

GAHC020000512024

2024:GAU-NL:534



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

Case No. : WP(C)/10/2024

M/S GENMACHINES
K.K. BHATTA ROAD, CHENIKUTHI
GUWAHATI-781003
REPRESENTED BY SHRI UNNIKRISHNA MENON, MANAGING
PARTNER, M/S GENMACHINES

VERSUS

THE STATE OF NAGALAND AND 3 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
DEPARTMENT OF POWER
NAGALAND KOHIMA

3:THE ENGINEER-IN-CHIEF
DEPT. OF POWER
NAGALAND KOHIMA

4:THE CHIEF ENGINEER (T AND G)
DEPT OF POWER
NAGALAND KOHIMA

Advocate for the Petitioner : N. LONGKUMER, NISUKA CHISHI

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

01.10.2024

Heard Mr. Nisuka Chishi, learned counsel for the petitioner and Mr. I. Imchen, learned State Counsel for all the respondents.

2. The projected case of the petitioner, in brief, is that it is a registered supplier and contractor and has earned its reputation in execution of small hydro electric project, design, supply, erection, commissioning, total building management system, testing, servicing of power plants, etc. and it has the experience of executing a number of hydro project works in various parts of the country.

2.1. On 09.12.2015, the office of the Chief Engineer [T&G], Department of Power, Nagaland [the respondent no. 4] published a Short Notice Inviting Tender [SNIT] inviting sealed bids from reputed Manufacturers, Authorized Distributors and Engineering Procurement and Construction [EPC] Contractors for construction of 'Ponglefo Hydro Electric Project' ['the Project', for short] at Salomi village under Kiphire District of Nagaland at an approximate cost of Rs. 16.00 crores. In response to the SNIT which was widely published in the local newspapers, the petitioner along with others submitted its sealed bid. After evaluation, the petitioner was selected and was awarded an Work Order dated 06.02.2016 for construction of the Project, that is, Ponglefo Hydro Electric Project, 2 x 500 kw and the petitioner was directed to execute a Contract Agreement within 15 days from the date of issue of the Work Order. A Contract Agreement was thereafter, executed between the petitioner and the respondent no. 4 on behalf of the Government of Nagaland on 14.03.2016 after complying with all the formalities. The details of the Project was set forth in the said Contract Agreement. After issuance of the Work Order and the execution of the Contract Agreement, the petitioner proceeded to execute the Project, Ponglefo Hydro Electric Project in a remote area in Kiphire District which does not have proper road

connectivity and other infrastructure.

2.2. It is the further case of the petitioner that despite the hardships and difficulties faced by it apart from unprecedented monsoon rains and natural calamities, the petitioner was able to complete the Project, Ponglefo Hydro Electric Project. The petitioner has asserted that the Ponglefo Hydro Electric Project was successfully erected, tested and technically commissioned on 27.08.2020. After completion of the Project, the petitioner had intimated the respondent authorities regarding completion of the Project vide a Letter dated 30.11.2022 with a request to make payment of its outstanding bill amount against the Project.

2.3. When the respondent authorities failed to pay the outstanding bill amount, the petitioner stated to have sent reminders on 03.04.2023 and 19.05.2023 for payment of the outstanding bill amount. When despite the reminders, the respondent authorities failed to make the payment, the petitioner sent a Legal Notice on 30.10.2023 to the respondent authorities demanding payment of the outstanding bill amount within thirty days from the date of receipt of the notice.

2.3. In response to the Legal Notice, the petitioner was furnished a copy of the Letter dated 22.11.2023 sent by the respondent no. 4 to the Commissioner & Secretary to the Government of Nagaland, Department of Power [the respondent no. 2] inviting attention of the respondent no. 2 that a proposal was already submitted for provisioning fund amounting to Rs. 617.38 lakhs as outstanding liabilities to the contractor, that is, the petitioner against the Project, Ponglefo Hydro Electric Project and the respondent no. 2 was requested to necessary action from his end. Thereafter on 23.11.2023, the respondent no. 4 vide his Letter of even date informed the petitioner that the completion DPR amounting to Rs. 617.38 lakhs for the outstanding liabilities for the Project, Ponglefo Hydro Electric Project had already been prepared and taken up with the Government for provisioning of additional fund and the petitioner was requested to withdraw the Legal Notice.

2.4. The petitioner has canvassed that it has already completed the Project after successfully testing and commissioning it on 27.08.2022 and to complete the Project, it had to incur huge investment in procuring construction materials, machineries and labour by raising fund from various sources. Due to non-release of its outstanding liabilities, the petitioner has been facing difficulties. With such projection, the petitioner has preferred the instant writ petition seeking inter alia a direction to the State respondents to release the admitted outstanding contractual liability amounting to Rs. 617.38 lakhs and also to pay an interest @ 12% per annum from the date of completion of the Project.

3. The State respondents through the Secretary to the Government of Nagaland, Department of Power has filed a counter affidavit. It has been stated therein that as regards the funding of a project, the process has to undergo through various stages at the Government level. It is stated that the Department of Power initiated the process for securing the fund vide its Letters, dated 31.10.2023 and dated 22.11.2023, but the process of securing the necessary fund could not be materialized during 2023-2024. It is further stated that the outstanding liability of the contractor has been approved and secured by provisioning Rs. 617.38 lakhs in the sectoral outlay of the Department for 2024-2025. The State respondents have stated that the Project was initially started with an estimated cost of Rs. 2295.00 lakhs in 2016-2017 but the cost escalated to Rs. 3217.33 lakhs due to unprecedented natural calamities at the time of the Project completion in 2022. Due to such natural calamities, some additional works were awarded to the contractor and as a result, the cost of the Project had increased. The State respondents have opposed the claim of the petitioner for interest @ 12% per annum on the ground that nowhere in the Contract Agreement, the claim for interest was agreed upon.

3.1. Mr. Imchen, learned State counsel appearing for the State respondents has submitted that the claim of the petitioner is under consideration of the State respondents and provisioning of fund amounting to Rs. 617.38 lakhs has already been approved and secured in the sectoral outlay of the Department for 2024-2025 and the

said amount will be disbursed to the contractor within a reasonable period of time. Mr. Imchen has, however, contended that the claim of interest by the petitioner is unjust and the same cannot be agreed upon.

4. In response, Mr. Chishi, learned counsel for the petitioner has submitted that if the State respondents disburse the admitted outstanding amount within a reasonable and agreed period of time, the petitioner would not make any claim for interest. He has further submitted that if the State respondents fail to disburse the admitted outstanding amount within the agreed period of time, then the petitioner should have the liberty to take recourse to appropriate proceeding to claim interest on the contract amount.

5. In view of such submission advanced by the learned counsel for the petitioner, Mr. Imchen, learned State counsel has submitted that the State respondents would be in a position to disburse the entire admitted outstanding amount of Rs. 617.38 lakhs to the petitioner within a period of 6 [six] months.

6. From the above discussion, it has emerged that the petitioner was awarded the Project, Ponglefo Hydro Electric Project after a tender process and execution of a Contract Agreement. In the counter affidavit filed by the State respondents through the Secretary to the Government of Nagaland, Power Department, it has been admitted that the petitioner had executed the Project. The assertion of the petitioner to the effect that the petitioner had successfully erected, tested and technically commissioned the Project on 27.08.2022 has not been denied by the State respondents. In the counter affidavit, the State respondents have admitted its outstanding liability to the extent of Rs. 617.38 lakhs against the Project. It has been projected that though the said amount could not be disbursed during the year 2023-2024, the said amount has been approved and secured in the sectoral outlay in the Department of Power during 2024-2025.

7. In view of admission of outstanding liability to the extent of Rs. 617.38 lakhs

and having regard to the submission of the learned State counsel that the State respondents will be in a position to disburse the said admitted outstanding amount within a period of six months, this writ petition can be disposed of with a direction to the State respondents to complete all the necessary steps for disbursal of the said amount and thereafter, to disburse the admitted outstanding amount of Rs. 617.38 lakhs as expeditiously as possible, within an outer limit of six months from the date of submission of a certified copy of this order by the petitioner at the office of the respondent no. 2. It is accordingly ordered. It is further observed that in the event of failure to disburse the said amount within such period of six months, the petitioner would be at liberty to initiate appropriate proceeding claim interest on the contract amount before the appropriate forum in accordance with law.

8. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant