

GAHC010187472023



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

Case No. : WP(C)/4948/2023

MUSLIM ALI
S/O LT. MAKBUL ALI R/O SUNDARBARI P.S JALUKBARI GUWAHATI 14
DIST. KAMRUP METRO ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY AND SPECIAL SECRETARY
TO THE GOVT OF ASSAM PUBLIC AND WORKS BUILDING AND N.H
DEPTT. DISPUR GUWAHATI 781006

2:THE COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVT OF ASSAM PUBLIC AND WORKS BUILDING AND N.H
DEPTT. DISPUR GUWAHATI 781006

3:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BUILDING) ASSAM CHANDMARI GUWAHATI
781003

4:THE EXECUTIVE ENGINEER

PWD GOALPARA DISTRICT AND SOUTH SALMARA MANKACHAR
DISTRICT TERRITORIAL BUILDING DIVISION GOALPARA PIN 783101

5:THE SPECIAL CHIEF ENGINEER
PWD BUILDING HEALTH AND EDUCATION ASSAM CHANDMARI
GUWAHATI 78100

Advocate for the Petitioner : MR P SARMA

Advocate for the Respondent : SC, PWD ROAD

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

30.08.2023

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. P. Sarma, learned counsel for the petitioner and Mr. B. Gogoi, learned Standing Counsel, Public Works Department [PWD] for all the respondents.

2. By a Work Order bearing no. BPM.17/2013/17 dated 28.02.2014, the petitioner was awarded a contract-work viz. 'Construction of ITI under MSDP at Nidanpur, Lakhipur in Goalpara District under Goalpara Building Division' ['the Contract-Work', for short] at a Contract Price of Rs. 3,69,25,000/- with the condition that the Contract-Work would have to be completed within a stipulated period of 12 [twelve] months following compliance of requisite formalities.

3. Mr. Choudhury, learned senior counsel appearing for the petitioner has submitted that the worksite was handed over to the petitioner only on 06.10.2016. After the worksite was handed over to the petitioner, the petitioner proceeded to execute the Contract-Work. As he was not paid the amount against the Running Account Bill, the petitioner approached this Court by way of a writ petition, W.P.[C] no. 3793/2022 seeking a direction to the respondent PWD authorities for disbursal of an amount of Rs. 1,49,62,686.82. When the writ petition was listed for motion on 08.06.2022, this Court while issuing notices to the respondent authorities in the PWD, had observed that the pendency of the writ petition should not be a bar for the respondent authorities to pay the Running Account Bill to the petitioner, if the same was admitted by the Department. During the pendency of the writ petition, a measurement of the works executed by the petitioner in relation to the Contract-Work, was undertaken by the respondent authorities and as per the Compliance Certificate [Page-118] signed under the hand of the respondent no. 4, the petitioner was shown to have completed 63.10% of the

Contract-Work. The petitioner has claimed that the percentage of the Contract-Work he had executed is more than 63.10%. But, instead of disbursing the amount against the Running Account Bill, the respondent authorities have proceeded to issue a letter on 15.06.2023 to express displeasure about alleged slow progress of the Contract-Work. The letter dated 15.06.2023 was followed by the impugned order dated 02.08.2023 issued under the hand of the respondent no. 4, whereby, the Contract-Work has been withdrawn from the petitioner with the further observation that the balance work would be executed through other agencies at the risk and cost of the petitioner. Aggrieved by such actions of the respondent authorities, the petitioner has approached this Court by this writ petition challenging the impugned order dated 02.08.2023.

3.1. Mr. Choudhury has submitted that the petitioner had also executed certain extra works in connection with the Contract-Work awarded to the petitioner. He has submitted that notwithstanding the challenge made to the impugned order dated 02.08.2023, the respondent authorities in the PWD are duty bound to carry out joint measurement in respect of the Contract-Work as well as the extra works executed by the petitioner, in presence of the petitioner.

3. Mr. Gogoi, learned Standing Counsel, PWD has submitted that the appropriate steps for joint measurement of the works executed by the petitioner in respect of the Contract-Work, would be carried out, if not carried out till date, by serving due notice upon the petitioner and by keeping proper custody of the measurement books, etc. before giving the new contract to the new contractor to proceed ahead with the balance part of the Contract-Work.

4. Issue notice, returnable on 25.09.2023.

5. As Mr. Gogoi has appeared and accepted notices on behalf of all the respondents, no formal notice is needed to be issued to the respondents. Mr. Sarma, learned counsel for the petitioner shall furnish requisite nos. of extra copies of the writ petition along with the annexures, to Mr. Gogoi within 3 [three] working days from today.

6. It is observed that the respondent authorities are to take appropriate steps to carry out joint measurements of the Contract-Work executed by the petitioner till 02.08.2023 with the assistance and cooperation of the petitioner in the meantime, after giving due notice to the petitioner.

7. List the case 25.09.2023.

JUDGE

Comparing Assistant