

GAHC010250202022



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

**Case No. : WP(C)/7878/2022**

M/S VIKAS MALKANI  
REP. BY ITS PROPRIETORS VIKAS MALKANI, AGED ABOUT 46 YEARS, S/O-  
LT. MANGAT RAM, R/O- BEHIND MILAN SAMITY CLUB, MILAN PALLY,  
SUKANTO SRANI BYE LANE, P.O. SILIGURI, P.S. SILIGURI, DIST.-  
DARJEELING (WB), PIN- 734005

VERSUS

THE NORTH EAST FRONTIER RAILWAYS AND 3 ORS  
THROUGH THE GENERAL MANAGER, N.F.RAILWAY, MALIGAON, GHY,  
ASSAM

2:THE PCSTE  
N.F.RAILWAY  
MALIGAON  
GHY  
ASSAM

3:THE DRM TINSUKIA  
TINSUKIA OFFICE  
N.F.RAILWAY  
TINSUKIA  
ASSAM

4:THE SR. DSTE/TSK  
DRM OFFICE  
TINSUKIA  
DIST.- TINSUKIA  
ASSA

**Advocate for the Petitioner : MS. S KANUNGOE**

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

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**24.04.2024**

- 1.** Heard Ms. S. Kanungoe, learned counsel for the petitioner and Ms. R. Devi, learned CGC appearing for all the respondents.
- 2.** The petitioner's case is that though the petitioner's contract work was terminated prior to completion of the contract work, the petitioner should be given payment for the work done.
- 3.** Ms. R. Devi, learned CGC appearing for the respondents submits that out of the 31 Slidding Booms that were to be constructed, the petitioner has completed 16 Slidding Booms and payment for the same has been given.
- 4.** Ms. S. Kanungoe, learned counsel for the petitioner on the other hand submits that there has been a variation in the price/cost of the SliddingBooms and as such, the price variation which has not been paid to the petitioner should be paid. Further, the petitioner had constructed 18 Slidding Booms.
- 5.** I have heard the learned counsels for the parties.
- 6.** The petitioner had participated in Tender No. N-2021-22-TSK-T-03 closing date 24-09-2021 15:00 for Provision of Slidding Boom at 35 Nos. Interlocked LC Gates (FM/83,DD/10, DD/21, DD/42, DD/55, DD/48, FM/58, ST/135, FM/57, DD/35, ST/86, ST/87, ST/107, ST/137, ST/138, DD/4, DD/49, ML/15, FM/15, FM/58A, FM@47<44@

FM@47>44@ FM/72, FM/75,ST/101, ST/112, ST/125, ST/130, ML/17 & FM/18) of Tinsukia Division. The respondents thereafter issued a Letter of Acceptance dated 05.10.2021 accepting the rates offered by the petitioner in respect of the above works provided in the Tender No.N-2021-22-TSK-03 (hereinafter referred to as the NIT). However, the petitioner's contract work was terminated vide letter dated 28.09.2022, as the petitioner had failed to show adequate progress in the contract work. The contents of the termination letter dated 28.09.2022 is reproduced hereinbelow as follows :

*“Contract Agreement No. N-2021-22-TSK-T-03(CA)/NFR/TSK/S&T/2021/0002dt.09.02.2022*

*In connection with "Provision of Slidding Boom at 35 Nos. Interlocked LC Gates (FM/83. DD/10, DD/21, DD/42, DD/55, DD/48, FM/58, ST/135,FM/57, DD/35, ST/86, ST/87, ST/107, ST/137, ST/138, DD/4.DD/49, ML/6, ML/15, FM/58A, FM/60, FM/62, FM/74, FM/75, ST/101. ST/112, ST/125, ST/130, ML/4, ML/17, ML/18) of Tinsukia division"*

*Forty Eight hours (48 hours) notice was given to you under this office letter no. N-2021-22- TSK-T-03 Dated: 26.09.2022, but you have taken no action to show adequate progress of the work.*

*Since the period of 48 hours' notice has already expired, the above contract stands rescinded in terms of Clause 62 of Standard General Conditions of Contract and the balance work under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm/JV is hereby debarred from participation in the tender for executing the balance work and your Security Deposit shall be forfeited and Performance Guarantee shall also be encashed.”*

**7.** The petitioner has prayed for payment for the construction of 18 Slidding Booms, while on the other hand, it is the case of the respondents that the petitioner had completed construction of only 16 Slidding Booms and payment made for 16

Slidding Booms.

**8.** The respondent nos.1 to 4 in paragraph-15 of their affidavit-in-opposition, state that though the contract work of the petitioner was terminated, the petitioner is entitled to get payment for the portion of works which had been completed. However, the Performance Guarantee and the Security Deposit would be forfeited as per Clause 62 of the Standard General Conditions of Contract, 2020.

**9.** In view of the fact that the respondents have now taken a stand that all payments pertaining to the completed works done by the petitioner have been paid, this Court is not inclined to go into the issue of whether the petitioner is entitled to get any further payment, due to variation of the rates for construction of the Slidding Booms. Disputed questions of facts would have to be agitated by the petitioner before the appropriate forum, as the same would require recording of evidence. In view of the fact that there is an efficacious alternative remedy available, this Court does not find any reason to keep this case pending any longer. The grievance of the petitioner with regard to payment still to be made by the respondents, if any, may be agitated before an appropriate forum and/or provided in terms of the contract agreement executed between the parties.

**10.** The writ petition is accordingly disposed of.

**JUDGE**

**Comparing Assistant**