

GAHC010080402021



2026:GAU-AS:5796

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

Case No. : WP(C)/2945/2021

SURAJIT DEKA
S/O PRANESWAR DEKA
RESIDENT OF ZOO NARENGI ROAD, OPP. C.P.W.D. COLONY, KARBI PATH,
GUWAHATI , 781021

VERSUS

UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY, GOVT. OF INDIA, CENTRAL PUBLIC
WORKS DEPARTMENT, NEW DELHI 01

2:THE CHIEF ENGINEER (GUWAHATI)
C.P.W.D
GARCHUK
GUWAHATI 781035

3:THE EXECUTIVE ENGINEER
PROJECT DIVISION
C.P.W.D
GUWAHATI 781015

4:THE ASSISTANT ENGINEER
SPSD II

C.P.W.D SONAPUR
ASSAM

5:THE DEPUTY COMMISSIONER

KAMRUP(M)
GUWAHATI.

6:THE STATE OF ASSAM

REPRESENTED BY SECRETARY TO GOVERNMENT OF ASSAM
DEPARTMENT OF POWER(E) MINES AND MINERALS DEPARTMENT
KHANIJ BHAWAN
DISPUR
GUWAHATI-781006.

7:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST.
GOVERNMENT OF ASSAM
PANJABARI ROAD
CHABIPUL
SANKARPUR
BATAHGULI
GUWAHATI-781037

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

- | | |
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| For the Petitioner(s) | : Mr. R. Hussain, Advocate
: Mr. A. A. Ahmed, Advocate |
| For the Respondent(s) | : Ms. S. Baruah, CGC
: Mr. S. R. Baruah, Government Advocate
: Mr. R. R. Gogoi, Standing Counsel |
| • Date on which Judgment was reserved | : N/A |
| • Date of Pronouncement of Judgment | : 24.04.2026 |
| • Whether the pronouncement is of the Operative Part of the Judgment | : No |
| • Whether the full Judgment has been Pronounced | : Yes |

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Hussain, the learned counsel appearing on behalf of the Petitioner and Ms. S. Baruah, the learned CGC appearing on behalf of the Respondent Nos. 1, 2, 3 and 4. I have

also heard Mr. S. R. Baruah, the learned Government Advocate appearing on behalf of the Respondent Nos. 5 and 6 and Mr. R. R. Gogoi, the learned Standing counsel appearing on behalf of the Respondent No.7.

2. The present writ petition has been filed by the Petitioner seeking the following reliefs which are reproduced herein under:

- “(i) To set aside and quash the show cause notice no. 23(106)/EE/PD/2020/329 dated 12.05.2020.*
- (ii) To set aside and quash the order of termination of work order vide No. 23(106)/EE/PD/2020/713 dated 28.08.2020 issued by the Respondent No.3 and upon cause or causes being shown and after hearing both the parties be pleased to make the Rule absolute.*
- (iii) To direct the Respondents to refund the amount of performance guarantee which was furnished to them in the form of BG Bond No.3213ILG001618 dated 17.05.2018 for Rs.22,93,058.00 issued by Punjab National Bank, Mahabir Market Branch, S.R.C.B. road, Guwahati-781001.*
- (iv) To direct the Respondents to pay the Bank charges for extra 16 months paid by the petitioners to his Banker for keeping the BG Bond No. 3213ILG001618 dated 17.05.2018 for Rs.22,93,058.00 alive till the determination of the contract.”*

3. It is the case of the Petitioner that the Petitioner was awarded

a contract for construction of Internal Roads at 33rd Bn. ITBP Karchia Sonapur, Guwahati. However, on account of not granting of the permissions by the Forest Department of the Government of Assam as well as the ban imposed by the District Administration, Kamrup (M), the Petitioner could not complete the work and resultantly after issuance of Show Cause Notice, the Petitioner's contract was terminated and the Bank Guarantee invoked. The Petitioner therefore has approached this Court by filing the present writ petition.

4. It is the opinion of this Court that the issue involved in the instant proceedings relates to as to whether there was any breach of contract by the Petitioner or the Petitioner was restricted by conditions beyond its control to perform the terms of the contract. These aspects cannot be decided in a writ proceeding taking into account that evidence has to be led as to the existence of such circumstances which did not permit the Petitioner to carry out the performance of the work.

5. This Court during the course of hearing, enquired with Mr. R. Hussain, the learned counsel appearing on behalf of the Petitioner as to whether there is any dispute redressal forum taking into account that such disputed questions of facts has to be dealt with

in a forum wherein evidence can be led.

6. Mr. R. Hussain, the learned counsel referred to Clause 25 of the General Conditions of Contract, 2014 of the CPWD which permits that such disputes to be decided by a particular forum in the manner stipulated therein. Clause 25 of the General Conditions of Contract, 2014 is reproduced herein under.

“CLAUSE 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders for these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to Dispute Redressal Committee (DRC)

within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and, give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer, CPWD in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General CPWD (CE/ADG/DG) for appointment of arbitrator on prescribed proforma as per Appendix XV under intimation to the other party.

It is a invoking arbitration.

The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-Charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- a. *A party fails to appoint the second Arbitrator, or*
- b. *The two appointed Arbitrators fails to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be."*

7. Taking into account that the present dispute would require a detailed factual examination on the basis of evidence led and further that the agreement specifically provides a dispute resolution mechanism in Clause 25 as quoted above, this Court is not inclined to exercise the jurisdiction under Article 226 of the Constitution.

8. This Court also duly takes note of that the Petitioner has been bonafidely and diligently pursuing the present proceedings and under such circumstances, as this Court is not entertaining the disputed questions of facts, the period during which the instant writ petition has been pending is required to be excluded in terms with Section 14 of the Limitation Act, 1963.

9. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

- (i) This Court is not inclined to entertain the instant writ petition under Article 226 of the Constitution on the ground that the

dispute involved in the instant proceedings would require detailed examination of factual disputes. In addition to that, this Court is also not inclined to entertain the writ petition on the ground of existence of an agreement providing a specified dispute resolution mechanism.

- (ii) The writ petition accordingly dismissed.
- (iii) The dismissal of the instant writ petition shall not preclude or prejudice the Petitioner to initiate appropriate proceedings in terms with Clause 25 of the General Conditions of Contract, 2014.
- (iv) The period during which the instant writ petition has been pending i.e. w.e.f. 26.04.2021 till date be excluded while computing the period of limitation.

JUDGE

Comparing Assistant