

GAHC020002602019



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

Case No. : WP(C)/86/2019

M/S ZELIEZHU
GOVT. REGD. CLASS-I CONTRACTOR AND SUPPLIER
REPRESENTED BY ITS PROPRIETOR SHRI ZELIEZHU,
R/O P.R. HILL, KOHIMA,N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED THROUGH THE CHIEF SECRETARY TO THE
GOVERNMENT OF N/L

2:THE COMMISIONER AND SECRETARY TO THE GOVT OF N/L
DEPTT. OF MUNICIPAL AFFAIRS
N/L KOHIMA.

3:THE DIRECTOR
DIRECTORATE OF MUNICIPAL AFFAIRS
N/L
KOHIMA

4:THE EXECUTIVE ENGINEER
DIRECTORATE OF MUNICIPAL AFFAIRS
N/L KOHIMA

5:MINISTRY OF URBAN DEVELOPMENT
NURM
NIRMAN BHAWA

Advocate for the Petitioner : WATI JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 22.02.2024

Date of Judgment : 22.02.2024

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed being aggrieved by the inaction on the part of the respondent authorities in not making the payment of Rs.18,70,250/- to which the petitioner claims to be entitled to on the basis of the works duly completed.

2. The record reveals that the petitioner herein was issued various work orders for constructions of the approach road connecting Government Higher Secondary School of Chumukedima, Package-I, Package-II, Package-III, Package-IV and Package-V totaling to an amount of Rs.18,70,250/-. The record further reveals that the work order issued on 10.04.2015. It has been specifically averred in the writ petition that the works were duly completed. However, the amount to which the petitioner was entitled to were not paid. Under such circumstances, the petitioner issued a legal notice on 25.03.2019 upon the respondent Nos.3 & 4 for payment of petitioner's entitled amount of Rs.18,70,250/-. To the said legal notice, the respondent authorities replied that due to non-availability of fund, the payment could not be made to the petitioner for the completed works till date as there was no budgetary allocation for the said works. In the reply so given by the respondent Nos.3 & 4 to the legal notice, a document was enclosed being a communication

issued by the Additional Director and HOD, Directorate of Municipal Affairs, Nagaland to the Commissioner and Secretary, Department of Municipal Affairs. In the said communication, it was mentioned that the Ministry of Urban Development, Government of India had sanctioned the project "Integrated Development of Chumukedima Town Road" under the Scheme UIDSSMT (Transition phase of JNNURM) vide the Ministry's letter bearing No.K-14011/19/2013-UD-1 amounting to Rs.1946.43 lakhs. On the basis of the same, the Department was directed to include the work "premix carpeting works from Government High School Chumukedima to the town Baptist Church" and the contractor had completed the work. However, as per the Ministry of Urban Development's Office Memorandum dated 04.08.2015, all projects approved under the UIDSSMT where fund could not be released as on 31.03.2014 stood dropped and would not be considered for funding. It was also mentioned that under such circumstances, the payment could not be released to the petitioner. The petitioner thereupon being aggrieved had approached this Court by filing the instant writ petition on 04.07.2019.

3. This Court vide an order dated 05.07.2019 had disposed of the instant writ petition thereby directing the respondents to pay the pending bill amount of the petitioner as claimed by him after verification of the work claimed to have been executed at the earliest but not beyond the period of 5 months from the date of the said order. It was also mentioned that the pending bills shall carry an interest at the rate of 9% per annum from the date of completion

of the work.

4. The record reveals that a review application was filed seeking review of the said order dated 05.07.2019. The said review application was registered and numbered as Review Petition No.7/2019. Vide an order dated 10.02.2021, this Court had recalled the order dated 05.07.2019 thereby allowing the said review application. Pursuant thereto, the record reveals that affidavits were filed by the respondent Nos.1 to 4 as well as by the respondent No.5. In the affidavit filed by the respondent Nos.1 to 4 on 16.06.2022, it was mentioned that vide the Office Memorandum dated 04.03.2014 issued by the Government of India, Ministry of Urban Development JNNURM Directorate, the State Government was conveyed on the release of Additional Central Assistance (ACA) to Nagaland for urban infrastructure development under the Urban Infrastructure Development for Small and Medium Town Scheme during 2013-14. The said O.M. dated 04.03.2014 amongst others provided the modalities for Financial Grant/Assistance under the UIDSSMT Scheme and also the project approved against Chumukedima Town at the approved cost of Rs.1946.43 lakhs in which the eligible Central share would be 80%, i.e. Rs.1751.79 lakhs and the first installment was projected as Rs.875.89 lakhs. The Department of Urban Development, Government of Nagaland was designated as the State Level Nodal Agency for implementing the UIDSSMT Scheme. Consequent to the issuance of the O.M. dated 04.03.2014, the Government of Nagaland had issued five work orders to the petitioner against the Approach road connecting

Government Higher Secondary School of Chumukedima which had been executed by the petitioner within the time stipulated in the work orders. It was also mentioned that the works undertaken by the petitioner amounted to Rs.18,70,250/- is against the project at Chumukedima Town under the UIDSSMT Scheme. Further to that, it was stated that the Government of India in the Ministry of Urban Development, NURM Section had subsequently issued an Office Memorandum dated 14.08.2015 whereby at Sl. No.6(b) of the Office Memorandum it was provided that all projects which were approved but funds could not be released as on 31.03.2014 stood dropped and would not be considered for funding. It was also mentioned that the Government of Nagaland had issued the five work orders dated 10.04.2015 on the basis of the policy decision adopted by the Government of India which was reflected in the Office Memorandum dated 04.03.2014. The works undertaken by the petitioner were under the UIDSSMT Scheme which abruptly were dropped by the Government of India, Ministry of Urban Development after the petitioner had completed the construction works allotted to him within the time allotted in the work orders which were issued by the respondent authorities.

5. It is therefore apparent from the said affidavit that it is the specific case of the State respondent that it is on account of the dropping of the Scheme vide the Office Memorandum dated 14.08.2015 by the Ministry of Urban Development, Government of India that the petitioner could not be paid his dues amounting to Rs.18,70,250/-.

6. The record reveals that the respondent No.5 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that the Jawaharlal Nehru National Urban Renewal Mission was implemented by the Government of India w.e.f. 03.12.2005 upto 31.03.2012, i.e. for 7 years beginning from 2005-06. The said JNNURM was extended from 01.04.2012 to 31.03.2014 and was called the transition phase of JNNURM. It was further mentioned that the Ministry of Finance did not release fund for the instant project along with some other projects. The project therefore stood dropped for funding by the Central Government right from April, 2014. The State Government was well aware that the funds were not been released for the said project and the transition phase has also ended on 31.03.2014. The said project was therefore not at all eligible for funding by the Government of India. In spite of that the respondents Government of Nagaland had issued the work orders in five packages dated 10.04.2015 with total cost of Rs.18.70 lakhs for the road project almost one year after the ending of the transition phase without any consultation with the Ministry of Housing and Urban Affairs.

7. The record reveals that the petitioner had filed an affidavit-in-reply to the affidavit-in-opposition filed by the respondent Nos.1 to 4.

8. In the backdrop of the above pleadings, let this Court take into consideration the submission so made by the learned counsels appearing on behalf of the parties.

9. Mr. N. Longkumer, the learned counsel for the petitioner

submitted that the respondent authorities, more particularly the respondent No.4 had issued work orders on 10.04.2015 and on the basis thereof, the petitioner has duly completed the work. Under such circumstances, the petitioner would be entitled to the said amount of Rs.18,70,250/- which is being admitted by the State respondents. It was also submitted by the learned counsel for the petitioner that the work order did not reflect that the said work was to be completed in connection with the Central Government funding. It is therefore the specific case of the petitioner that the petitioner is entitled to the said amount Rs.18,70,250/-.

10. Mr. N. Angami, the learned Government Advocate appearing on behalf of the respondent Nos.1 to 4 submitted on the basis of the pleadings stating inter-alia that the work orders were issued on the basis of assurance given by the Central Government in its Office Memorandum dated 04.03.2014, and under such circumstances, the dropping of the said project vide the Office Memorandum dated 14.08.2015 by the respondent No.5, that too after the completion of the project in question cannot absolve the liability to which the respondent No.5 was liable to pay.

11. Mr. C. Phom, the learned counsel appearing on behalf of the respondent No.5 submitted that the State of Nagaland very well knew that JNNURM was not extended beyond 31.03.2014 and under such circumstances, the issuance of the work order by the respondents, that too without consultation with the Ministry cannot make the Union of India liable for that.

12. This Court had duly perused the pleadings as above noted and

also given an anxious consideration to the respective submissions made by the learned counsels for the parties. The fact that the petitioner herein was issued work order on 10.04.2015 is not in dispute. The fact that the petitioner duly completed the works in question to the satisfaction of the respondent Nos.3 & 4 are also not in dispute. The question which is in dispute is as to who would be liable to pay the petitioner. The work orders which have been enclosed to the writ petition do not in any manner show that the said work orders were issued in pursuance to any implementation of the Central Government Scheme. The said work orders categorically show that the petitioner was asked to complete the said works and accordingly the petitioner had completed. Under such circumstances, non-payment of the amount by the respondent Nos.1 to 4 to which the petitioner is admittedly entitled to the amounts to an infraction to the rights of the petitioner under Article 300A of the Constitution apart from being arbitrary and unreasonable thereby rendering the actions of the respondent authorities violative of Article 14 of the Constitution.

13. Under such circumstances, this Court directs the respondent Nos.1 to 4 to disburse the amount of Rs.18,70,250/- to the petitioner within a period of 4 (four) months from the date a certified copy of the instant order is served upon the respondent No.3. Failing which this Court further directs that the respondent Nos.1 to 4 shall be liable to pay interest @ 7.5% per annum from the date of default, i.e. from the date of expiry of 4 months from the date of service of the certified copy of the instant judgment and

order to the respondent No.3.

14. This Court has not decided as to whether the State of Nagaland would be entitled to claim such amounts from the respondent No.5, i.e. the Ministry of Urban Affairs, Government of India. Under such circumstances, it shall be open to the State of Nagaland to pursue its remedies against the respondent No.5 in respect to the amount which the respondent Nos.1 to 4 have been directed to pay.

15. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant