

GAHC030000212024



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

Case No. : WP(C)/2/2024

Sh. P.C. Vanlalawmpuia
S/o Biaklian (L),
R/o Mission Veng, Aizawl, Mizoram

VERSUS

The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram and 3 Ors.
Aizawl

2:The Secretary to the Govt. of Mizoram
Public Works Dept.

3:The Secretary to the Govt. of Mizoram
Finance Dept.

4:The Chief Executive Officer
Mizoram Rural Roads Development Agency-cum-Engineer-In-Chief
PW

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv.

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 4

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

16.07.2024

Heard Mr. C Lalramzauva, learned Senior Counsel assisted by Ms. Amira L Hmar for the petitioner and Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General, Mizoram for the respondents.

[2.] By filing this writ petition under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent authorities to release the Performance Security Deposits, Security Deposits, Unbalanced Bid Security Deposits as well as pending RA Bills/BA Bills to him.

[3.] It is the case of the petitioner that he is the son of Sh. Biakliana who is a contractor and who was awarded as many as 11 contract works for construction of roads under PMGSY by the respondents. Although Sh. Biakliana managed to complete most of the allotted works physically, but however before he could complete the entire work, he expired on 03.07.2022.

[4.] The petitioner as the son and nominee of the late contractor expressed his unwillingness to continue with the remaining balance work by submitting his representation before the competent authority on different dates except for the work in respect of construction of Phura to Vahai Road (0.00-17.0 Kmp) Package No. MZ07 912 Group No. 133. For the said work, the petitioner was not the

nominee and the appointed nominee although expressed his willingness to continue with the work, no positive response was given by the respondent authorities and therefore, the petitioner had to request for termination of the contract work in respect of the said package.

[5.] For the sake of convenience, the name of the work, the agreement, the agreed amount and the relevant remarks as provided by the petitioner in the writ petition is abstracted hereunder:-

SL No.	Name of Work	Agreement No.	Agreement Amount (In Rs.)	Remarks
1.	Construction of Jognasuri to Karlui Road (0.00-12.10 Kmp) Package No. MZ04 1024	57/MiRR DA/2018-19	888.95 Lakhs	Works Physically Completed
2.	Construction of Sabualtlang to Hmawngbuchhuah Road (0.00-1.76 Kmp) Package	56/MiRR DA/2018-19	244.22 Lakhs	Works Physically Completed
3.	Construction of Nghalimlui to Balisora Road (3.00-5.00 Kmp) Package No. MZ04 91B	104/MiRRDA /2017-18	2,49,17,142.63	Works Physically Completed
4.	Construction of Chhualung to Ainak Road (0.00-10.90 Kmp) Package No. MZ07 911	142/MiRRDA /2017-18	8,35,87,397.45	Works Physically Completed

5.	Construction of Bunghmun to W Mualthuam Road (0.00-13.50 Kmp) Package No. MZ06 912	141/MiRRDA /2017-18	8,64,81,131.30	Works Physically Completed
6.	Construction of Phura to Vahai Road (0.00-17.0 Kmp) Package No. MZ07 912 Group No. 133	95/MiRRDA/ 2017-18	14,68,31,459.05	Works Physically Incomplete (Request to terminate current contract submitted on 6/1/2023)
7.	Construction of Vaseitlang to Maniababsora Road (0.00-13.50 Kmp) Package No. MZ07 912	3/MiRRDA/2 019-2020	23,16,96,447.79	Works Physically Completed
8.	Construction of Niawhtlang to Chakang Road (0.00-44.05 Kmp) Package No. MZ07 71	2/MiRRDA/2 020-21	16,15,33,485.95	Works Physically Incomplete (Unwillingness to continue execution submitted on 6/1/2023) RA Bill-III & RA Bill-iv submitted on 22/2/2023. Payments awaited.
9.	Construction of Nalkawn to Rulkual Road, Package No. MZ-04 p@ 01 B	6/MiRRDA/P MGSY-II/2019-20	13.15 Crore	Works Physically Incomplete (Unwillingness to continue execution submitted on 6/1/2023)
10.	Construction of Chawngte P to Hmunlai Road, Package No. MZ04	7/MiRRDA/2 013-14	748.88 Lakhs	Works & Maintenance Physically

	74			Completed
11	Construction of Thingfal to Mamte Road, Package No. MZ05/714	4/MiRRDA/2013-14	6,31,20,812.41	Works & Maintenance Physically Completed

[6.] Mr. C Lalramzauva, learned Senior Counsel has drawn the attention of this Court to the general conditions of contract, more particularly Clause 55.2. The same is abstracted hereunder for ready perusal:-

*“**55.2** Death or permanent invalidity of the Contractor: the Contractor shall indicate his nominee for the Contract at the time of signing of Agreement. If a Contractor dies during the currency of the Contract or becomes permanently incapacitated, and his/her nominee are not willing to complete the Contract, the Contract shall be closed without levying any damages/compensation as provided for in clauses 44 and 53 of GCC.*

However, if the nominee expresses his/her intention to complete the balance work and the competent authority is satisfied about the competence of the nominee, then the competent authority shall enter into a fresh agreement for the remaining work strictly on the same terms and conditions, under which the Contract was initially awarded.”

[7.] Referring to the above abstract, the learned Senior Counsel submits that the contractor is required to indicate his nominee for the contract at the time of signing the agreement and if he expires during the currency of the contract or

becomes permanently incapacitated, and further if his nominee is not willing to complete the contract, the contract is to be closed without levying any damages/compensation as provided for in Clauses 44 and 53 of GCC. The learned Senior Counsel submits that in terms of the said provision, the petitioner had communicated to the respondent authority concerned expressing his unwillingness to continue with the remaining work as the nominee of the contractor but despite the same, the respondent authorities have failed to take any positive steps for closure of the contract and for refunding of the amount due to the late contractor through the petitioner.

[8.] The learned Senior Counsel also submits that the petitioner has also come to learn that the respondent authorities have floated tender inviting application for execution of the balance work in respect of construction of Niawhtlang to Chakang Road (0.00 – 44.05 Kmp) Package No. MZ07 71 and Nalkawn to Rulkual Road, Package No. MZ04 p@ 01 B.

[9.] The learned Senior Counsel further submits that during the pendency of the writ petition, the Finance Controller, Mizoram Rural Roads Development Agency apparently on the direction by the respondent Nos. 1, 2 & 4 had written to the Branch Manager of HDFC Bank, Lawngtlai Branch, YES Bank, Aizawl Branch and State Bank of India, Mission Veng Branch, Aizawl for release of fixed deposits. The amount includes both the Performance Security Deposit and Unbalanced Bid

Deposit amount to Rs. 3.66 crores. The learned Senior Counsel submits that the release of the aforesaid amount during the pendency of the writ petition has gravely prejudiced the petitioner, inasmuch as there are outstanding dues which is yet to be released to the petitioner, which comes to a sum of Rs. 14,68,97,699/-.

[10.] Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General submits that since the contract was awarded to the late contractor in terms of the contract agreement governed by the general conditions of the Standard Bidding Documents for PMGSY, whatever amount that may be due to the petitioner can very well be examined by the respondent authorities in terms of the relevant provisions.

[11.] Upon considering the submissions made by the learned counsels for the rival parties and upon perusal of the materials available on record and importantly, having regard to the provisions of the Standard Bidding Document, particularly Clause 55.2 of the GCC, Court is of the view that instead of going into the nitty gritty of the issue raised, it would be better for the respondent authorities concerned to examine the claim of the petitioner and to take a decision within a time frame.

[12.] In view of above, the petitioner shall submit his claim before the respondent No. 4 alongwith all details and supporting documents within a period of

2 (two) weeks from today and the respondent No. 4 upon receipt of the same shall undertake necessary verification and examination of the claim in terms of the agreement that was made between the parties, and as per the Standard Bidding Document and the GCC, more particularly Clause 55.2 of the GCC as expeditiously as possible and at any rate, within a period of 2 (two) months from the date of receipt of the claim made by the petitioner. Upon such examination and verification, the amount due that has been worked out should be paid to the petitioner within a period of 2 (two) months from the date of completion of the said verification.

[13.] It is also further provided herein that if the petitioner is still aggrieved with the amount worked out by the respondent authorities, he will be at liberty to seek such remedy as may be available to him in law.

[14.] With the above observation and direction, the Writ Petition stands disposed of.

JUDGE

Comparing Assistant