

GAHC010086702022



2026:GAU-AS:2512

THE GAUHATI HIGH COURT

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

WRIT PETITION [C] NO. 3281/2022

Nurul Alam Barbhuiya, aged about 31 years, S/o - Kurman
Ali Barbhuiya, R/o – Village Ujjain Gram, Borkhola, P.O. –
Barjatrapur, P.S. – Borkhola, District – Cachar, Assam.

.....**Petitioner**

-VERSUS-

1. The State of Assam, represented by Chief Secretary to the Govt. of Assam, Dispur, Guwahati, Assam, Pin no. 781006.
2. The Commissioner and Secretary to the Government of Assam, Agriculture Department, Dispur, Guwahati, Assam, Pin no. - 781006.
3. The Director of Horticulture and F.P. Assam, Khanapara, Kamrup [M], Assam, Pin – 781022.
4. The District Agriculture Officer, Cachar, Silchar, Assam, Pin – 788001.
5. The Additional District Agriculture Officer Arunachal Circle, District – Cachar, Assam, Pin no. – 788001.

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner : Mr. N.K. Murry, Advocate

Advocate for the Respondent no. 1 : Mr. S.R. Baruah, Junior
Government Advocate

Advocate for the Respondent nos. 2-5 : Ms. R. Borah, Standing
Counsel, Agriculture Department

Date of hearings : 17.02.2026

Date of pronouncement of judgment : 17.02.2026

Whether the pronouncement is of the
Operative part of the judgment ? : No

Whether the full judgment has been
Pronounced ? : Yes

JUDGMENT & ORDER

[M. Choudhury, J]

Heard Mr. N.K. Murry, learned counsel for the petitioner; Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent no. 1; and Ms. R. Borah, learned Standing Counsel, Agriculture Department for the respondent nos. 2-5.

2. In this writ petition under Article 226 of the Constitution of India, the petitioner has inter-alia sought for a direction to the respondent authorities in the Agriculture Department,

Government of Assam to release the due subsidy amount payable to the petitioner in terms of an Work Order dated 05.04.2019 issued in his favour by the respondent no. 4.

3. The Work Order dated 05.04.2019 was issued by the respondent no. 4 for establishment of a small nursery. By the Work Order, the petitioner was informed that his name had been enlisted in the provisionally selected beneficiary list for project-based activities [i.e. establishment of a small nursery] under the HMNEH Scheme – 2018-2019. The petitioner was asked to start the construction/establishment of the small nursery within the time frame [i.e. within 2 months] from the date of receipt of the Work Order. The petitioner was asked to prepare a Detail Project Report [DPR] in consultation with the concerned ADO/Technical experts of the Agriculture Department and to submit the same along with bills/vouchers, relevant documents, completion report, Bank Account details, etc. for onward submission for release of subsidy amount [DBT]. The petitioner was informed that the final release of subsidy would be subject to receipt of a satisfactory report from the Joint Inspection team only.

4. It is the case of the petitioner that after his enlistment in the provisionally selected beneficiary list and issuance of the Work Order on 05.04.2019, the petitioner proceeded to undertake all the necessary measures for establishment of a small nursery as per the advice/instruction and the supervision of the concerned Departmental authorities. The petitioner has stated that he had completed/executed the Work Order allotted in his favour by setting up a nursery, strictly in adherence to the terms and conditions of the HMNEH Scheme - 2018-2019.

5. After establishment/construction of the small nursery, a verification team consisting of [a] District Agriculture Officer, Cachar, [b] ADO, Arunachal, Cachar, [c] Senior Scientist and Head Krishi Vigyan Kendra [KUK] Cachar Arunachal, [d] SDAO Horticulture and [e] CS [K.V.K.] visited the small nursery of the petitioner located at Village – Ujjain Gram Borkhula, Cachar, Silchar, which he has named as Al-Amin Nursery. In the Joint Verification Report the team reported that the nursery of the petitioner was in the production stage with effect from the establishment stage and the visiting officials had subscribed their seals and signatures in the Joint Verification Report, which the petitioner has annexed as Annexure – 5 of the writ

petition.

6. Thereafter, on the basis of the Joint Verification Report, the respondent no. 4 vide his Office Letter dated 17.03.2020 wrote to the respondent no. 3 informing that on the basis of the Work Order dated 05.04.2019, the enlisted beneficiary, that is, the petitioner had completed the work of the nursery and submitted bills/vouchers and other relevant documents for release of the subsidy amount admissible as per the Government norms. Informing so, the respondent no. 4 requested the respondent no. 3 to make arrangements for release of the Government's share upon satisfaction. In the Office Letter dated 17.03.2020 the respondent no. 4 had observed that the admissible subsidy amount would be Rs. 7.50 Lakhs.

7. When despite submission of the Joint Verification Report and the Office Letter dated 17.03.2020, the respondent authorities, more particularly, the respondent no. 3 did not release any subsidy amount to the petitioner, the petitioner has approached this Court by the present writ petition seeking the relief, mentioned above.

8. In the affidavit-in-opposition filed by the respondent no. 3, a stand has been taken to the effect that a small nursery was sanctioned to the petitioner vide a Sanction Order dated 20.03.2019. However, the Sanction Order dated 20.03.2019 has not been made part of the affidavit-in-opposition. The respondent no. 3 has stated that vide an Office Letter dated 21.12.2021, a request was made to the respondent no. 4 to submit an up-to-date status report of the nursery with photographs, prior to payment of the bill and the report should contain information on the aspects mentioned herein. According to the respondent no. 3, the respondent no. 5 submitted an up-to-date status report of the nursery to the respondent no. 4 on 03.01.2022 after a personal visit to the nursery on 31.12.2021 pointing out five deficiencies. It is on the basis of the report submitted by the respondent no. 5 on 03.01.2022 after personal visit, the respondent no. 3 has observed that the nursery of the petitioner was still in the establishment stage. According to the respondent no. 3, the photographs submitted by the respondent no. 5 with his report had clearly indicated that the nursery was not completed. It is the further contention of the respondent no. 3 that the payment under the HMNEH Scheme is completely back-ended.

9. Neither of the two sides has brought the detailed guidelines, terms and conditions of the Scheme named HMNEH Scheme on record. It is, however, noticed that HMNEH Scheme stands for 'Horticulture Mission for North East and Himalayan States Scheme' and it is a sub-scheme under the centrally sponsored 'Mission for Integrated Development of Horticulture' [MIDH]. The objective of the HMNEH Scheme focuses on the holistic development of horticulture, including, fruits, vegetables, spices and powers, specifically for the States in the North Eastern and Himalayan Region. It envisaged financial assistance in the form of subsidy to the farmers in the North Eastern States and the Himalayan States.

10. From the Joint Verification Report [Annexure – 5 to the writ petition] which was stated to have been submitted by a team of officials after an inspection of Al-Amin Nursery of the petitioner at Village - Ujjain Gram, District - Cachar, the nursery was found to be in the production stage with effect from the establishment stage. The Report seemed to have been prepared in August, 2019, that is, after about four months from the Work Order dated 05.04.2019. The Office Letter dated 17.03.2020 of the respondent No. 4 had endorsed the fact that the petitioner had completed the works of the nursery and submitted bills/vouchers and other relevant documents for release of the subsidy amount admissible as per the Government norms. From the contents of the Office Letter dated 17.03.2020, the respondent No. 4 appeared to have reached a satisfaction that the petitioner had completed the part required on his part for establishing the nursery as he, by the Office Letter dated 17.03.2020, had requested the respondent no. 3 to make arrangement for the release of the State Government's shares of the subsidy to the extent of Rs. 7.50 Lakhs upon reaching a satisfaction from his end.

11. The affidavit-in-opposition of the respondent did not advert to the Joint Verification Report and the Office Letter dated 17.03.2020 in any manner. From the stand taken in the affidavit-in-opposition of the respondent no. 3, it transpires that on 31.12.2021, the respondent no. 5 made a personnel visit to the nursery of the petitioner and submitted a status report before the respondent no. 4. The respondent no. 4 upon receipt of the status report had, in turn, forwarded the said report to the respondent no. 3 vide an Office Letter dated 03.01.2022. It is on the basis of the said status report prepared by the respondent no.

5 after a personnel visit to the nursery, the respondent no. 3 has taken the stand in the affidavit that the nursery was still in the establishment stage.

12. When the proposal forwarded by the respondent no. 4 to the respondent no. 3 vide Office Letter dated 17.03.2020 is compared with the stand taken by the respondent no. 3 in the affidavit-in-opposition, it seems to have projected two different scenarios. As per the proposal contained in the Office Letter dated 17.03.2020, the nursery set up by the petitioner was complete much before the said date, 17.03.2020. On the other hand, as per the affidavit-in-opposition of the respondent no. 3 filed on 29.07.2022, the nursery of the petitioner was still in the establishment stage.

13. The exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution is discretionary. The very amplitude of the jurisdiction demands that it will be exercised subject to certain self imposed limitations. It is settled that this 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 facts 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 among the parties is complete. A writ petition is ordinarily decided on the basis of affidavits. When a writ petition raises disputed questions of fact and for determination of those, a fact finding exercise is necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution of India and then in such a situation, the Court may decline to try a writ petition.

14. In view of the contrary scenario projected through the Office Letter dated 17.03.2020 and the stand taken in the affidavit-in-opposition filed on 29.07.2022, it would not be proper and expedient for the Court to embark on any fact-finding enquiry to decide whether the petitioner had completed the nursery as per the Work Order dated 05.04.2019 and the guidelines, terms and conditions of the HMNEH Scheme to be eligible to receive subsidy amount to the extent of Rs. 7.50 Lakhs, as claimed in this writ petition. Such a fact finding exercise can only be undertaken by the respondent authorities in the Agriculture Department,

Government of Assam.

15. In view of such obtaining fact situation and taking note of the stands taken by the respondent no. 3 at different points of time suggestive of contrary stands, this Court is of the considered view that the respondent no. 2 is best positioned to conduct a fact-finding enquiry to reach a finding whether the petitioner had completed the nursery as per the Work Order dated 05.04.2019 within the stipulated time under the HMNEH Scheme to be eligible to receive any subsidy amount from the Government. It is accordingly directed. While conducting the enquiry, the respondent no. 2 shall afford an opportunity of hearing to the petitioner to submit all the supporting documents with regard to his claim for the subsidy amount under the HMNEH Scheme. The respondent no. 2 shall, thereafter, on the basis of the materials available in the departmental records and the documents submitted by the petitioner shall determine whether the petitioner is eligible to receive any subsidy amount under the HMNEH Scheme and if the answer is in affirmative, then what would be the subsidy amount the petitioner is eligible to receive.

16. The writ petition is, therefore, disposed of with a direction to the respondent no. 2 to complete the entire exercise within a period of 4 [four] months from the date of submission of a certified copy of this order at his Office by the petitioner by passing a speaking order. The speaking order to be passed shall, thereafter, be immediately communicated to the petitioner.

JUDGE

Comparing Assistant