

GAHC010269312022



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

Case No. : WP(C)/8425/2022

DILIP BORA
S/O- LATE DASKHIRAM BORA,
VILLAGE- BOINAOZA,
P.S.- MANGALDAI,
DIST. DARRANG, ASSAM,
PIN- 784125.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER,
TO THE GOVT. OF ASSAM,
IRRIGATION DEPARTMENT,
DISPUR, GUWAHATI- 37.

2:THE SECRETARY TO THE GOVT. OF ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI- 37.

3:THE CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GUWAHATI- 03.

4:THE CHIEF ENGINEER
MINOR IRRIGATION
ASSAM
CHANDMARI
GUWAHATI- 03.

5:THE COMMISSIONER TO THE GOVT. OF ASSAM
FINANCE (BT) DEPARTMENT
DISPUR
GHY-06.

6:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI- 26.

7:THE EXECUTIVE ENGINEER
MANGALDAI DIVISION (IRRIGATION)
MANGALDAI
DIST.- DARRANG

ASSAM
PIN- 784125.

8:THE SUPERINTENDING ENGINEER
MANGALDAI CIRCLE (IRRIGATION)
MANGALDAI
DIST.- DARRANG

ASSAM
PIN- 784125

Advocate for the Petitioner : MR. A M AHMED, P. GHOSH,MRS S RAHANA

Advocate for the Respondent : SC, IRRIGATION, MR. S K MEDHI (R-6),SC, AG,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

19.08.2024

1. Heard Mr. A.M. Ahmed, learned counsel for the petitioner and Mr. N. Upadhyay, learned counsel for the Irrigation Department. Ms. M. Barman, learned counsel appears on behalf of Mr. S.K. Medhi, learned counsel for the Accountant General's Office and Ms. R.M. Barooah, learned counsel appears for the respondent no.5.

2. The petitioner's case is that he is a registered Class-II contractor under the Irrigation Department, Government of Assam. Pursuant to a Notice Inviting Tender (NIT) dated 11.11.2014, inviting tenders from the registered contractors of the Irrigation Department, Assam for the Scheme ""Construction of Canal from Tail point of Extension of NOANADI I/S (From Ch.14868.00 M to 16000.00 M)" under SCSP during the year 2013-2014 under Mangaldai Division (Irrigation), Mangaldai with the approximate value of Rs. 29,47,100/- (in Group No.2), the petitioner was allotted the following work :

"Construction of Canal-lining, 0.15 M dia HP gated outlet 4 (four) Nos. Cattle Crossing 2 (two) Nos & RCC sign Board under SCSP during the years 2013-2014 (Construction of Canal of Tail point of Extension of Noanadi I/S from CH.14868.00M.21600.00M)."

3. The grievance of the petitioner is that despite completing 66% of the works and submission of bills for the completed work of 66%, the respondents have not paid the contractual dues of the petitioner amounting to Rs.17,37,956/-.

4. The petitioner's counsel submits that as there is an admission by the respondents in the affidavit-in-opposition filed on behalf of the respondent no.3 with regard to the claim made by the petitioner, a direction should be issued to the respondents to pay to the petitioner the admitted amount.

5. Mr. N. Upadhyay, learned counsel for the Irrigation Department submits

that the petitioner could not be paid the admitted liability amount of Rs.17,37,956/-, due to non-availability of funds with the department.

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

7. The claim of the petitioner for non-payment of his contractual dues amounting to Rs.17,37,956/- has been admitted by the respondent no.3 in his affidavit, at paragraph nos.6, 7, & 12, which is as follows :

“6. That as regards the statements made in paragraph 5 of the writ petition, the answering respondent begs to state that the overall progress of the scheme is 66% but the individual (Contractor concern) progress is 58.97%. The total bill of the petitioner is Rs. 17,37,956.00 only.

7. That as regards the statements made in paragraph 6 of the writ petition, the answering respondent begs to state that at the time of allotment of the works the petitioner signed the formal agreement in F-2 form. He agreed to complete the work in stipulated time but he has failed to complete the work within stipulated time. In this way the petitioner has violated the fundamental breach of contract. However this department was trying to release the liability amount time to time but due to non availability of fund under the concern Head of account it could not released.

12. That as regards the statement made in paragraph 11 and 12 of the writ petition, the answering respondent begs to state that the Executive Engineer, Mangaldai Circle (Irrigation), Mangaldai has received bill of Rs.17,37,956.00 from the petitioner and submitted demand proposal to the Government to release fund time to time but due to non availability fund under the concern head of account the department could not make payment of the due liability amount to the petitioner in time.”

8. On considering the fact that the petitioner's contractual dues is an admitted amount, the respondents are directed to ensure that funds are made available for payment of the admitted dues of the petitioner amounting to Rs.17,37,956/-, within a period of 6 (six) months from the date of receipt of a certified copy of this order.

9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant