 1,14,59,435/- (Rupees One Crore Fourteen Lakhs Fifty Nine Thousand Four Hundred Thirty Five) only to be payable to the petitioner. A copy of such report has also been annexed. The aforesaid paragraph is quoted herein below:-

“That in view of the calculation above the petitioner is entitled to 30% of the work undertaken valued at Rs. 1,14,59,435/- (Rupees One Crore Fourteen Lakhs Fifty Nine Thousand Four Hundred Thirty Five) only”

Mr. Borthakur, learned counsel for the petitioner submits his client will be agreeable if the aforesaid amount is paid at the early date.

*At this stage, Mr. Bora, learned Standing Counsel for the GMC submits that such payment shall be made by GMC within a period of four months on receipt of fund from the Guwahati Development Department [presently named as Department of Housing and Urban Affairs, Government of Assam] as directed in the earlier writ petition being WP(C) No. 3164/2021 **(Zeetendra Saloi –Vs- The State of Assam and ors).***

Be that as it may, in view of the admitted position and the settlement arrived at between the parties, the contempt petition stands closed by granting four months further time to GMC and GDD [presently named as Department of Housing and Urban Affairs, Government of Assam] to make such payment as directed by this Court under its order dated 20.12.2022 in WP(C) No.

3164/2021.

Accordingly the contempt petition stands closed with a liberty to the petitioner to file afresh petition in case of non compliance.”

7. On considering the above facts, this Court is of the view that a similar order that has been passed in WP(C) No.3397/2021 should be issued again. Accordingly, in view of the above reasons, the GMC and the Department of Housing & Urban Affairs are directed to undertake a verification exercise of the work done by the petitioner pertaining to Cleaning, Desilting and Maintenance of All City Drains in Guwahati City for the year 2020-21, i.e., Package No. C&D/40. Thereafter, payment should be made in terms of the verification made by the authorities, in the presence of the petitioner or his representatives. The above direction would however not preclude the respondent authorities from paying to the petitioner the contractual dues in respect of any records or verification made earlier by the respondent authorities with regard to the amount of contract work done by the petitioner, as has been done in Cont. Cas(C) No.145/2023. The entire exercise should be concluded within a period of 3(three) months from the date of receipt of a certified copy of this order.

8. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant