

GAHC010268422022



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

Case No. : WP(C)/147/2023

M/S BARBHUIYA TRADERS AND ANR
REPRESENTED BY ITS PROPRIETOR
SALINA PARBIN BARBHUIYA @ SALINA PARVIN BARBHUIYA,
VILLAGE AND P.O.- VICHINGCHA PART-I,
P.S.- HAILAKANDI,
DISTRICT- HAILAKANDI, ASSAM.

2: SALINA PARBIN BARBHUIYA @ SALINA PARVIN BARBHUIYA
PROPRIETOR OF M/S BARBHUIYA TRADERS

VILLAGE AND P.O.- VICHINGCHA PART-I

P.S.- HAILAKANDI

DISTRICT- HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF
ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI- 37.

3:THE DEPUTY COMMISSIONER CUM DISTRICT PROGRAMME
COORDINATOR (MGNREGA)
HAILAKANDI
ASSAM.

4:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
HAILAKANDI
ASSAM.

5:THE PROJECT DIRECTOR
ZILLA PARISHAD
HAILAKANDI
ASSAM.

6:THE BLOCK DEVELOPMENT OFFICER
CUM PROGRAMME OFFICER
MGNREGA
SOUTH HAILAKANDI DEVELOPMENT BLOCK

HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. K MIRA

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

05.02.2024

1. Heard Mr. K. Mira, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned counsel for the respondent nos.1, 2, 4 & 5 and Mr. M. Chetia, learned counsel for the respondent no.3 & 6.

2. The petitioners' case is that the petitioner no.1 is a Proprietorship firm and the petitioner no.2 is the Proprietor of the said Proprietorship firm. The petitioners' counsel submits that the petitioner deals in supply of materials to

the Government for implementation of MGNREGA Schemes under the Panchayat & Rural Development Department. The petitioners' counsel submits that the petitioners have supplied various materials to the respondents in respect of 25 Schemes under MGNREGA, which is listed in paragraph 6 of the writ petition.

3. The petitioners' counsel submits that the petitioners have submitted various bills to the respondents. However, the respondent authorities have cleared only 15 bills amounting to Rs.26,36,420/-. The balance unpaid amount of Rs.52,90,498/- has not been paid to the petitioners till date, despite the same being cleared by the respondent authorities. The petitioners' counsel submits that the petitioners have submitted representations to the authorities for clearance of the unpaid dues, which has not been cleared till date.

4. Mr. M. Chetia, learned counsel for the respondent nos.3 & 6 submits that though the petitioners have made a claim for payment of bills for materials supplied by them for 25 Schemes under MGNREGA, no order for supply of materials has been issued to the petitioners. Further, no copy of the any supply order is with the Office of the BDO, South Hailakandi Development Block against the 25 Schemes. As such, the bills that were uploaded in the MGNREGA website have been communicated to the higher authority for deletion, vide letter dated 25.03.2019. He submits that payment cannot be made to the petitioners against the unpaid bills, as no works were in the scheme and no inquiry report related to such bills were available in the Office.

5. The learned counsel for the respondent nos.3 & 6 also submits that the

then authority had made payment through electronic fund transfer system for 9 Schemes (15 bills). However, no hardcopy of the bills, requisition letter and supply order related to payment, lies with the office of the In-charge Accountant as no records were handed over. The learned counsel for the respondent nos.3 & 6 submits that as there are no supply orders issued to the petitioners and as there is nothing in the records to show that any supply orders had been issued, there is no question of payment of unpaid dues to the petitioner.

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

7. The petitioners have not annexed any supply order along with the writ petition to show that they had been asked to supply materials for 25 Schemes under MGNREGA. As the State respondents have also taken a stand that they did not give any supply order to the petitioners and as no records of the same are available in the records, this Court is hard-pressed to understand as to how the petitioners could have supplied materials to the Government, in the absence of any written supply orders. The same appears to be shrouded in mystery. Be that as it may, paragraph 8 of the affidavit-in-opposition filed by the respondent nos.3 & 6, is to the effect that the then authority had made payment for 9 numbers of schemes (15 bills) to the petitioners, without specifying the amount paid. However, no hardcopy of the bills, requisition letter and supply orders related to payments is with the office, as the then In-charge Accountant did not handover the records to the subsequent In-charge Accountant.

8. Paragraph-9 & 10 of the writ petition is to the effect that the petitioners

have already received payment for part of the bills amounting to Rs.26,36,420/- and that the balance amount of Rs.52,90,498/- was still to be paid to the petitioner. Thus a reading of paragraph 8 of the affidavit filed by the respondent nos.3 & 6, read with paragraph 9 & 10 of the writ petition implies that payment has been made to the petitioners for alleged supplies made by them. However, there is nothing to show that written supply orders were issued to the petitioners by the State respondents, for the supply of the materials made by them.

9. On considering the fact that the State respondents have taken a stand that no supply orders were issued by the Government for the alleged supply of materials by the petitioners, this Court is of the view that no direction can be passed for payment of the alleged outstanding amount in the absence of any supply order, inasmuch as, it appears that the supplies have been made in violation of proper procedure, i.e., in the absence of advertisement, supply order and approval by the Government. Consequently, this Court is not inclined to pass any order in view of facts which are needed to be proved by way of adducing evidence. Be that as it may, the petitioners are given the liberty to approach the Civil Court with a claim for their unpaid bills, if so advised.

10. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant