GAHC010016772025

2026:GAU-AS:15131

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

Case No. : Cont.Cas(C)/176/2016

DWIPEN DEKA
S/O- LT. RAJAT CHANDRA DEKA
R/O- RANGIA
WARD NO. 3
BARMESE NAGAR
DIST.- KAMRUP
ASSAM.

VERSUS

KUJENDRA DOLEY and ORS.
COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
IRRIGATION DEPTT.
DISPUR
GHY- 6.

2:MAHENDRA MOHAN BORO
THE CHIEF ENGINEER M.I. IRRIGATION DEPTT.
ASSAM
GHY- 3.

3:SRI PABITRA RAM KHOUND
SECRETARY TO THE GOVERNMENT OF ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI-781006.

4:SRI K M GOPAL SANA RAJ KUMAR
CHIEF ENGINEER
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI-781003.

Advocate for : MR.P DAS

Advocate for : DR.B AHMEDR appearing for KUJENDRA DOLEY and ORS.

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 07-10-2026

Heard Mr. S. Dutta, learned senior counsel, assisted by Ms. I. Das, learned counsel for the petitioner. Also heard Mr. D Gogoi, learned counsel for the respondent Nos.3 & 4.

2. The petitioner had participated in a tender process and had completed 95% of the allotted work on 01.12.2012. Out of the total running bill of Rs.2,97,00,539/-, he had been paid an amount of Rs.1,09,36,170/- till March, 2013. Praying for a direction to the respondents to make payment of the remaining admitted amount, the petitioner had filed WP(C) No.7114/2013, which was disposed of vide order dated 07.02.2014. As per the aforesaid order, the respondents were required to look into the grievance of the petitioner in accordance with the guidelines formulated in ***Tamsher Ali -Vs- State of Assam & Ors.***, reported in ***2008 (4) GLT 1***.

3. When, despite being notified of the order passed by this Court in WP(C) No.7114/2013, no action was initiated by the respondent authorities, the petitioner approached this Court by filing WP(C) No.1373/2014. This Court, vide order dated 31.03.2014, had again directed the respondent authorities to

examine the case of the petitioner, to his claim of Rs.1,86,55,647/-, by taking note of all the attending facts and circumstances and in accordance with law and also following the guidelines formulated in ***Tamsher Ali*** (supra).

4. When the order of this Court passed in WP(C) No.1373/2014 had not been complied with, the petitioner instituted Cont. Case (C) No.394/2014, where an affidavit had been filed by the alleged contemnors therein by stating that a demand proposal for Rs.1,68,879.20/- had already been submitted by the then Additional Chief Engineer/In-charge Chief Engineer, Irrigation Department, Chandmari to the Government for release of the amount to the petitioner and a statement had also been made that the release was awaited. It was further stated that the Department had been magnanimous in not fixing liability on the petitioner for the collapse of the bridge.

5. Based on the aforesaid affidavit, this Court noted that an enquiry was conducted regarding the construction done by the petitioner and if, after the enquiry, the petitioner was found to be entitled to any money, the same would be paid. The petitioner accepted the above submission and the contempt petition was accordingly closed. The respondents were required to complete the exercise of enquiry and pass final order regarding the entitlement of money within a period of 6(six) months from 02.02.2015.

6. The present contempt petition has been filed alleging violation of the

direction dated 02.02.2015 in Cont. Case (C) No.394/2014, whereby the respondents were directed to complete the exercise of enquiry and pass final order regarding the entitlement of money within a period of 6 (six) months from the date of the order.

7. The learned senior counsel for the petitioner has submitted that in the course of complying with the order dated 31.03.2014 passed in WP(C) No.1373/2014, the Additional Chief Engineer, Irrigation Department had issued a report bearing No. ACE(M&I)G-12/2014, dated 18.12.2014, wherein, on the basis of records, it was admitted that there is a balance of Rs.1,87,64,369/- to be paid to the contractor. The aforesaid report also stated that after threadbare discussion with all the members, the members unanimously decided not to make the contractor a scapegoat, since the cause of damage to the structure was not detected up to that date. The Committee had further decided that the payment of the bills of the contractor will be made after deducting an amount of 10% as additional security deposit.

8. When no further payment had been made, the petitioner instituted WP(C) No.110/2016 claiming payment of the unpaid amount, which was arrived at after deducting the 10% as additional security deposit from the admitted amount of Rs.1,87,64,369/-. The petitioner had also prayed for refund of the other security deposit that had been held up.

9. The aforesaid WP(C) No.110/2016 had been thereafter dismissed by the

order dated 05.10.2023, which recorded as follows:-

"*Heard Ms. I. Das, learned counsel for the petitioner and Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department for all the respondents.*

2. By seeking to invoke the extraordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has instituted the present writ petition seeking inter alia a direction in the nature of mandamus to the respondent authorities to release an amount of Rs. 85,82,320/- with interest @ 7% forthwith on the contention that the said amount is an admitted contractual liability in respect of a contract-work executed by the petitioner for the respondent Irrigation Department, Assam.

3. The background facts leading to the institution of the present writ petition can be narrated, in brief, as follows :-

3.1. It has been stated that the petitioner who is a registered Class-I Contractor with the respondent Irrigation Department, was awarded with a contract work : 'Approach road of Parbatia Flow Irrigation Scheme [F.I.S.] under the Accelerated Benefited Programme [A.I.B.P.] Scheme, 2009-2010, Nalbari Division, Nalbari' ['the Contract-Work', for short] vide a Work Order no. DDMI/T/30/2010/Pt-III/65 dated 07.09.2010. A copy of the Work Order dated 07.09.2010 is, however, not made part of the writ petition.

3.2. It is the case of the petitioner that after receipt of the Work Order dated 07.09.2010, he proceeded to execute the Contract-Work w.e.f. 09.02.2011 and completed 95% of the work on 01.12.2012. According to a petitioner, the remaining 5% of the Contract-Work was related to an approach road. The petitioner has asserted that he had subsequently completed the said 5% of the work pertaining to the approach road also. The petitioner has stated that he submitted Running Account [RA] bills to the extent of Rs. 2,97,00,539/- and the respondent authorities had paid him an amount of Rs. 1,09,36,170 out of the total RA bills amount of Rs. 2,97,00,539/-. Thus, an amount of Rs. 1,87,64,369/- remained to be paid by the respondent authorities.

3.3. Aggrieved by non-disbursal of the said amount of Rs. 1,87,64,369/- against the Contract-Work pertaining the Parbatia F.I.S. under the A.I.B.P. Scheme, the petitioner approached this Court earlier by a writ petition, W.P.[C] no. 7114/2013. When the writ

petition, W.P.[C] no. 7114/2013 came up for consideration on 07.02.2014, it was submitted by the learned Standing Counsel, Irrigation Department that the claim of the petitioner would be verified by the Chief Engineer, Irrigation Department and upon verification, if any amount was found due to be payable, the same would be paid following the guidelines formulated in the Full Bench decision of this Court in Tamsher Ali and others vs. the State of Assam and others, reported in 2008 [4] GLT 1. The writ petition, W.P.[C] no. 7114/2013 was accordingly, disposed of by an Order dated 07.02.2014.

3.4. Subsequently, the petitioner preferred another writ petition, W.P.[C] no. 1373/2014 claiming that an amount of Rs. 1,86,55,647/- was admittedly due from the respondent authorities in the Irrigation Department against the Contract-Work. When the writ petition, W.P.[C] no. 1373/2014 listed on 31.03.2014 for consideration, the learned Standing Counsel, Irrigation Department submitted that the matter would require thorough investigation by the Chief Engineer, Irrigation Department, Assam. The writ petition, W.P.[C] no. 1373/2014 was disposed of, by an Order dated 31.03.2014, by providing that the Chief Engineer, Irrigation Department shall examine the case of the petitioner, taking note of all the attending facts and circumstances and in accordance with law and also following the directions formulated in the decision in Tamsher Ali [supra]. It was observed that the required exercise be carried out as expeditiously as possible, preferably within a period of 4 [four] months.

3.5. Alleging non-compliance of the directions made in the Order dated 31.03.2014 passed in the writ petition, W.P.[C] no. 1373/2014, the petitioner preferred a contempt petition, Contempt Case [C] no. 394/2014. When the contempt petition, Contempt Case [C] no. 394/2014 was listed on 02.02.2015, the learned counsel for the respondents submitted that an inquiry was being conducted regarding the constructions done by the petitioner and it would be after enquiry, if the petitioner was entitled to any money, the money would be paid. Such submission advanced by the respondents was accepted by the learned counsel for the petitioner. The contempt petition, Contempt Case [C] no. 394/2014 was accordingly closed by an Order dated 02.02.2015 with a direction to the respondents to complete the exercise of enquiry and pass final order regarding entitlement of the money within a period of 6 [six] months therefrom.

3.6. In the interregnum, the Chief Engineer, Irrigation Department, Assam, vide an Office Order dated 17.10.2014 and a Corrigendum dated 25.11.2014, constituted a Committee comprising of officials of the Irrigation Department to be headed by the Additional Chief

Engineer [M&I]-cum-Chairman with [i] the Director, Design [MI]-cum-Member Secretary; [ii] the Director Design [Mech]; [iii] the Director, Planning; [iv] the Superintendent Engineer, North Kamrup Circle; & [v] the Executive Engineer, Nalbari Division, as Members for conducting an enquiry as regards the claim of payment for the Contract-Work pertaining to Parbatia F.I.S. under the A.I.B.P. Scheme. The said Committee after field investigation and scrutiny of the records, had submitted an Enquiry Report on 18.12.2014 to the Chief Engineer, Irrigation Department, Assam. The Committee had recommended that payment of the bills of the contractor i.e. the petitioner might be made after deducting an amount of 10% as additional security deposit. The Committee had observed that such suggestion had been made as detailed cause of damage could not be detected. It is relevant to state herein that the headwork of Parbatia F.I.S. under the A.I.B.P. Scheme totally collapsed on 31.07.2013. The Committee in its Enquiry Report dated 18.12.2014 had further reported that prior to 31.07.2013, the petitioner as the Contractor of Headwork of Parbatia F.I.S. under the A.I.B.P. Scheme submitted 5 [five] nos. of Running Account [RA] bills. The Committee had also reported that as per records, the up-to-date bill value of the Contract-Work was Rs. 2,97,00,539/- and as out of that amount, an amount of Rs. 1,09,36,170/- had already been paid to the Contractor i.e. the petitioner and there remained a balance of Rs. 1,87,64,369/- from up-to-date bill value, to be paid to the Contractor.

4. The petitioner has, in this writ petition, averred that out of the said amount of Rs. 1,87,64,369/-, he had received an amount of Rs. 1,38,88,000/- after submission of the Enquiry Report by the Committee before the Chief Engineer, Irrigation Department, Assam. With the aforesaid projections, the petitioner has contended that the decision to deduct 10% from the outstanding amount of Rs. 1,87,64,369/- was illegal. The petitioner has instituted the present writ petition with the prayers, already mentioned above.

5. In the present writ petition, the petitioner has projected that the said amount of Rs. 85,82,320/- is required to be disbursed by the respondent authorities in the Irrigation Department with the claim that the same is admittedly due to the petitioner against the Contract-Work executed by him.

6. The Chief Engineer, Irrigation Department who has been impleaded as the respondent no. 2, has filed an affidavit-in-opposition on 09.11.2016. In the said affidavit-in-opposition, it has been averred that as per records, some components of the Contract-Work pertaining to the Parbatia F.I.S. under the A.I.B.P. Scheme had been done to the extent of 95% by the petitioner. But in some components such as the approach road and river training walks, etc., the

petitioner had completed only 93%. It has been averred that subsequently, the approach road and the river training works were completed and bills for amount of Rs. 27,11,883/- instead of Rs. 19,61,661/-, as stated by the petitioner, was submitted. The respondent no. 2 has mentioned that the total value of the Contract-Work pertaining the Parbatia F.I.S. under the A.I.B.P. Scheme : 2009- 2010, as per the approved estimate, was Rs. 4.20 crores and out of it, the petitioner was allocated works for Rs. 3,16,62,200/-. By giving a chart, the respondent no. 2 had stated that up-to-date bill value of the executed works as per the records of measurement book of the petitioner was Rs. 2,97,00,539/- and out of the said amount, Rs. 2,48,24,170/- had already been paid to the petitioner.

6.1. It has been pointed out that the whole construction of the project collapsed after the works were done and the Committee headed by the Additional Chief Engineer, Irrigation Department had to be constituted for causing an enquiry. The respondent no. 2 has further pointed out that as per the Enquiry Report submitted by the Committee, the petitioner was found partly responsible for the destruction caused due to technical defects. Stating that an amount of Rs. 1,09,36,170/- had already been paid to the petitioner against the Running Account [RA] bills submitted by him, the respondent no. 2 has averred that the balance payment was not made as the Government in the Irrigation Department did not accord fixation of ceiling against the Contract-Work for making further payments to the petitioner.

6.2. References have been made to the Orders passed in the two writ petitions, preferred by the petitioner, which were disposed of with a direction to the respondent no. 2 only to examine the claim of the petitioner. The respondent no. 2 has further averred that the balance amount, claimed by the petitioner, cannot be paid to the petitioner as the whole matter was then under investigation for fixing liabilities in view of collapse/destruction of the entire project. The respondent no. 2 has categorically asserted that in view of the facts and circumstances of case, the petitioner cannot claim further amount as the entire matter is disputed. The respondent no. 2 has further referred to a Report submitted before the Secretary to the Government of Assam, Irrigation Department on 03.08.2013 and as per the said Report, a number of defects in the execution of the Contract-Work were detected during a field visit to the Scheme on 02.08.2013 by a team of officers headed by the Additional Chief Engineer, Inspection and Quality Control, Irrigation Department. It has been further averred that the matter of payment to the petitioner would be subject to further enquiry into the reasons of sudden collapse of the Contract-Work of the petitioner for ascertaining as to whether it was for his use of low quality of materials or for non-maintenance of the standard procedure. The

respondent no. 2 has further contended that it has remained to be determined whether it was the lapse of the petitioner that the Scheme collapsed or the default was also partly attributable to the Departmental officials for inadequate supervision on their part. With such contentions, the respondent no. 2 has contended that the petitioner could not be paid any further amount.

6.3. Disputing the claims of the petitioner, the respondent no. 2 has contended that the petitioner is not entitled to any relief in the present proceedings as a number of disputed questions of facts are involved.

7. At this stage, it is apposite to refer to the decision of the Full Bench of this Court in Tamsher Ali [supra], as the learned counsel for the parties have referred to the same to reinforce their respective submissions.

7.1. The writ petitions involved in Tamsher Ali [supra] pertained to claims of bill amounts in respect of various contractual works executed by the petitioners therein with claims that they were entitled to the amounts claimed against the works executed pursuant to various work orders issued in their favour by the respective Departmental authorities. The Full Bench had also taken note of the observations/guidelines issued in a writ petition, W.P.[C] no. 3354/2004 [Jatin Pathak vs. State of Assam and others] and few conflicting decisions of the Court.

7.2. In Paragraph 14 of the Judgment in Tamsher Ali [supra], the Court noted the principles which the State Government had agreed to adopt for considering the claim against contractual works. As the Government of Assam, on principle, had agreed to adopt the guidelines issued by the Court in the case of Jatin Pathak [supra] for the manner of processing the claims, which are admitted to be due, subject however, to the following conditions :-

> *i. All claims for payment of outstanding dues would be entertained for consideration provided the same are admitted by the respective departments. The admissions of liability shall have to be certified by the respective Chief Engineer in respect of Works Departments and in respect of other departments by the Head of the departments.*
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> *ii. All claims for payment of admitted outstanding dues would be entertained for payment provided the claims are lodged before the competent authority within a period of three years from the date of the payment becoming due.*

iii. All claims for payment of admitted outstanding dues in respect of which the contractors intend or have approached the Hon'ble Court, in such cases, the contractors must approach the Hon'ble High Court within a period of 3 years from the date of the payment becoming due. This view has been taken as the Hon'ble Apex Court in the State of Madhya Pradesh Vs. Bhailal Bhai and Ors. reported in AIR 1964 SC 1006 at Para 21 has observed that though provisions of Limitation Act do not as such apply to proceedings under Article 226, the period of Limitation prescribed by Limitation Act for instituting a civil action may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured.

7.3. In Paragraph 16 in Tamsher Ali [supra], the Court has observed about the agreement that the term, 'payment becoming due' shall be construed depending upon the terms and conditions of the individual work orders and/or a contract, and as may be applicable under the law. The Full Bench has further clarified that the matter of claim to be considered in the context of clause [i] of the conditions, mentioned in Paragraph 14 thereof, in terms of which all claims of payment of outstanding dues would be entertained for consideration provided the same are admitted by their respective departments. It has been further clarified that as per Clause [i] of the conditions, admission of liability shall have to be certified by the respective Chief Engineer in respect of Works Departments and in respect of other Departments by the Head of the Departments.

7.4. The reason behind the Judgment in Tamsher Ali [supra] is discernible from Paragraph 18 of the Judgment. As the State Government had agreed for disposal of the writ petitions in terms of the broad agreement to abide by the guidelines formulated in Jatin Patak's case with the aforesaid terms and conditions, the Full Bench has not answered the question formulated as to whether the forum under Article 226 of the Constitution of India is appropriate to adjudicate the claims relating to payment of contractual bills and whether the writ petitions are required to be entertained in such cases. The judgment in Tamsher Ali [supra] has been rendered in view of the broad agreement arrived at, by and between the parties.

7.5. What is, thus, discernible as a principle emerging from Tamsher Ali [supra] is that a writ petition containing claims for amount as regards executed contract works can be entertained if such claim of outstanding dues is admitted and certified by the respective Chief Engineer in respect of Works Department and by the Head of Departments in respect of other

Departments.

8. It has been settled by a long line of decisions that the jurisdiction of the High Court under Article 226 of the Constitution of India is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary and it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will be exercised subject to certain self imposed limitations. It is also settled that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution merely because in order to consider the right of the petitioner to be granted the relief sought for questions of facts are to be determined. In a writ petition under Article 226 of the Constitution, the High Court has jurisdiction to try issues both of fact and law. In the process, the Court has to consider as to what facts are in dispute and what facts are not in dispute and such a stage comes after the exchange of pleadings in the form of affidavits amongst the parties is complete. A writ petition is ordinarily decided on the basis of affidavits. A lis arising out of contractual matter is also not beyond the purview of the judicial review though such purview is limited and the discretionary writ jurisdiction in such matters is to be exercised on sound and firm judicial principles. When a writ petition raises disputed questions of fact and for determination of those, leading of evidence by the parties, would be necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution and then in such a case, the Court may decline to try a writ petition. Though no authority is required to be cited for such settled propositions of law, the decisions of the Hon'ble Supreme Court of India in Gunwant Kaur vs. Municipal Committee Bhatinda, reported in [1969] 3 SCC 769; Noble Resources Ltd. vs. State of Orissa and another, reported in [2006] 10 SCC 236; and State of Kerala and others vs. M.K. Jose, reported in [2015] 9 SCC 433 can be referred to as references. It is also settled, as has been observed by a Constitution Bench of the Hon'ble Supreme Court of India in Thansingh Nathmal vs. The Superintendent of Taxes, Dhubri and others, reported in AIR 1964 SC 1419, that the High Court in its jurisdiction under Article 226 of the Constitution does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

9. In Union of India and others vs. Puna Hinda, reported in [2021] 10 SCC 690, a Notice Inviting Tender [NIT] was issued for construction and improvement of road under Special Accelerated Rural Development Programme [SARDP]. The bid value of the petitioner was

accepted at Rs. 31,87,58,950.00/- and the work order was issued. The said work order was amended by the parties on 15.03.2012 leading to enhanced work cost at Rs. 35,03,15,695.23/-. The work order had provided the details of the work to be carried out and the estimated amount payable for each work with rate of each work. The work was divided into three parts and the measurement process for payment was specified in the general conditions of the contract. The contractor completed one part of the work and a joint survey of the work was carried out by a board of officials. However, the said joint survey report was rejected by the competent authority at the Headquarter. The contractor filed a writ petition after submitting a final bill, claiming a sum of ₹ 23,68,11,589.02. The High Court allowed the writ petition and the matter was carried to the Hon'ble Supreme Court of India by appeal. The appellant Union of India contended that there were serious disputes about the facts in respect of the authenticity of the joint final report and the work done and therefore, such dispute in questions of fact could not have been adjudicated by the writ court as disputed questions of fact relating to recovery of money could not have been entertained by the High Court under the writ jurisdiction. The Hon'ble Supreme Court of India had allowed the appeal with the following observations :-

> *24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.*

10. Reverting back to the facts of the case in hand, the contentions advanced by the petitioner side and the contentions advanced by the respondent no. 2 as the Head of the Department are already noted above. On perusal of the contentions and counter contentions of the parties, it clearly emerges from the contentions and the counter contentions of the parties that there are a number of disputed questions of facts which would fall for

determination. As has already been mentioned above, this court does not generally embark upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

11. Mr. Upadhyay, learned Standing Counsel, Irrigation Department has submitted that with regard to the construction works carried out in connection with the Parbatia F.I.S. under the A.I.B.P. Scheme, and its subsequent collapse, a public interest litigation, PIL 4/2017 [Udangsree Pathar Parichalana Samiti vs. the State of Assam and others] was also instituted. Placing the copy of the Order dated 25.07.2018 whereby the PIL was disposed of, Mr. Upadhyay has submitted that observations made therein are also of relevance as the petitioner was the Contractor concerned therein.

11.1. The observations made in the Order dated 25.07.2018 by the Division Bench while disposing of the PIL, are as under :-

> *One Parbatia Flow Irrigation Scheme was constructed in the year 2010 by the Irrigation Department at village Tokankata under Dhom Dhoma Block, District Baska. Sadly the Scheme collapsed within 7 months of its construction and about 3.3 crore of public money spent in the construction of Scheme was washed away. We, therefore, directed the Chief Secretary to constitute a committee of three members of high repute to enquire the cause. The committee, in its report dated 23.3.2018 gave the following findings:-*
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> *1. The structure collapsed due to settlement of the foundation and it was caused by heavy scour for which water flows below the foundation and the soil was washed away by flowing water.*
>
> *2. Regarding the quality of the soil below foundation the committee have no comments as no sub soil investigation report was produced before the committee.*
>
> *3. The contractor had not engaged any technical man power in the project for which whether the quality was maintained or not cannot be ascertained as no quality control records/register were produced before the committee.*
>
> *4. There may be inadequate site inspection by the field Engineers. The field officers*

during discussion informed that due to disturbed situation they could not go to site frequently.

5. As the resisting strength of concrete of foundation after a certain depth was found to be gradually decreasing as mentioned above, the strength of the concrete after that depth may be less than required, for which seepage may occur through that layer also and it may be due to the absence of permanent technical man power of the contractor since the ordinary labour force are not aware about the strength of concrete.

6. The Chief Engineer may re-check the design of the structure either from his end or by other institutional experts.

From the above findings, it became clear that Parbatia Flow Irrigation Scheme was constructed without any prior soil inspection and also without ascertaining the technical capability of contractor, to whom, the work was allotted. Since this was a serious lapse on the part of Irrigation Department, we directed the Additional Chief Secretary, Irrigation Department to initiate departmental proceedings against the erring officials in the light of above quoted findings of the committee. We also directed the Additional Chief Secretary to ensure execution of identical project in the interest of public of that area for which budget allocation has already been provided by the State Government.

It is heartening to learn that 11 erring officials have been identified and against 8 such officials, who are in service, charge sheets have also been issued. And for the remaining 3, who are reported to have been retired, legal opinion is being sought by the department for taking appropriate action against them. We trust and hope that departmental proceedings initiated against the erring officials will be brought to logical conclusion as early as possible.

As regards execution of identical project in the interest of public of the area, in question, learned Senior Additional Advocate General, Assam has informed that Executive Engineer has already submitted the estimate of project which is being examined by the Chief Engineer whereafter financial and administrative approval will be sought for inviting tenders. We direct the Secretary of the Irrigation Department to ensure that all this process be completed within four months from today. We also direct the Secretary to ensure that identical project is completed as early as possible after issuance of work order to the successful bidder.

With the above directions, the petition stands finally disposed of.

12. Having regard to the scope and ambit of the power of judicial review in a case involving disputed questions of facts and in view of non-admission of liability by the Head of the Irrigation Department i.e. the Chief Engineer, Irrigation Department with the further contention that the entire matter is disputed, this Court is of the considered view that the present one is such a case which would require determination of several disputed questions of facts through both oral and documentary evidence with examination of witnesses by the parties in a full-fledged trial and the present writ proceeding is found to be not the proper and appropriate proceedings. In such view of the matter, this Court is of the unhesitant view that the disputes involved in the writ petition, as mentioned above, cannot be decided in writ proceedings. As a corollary, the writ petition is not entertained. It is, however, observed that non-disposal of the writ petition may not preclude the petitioner to resort to any other remedy as may be permitted under the law. There shall be no order as to cost.

10. The learned Senior Counsel for the petitioner has submitted that since the speaking order required to be passed in accordance with the order dated 02.02.2015 of Cont. Case (C) No.394/2014 had not been passed till the filing of the contempt petition, the contempt petition had been initiated. It has been submitted that during the pendency of the contempt petition, a speaking order had been passed on 16.03.2024, by which the claim of the petitioner for release of payment against the work done had been rejected. For ready reference, the speaking order dated 16.03.2024 passed by the Chief Engineer, Irrigation Department, Assam is reproduced herein below:-

"*SPEAKING ORDER*

It is seen that a contractor Sri Dwipen Deka had instituted a Writ Petition, registered as W.P. (C) No. 1373/2014 alleging non-payment of contractual dues arising out of Work Order No. DDMI/T/30/2010/Pt-III/66 dated 07.09.2010 for 'Construction of Head Work, Appurtenant Work

and River Training Work of Parbatia Flow irrigation Scheme under Accelerated Irrigation Benefited Programme (AIBP)'. Vide Order dated 31.03.2014, the said writ pettion was disposed of by the Hon'ble Gauhati High Court by directing that the case of the petitioner be examined by the Chief Engineer, Irrigation Department within a period of 4 months. Thereafter, the said contractor filed a contempt Case registered as Cont. Case (C) No.394/2014, alleging non-compliance of the aforesaid directions. The said contempt proceedings were disposed of by the Hon'ble Court vide Order dated 02.02.2015 by directing the opposite parties to complete the enquiry and pass a final order regarding the entitlement of the petitioner. Thereafter, the Contractor again instituted contempt proceedings being Contempt Case (C) No.176/2016 alleging non-compliance of the directions passed vide Order 02.02.2015 in the earlier round of contempt proceedings i.e. Cont. Case (C) No.394/2014.

At this stage, it is pertinent to mention that the work of aforesaid Parbatia Flow Irrigation Scheme was in an incomplete state on the day of collapse, and, in this regard, a Public Interest Litigation being P.i.L. No.4/2017 was also instituted before the Hon'ble Gauhati High Court. Vide Order dated 30.05.2017 passed in the said proceedings, the Chief Secretary was directed to constitute a Committee of 3(three) Members of high repute to enquire the cause of collapse of the scheme and thereafter, submit a report before the Hon'ble Court. Accordingly, the committee, in its report dated 23.3.2018 inter alia held that 'The contractor had not engaged any technical man power in the project for which whether the quality was maintained or not cannot be ascertained as no quality control records/register were produced before the Committee."

The Committee further concluded that, 'As the resisting strength of concrete of foundation after a certain depth was found to be gradually decreasing as mentioned above, the strength of the concrete after that depth may be less than required, for which seepage may occur through that layer also and it may be due to the absence of permanent technical man power of the contractor since the ordinary labour force are not aware about the strength of concrete.'

The findings of this Committee pointed out major anomalies and shortcomings on the part of the contractors as well as the departmental officers responsible for supervision of the said work. Moreover, the said work was in an incomplete state on the day of collapse and it was yet to be handed over to the Department. Therefore, at the time of collapse, the responsibility of completing the works and handing over a completed structure in a functional state still lay with the contractor. In fact, in Order dated 25.07.2018, the Division Bench held that the Parbatia Flow Irrigation Scheme was

constructed without any prior soil inspection and also without ascertaining the technical capability of the contractor.

However, during the pendency of the said proceedings before the Hon'ble Division Bench, the Contractor had instituted another Writ Petition being W.P. (C) No.110/2016 praying for release of his pending dues of Rs.85,82,320/- arising out of the same work order No.DDMI/T/30/2010/Pt-III/65 dated 07.09.2010. Vide Order dated 05.10.2023, this Hon'ble Court dismissed the said Writ Petition on the ground that the said dues had not been admitted by the Department and disputed questions of facts are involved which would require determination through oral and documentary evidence with examination of evidence in a full-fledged trial. Meanwhile, the contractor Sri Dwipen Deka also instituted a second round of contempt proceedings i.e. the present Contempt Case (C) No.176/2016 pertaining to the same claim for payments against works carried out in Parbatia F.I.S.

It is to be noted that, on the charges of sub-standard execution of works against Parbatia F.l.S., several departmental officers have been implicated, and Departmental Proceedings have been drawn against them and their promotions have since been withheld. When the quality of work has been pointed out to be poor by the High-Level Committee after detailed on-site verification, there is no justification for making any further payments to the said contractor. The findings of the Committee clearly state that the petitioner, a Class I(A) contractor was misleading the Department and has been running his business without a graduate engineer to supervise the construction works which is in violation of Norms etc. The poor quality of materials used, and poor workmanship due to lack of supervision is the reason leading to the collapse of the entire headwork structure. Therefore, the contractor must be considered to be responsible and liable for the failure of the structure and the payment claimed by him against the defective work done cannot be released as it will be a huge wastage of public money.

In view of the above, the Department cannot accede to the demand of the contractor Sri Dwipen Deka for further payment in respect of Works carried in Parbatia F.I.S. and his claim for further payment is accordingly denied."

11. Mr. Gogoi, learned counsel appearing for the contemnor Nos.3 & 4 has submitted that with the passing of the speaking order rejecting the claim of the petitioner for payment of money for the alleged work executed by him is in compliance with the order dated 02.02.2015 passed by this Court in Cont. Case

(C) No.394/2014. He has submitted that the present contempt petition has not alleged violation of the orders passed in any writ petitions, but has alleged the violation of orders passed in a contempt petition. The contents of the order dated 02.02.2015 have already been reproduced hereinabove, which were to the effect that an enquiry was being conducted regarding the construction and at the end of the enquiry, if the petitioner is found entitled to any money, the same would be paid. It has also been recorded that the petitioner accepted the above submission.

12. Mr. Gogoi, learned counsel for the respondent Nos.3 & 4, has submitted that since the speaking order has now been passed rejecting all claims of the petitioner, none of the respondents would be guilty of committing any contempt of Court. The learned counsel for the respondent Nos.3 & 4 has placed reliance on the decision of the Apex Court in ***J. Parihar -Vs- Ganpat Duggar & Ors.***, reported in ***(1996) 6 SCC 291***, where at Para 6, the Court held as follows:-

> "*6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions*

issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act.

Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."

13. He has also placed reliance on the decision of the Apex Court in ***V. Senthur & Ors. -Vs- M. Vijayakumar & Ors.***, reported in ***(2022) 17 SCC 568***, where at Para 14, the Apex Court had held as follows:-

"*15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order."*

14. He accordingly prays that this contempt petition need not be proceeded with any further and may be closed.

15. The learned Senior Counsel appearing for the petitioner has submitted that the fact situation in the two cases referred to by the learned counsel for the

respondent Nos.3 & 4 are at variance from the facts and circumstances of the present case and, therefore, the aforesaid judgments would not apply to the present case. He has submitted that the issuance of the order dated 16.03.2024 does not satisfy the requirements of the order dated 31.03.2014 passed in WP(C) No.1373/2014, inasmuch as, the respondents were required to take a decision as per the conditions laid down in the case of ***Tamsher Ali*** (supra) and since the order dated 02.02.2015 had been passed in a contempt petition alleging contempt of the earlier orders passed by this Court, the speaking order does not meet the requirements of the orders of this Court and, therefore, the respondents are guilty of contempt of Court. He has submitted that the speaking order does not even refer to the orders passed in WP(C) No.1373/2014.

16. Learned Senior Counsel for the petitioner submits that the speaking order dated 16.03.2024 is not an exercise in pursuance of the orders passed in WP(C) No.1373/2014 and, therefore, the respondents are in contempt for not complying with the order passed in WP(C) No.1373/2014. He has further submitted that the order dated 16.03.2024 is not in pursuance of any enquiry held as a consequence of orders passed in WP(C) No.1373/2014.

17. I have heard the learned counsel appearing for the parties, and I have also considered the materials available on record.

18. The allegations in this contempt petition were regarding violations of the

orders passed in Cont. Case (C) No.394/2014. The order dated 02.02.2015, as already noted hereinabove, had already recorded the submission of the counsel for the respondents that an enquiry was being conducted regarding the construction and, after the enquiry, if the petitioner was found entitled to any money, it would be paid to him. The petitioner had accepted the above submission and, therefore, the Court had directed the completion of the enquiry and required the respondents to pass final orders regarding entitlement to money within a period of 6(six) months from 02.02.2015. There is no dispute at the bar that the final orders were not passed within the time frame given by the Court. However, this Court notices that a speaking order has been passed rejecting the claim of the petitioner for release of money against the work done by him. This contempt petition is not arising out of violation of the orders passed by this Court in WP(C) No.1373/2014 but is arising out of the order dated 02.02.2015 passed by this Court in Cont. Case (C) No.394/2014, wherein the allegation had been made that the orders passed in WP(C) No.1373/2014 had not been complied with. The petitioner accepted the order dated 02.02.2015 passed in Cont. Case (C) No.394/2014 and, therefore, in the opinion of this Court, the respondents were required to complete the enquiry and pass final orders regarding entitlement of money. Though the speaking order regarding the entitlement of money has been passed after the time frame given by this Court, I am of the considered opinion that the order dated 02.02.2015, having been complied with by passing of a speaking order, the respondents in the given circumstances

cannot be held to have violated the order dated 02.02.2015 passed in Cont. Case (C) No.394/2014.

19. The submissions made by the learned Senior Counsel for the petitioner that the order dated 16.03.2024 is not in accordance with the requirement made by this Court in WP(C) No.1373/2014 cannot be brushed aside, and the petitioner would of course remain entitled to assail the speaking order dated 16.03.2024 in a manner known to law. It is made clear that closure of this contempt petition will not hamper such assailment by the petitioner to the order dated 16.03.2024 and this Court has not commented on the correctness or otherwise of the order dated 16.03.2024.

20. With the above observation, the contempt petition stands disposed of.

JUDGE

Comparing Assistant