GAHC010233812023

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

Case No. : WP(C)/6116/2023

M/S SAMIM AKHTER CHOUDHURY
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SIX MILE, PANJABARI ROAD,
HOUSE NO. 29, GUWAHATI- 781022, DISTRICT- KAMRUP(M), ASSAM,
REPRESENTED BY ITS SOLE PROPRIETOR,
SRI SAMIM AKHTER CHOUDHURY, AGED ABOUT 53 YEARS,
SON OF LATE JALIL AHMED CHOUDHURY,
RESIDENT OF HOUSE NO. 29, SIX MILE,
PANJABARI ROAD, GUWAHATI- 781022,
DISTRICT- KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
FOREST AND ENVIRONMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIVISIONAL FOREST OFFICER
GOLAGHAT FOREST DIVISION
DISTRICT- GOLAGHAT
ASSAM
PIN- 785621.

3:THE DIVISIONAL FOREST OFFICER
KARBI ANGLONG EAST DIVISION

DIPHU
DISTRICT- KARBI ANGLONG

ASSAM

PIN- 782460.

4:THE NUMALIGARH REFINERY LIMITED
A GOVERNMENT OF INDIA UNDERTAKING

HAVING ITS REGISTERED OFFICE AT 122 A
G.S. ROAD
CHRISTIAN BASTI

GUWAHATI- 781005
REPRESENTED BY ITS MANAGING DIRECTOR.

5:THE CHAIRMAN
NUMALIGARH REFINERY LIMITED
122A
G.S. ROAD
CHRISTIAN BASTI

GUWAHATI
KAMRUP(M)
ASSAM

PIN- 781005.

6:THE MANAGING DIRECTOR
NUMALIGARH REFINERY LIMITED
122A
G.S. ROAD
CHRISTIAN BASTI

GUWAHATI
KAMRUP(M)
ASSAM

PIN- 781005.

7:THE GENERAL MANAGER (COMMERCIAL)
NUMALIGARH REFINERY LIMITED
NRL COMPLEX
NUMALIGARH
DISTRICT- GOLAGHAT

ASSAM
PIN- 785699.

8:THE GENERAL MANAGER (PROJECT)
NUMALIGARH REFINERY LIMITED
NRL COMPLEX

NUMALIGARH
DISTRICT- GOLAGHAT

ASSAM
PIN- 785699.

9:THE HEAD (PROJECT-COMMERCIAL)
NUMALIGARH REFINERY LIMITED
NRL COMPLEX
NUMALIGARH
DISTRICT- GOLAGHAT

ASSAM
PIN- 785699.

10:THE RESIDENT CONSTRUCTION MANAGER
ENGINEERS INDIA LIMITED CUM ENGINEER IN-CHARGE

DCU REVAMP PROJECT
NRL

NUMALIGARH
DISTRICT- GOLAGHAT

ASSAM
PIN- 785699

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

16.10.2023

Heard Mr. R. Sarma, learned counsel for the petitioner and Ms. M. Kalita, learned counsel representing Mr. P.N. Goswami, learned Standing Counsel Environment and Forest Department for the respondent nos. 1 – 3.

2. It has been projected that after emerging successful in tender process initiated vide Tender

Notice bearing Tender no. AS/B440-003-CU-TN-8101/1004 dated 02.11.2022, the petitioner was issued a Letter of Acceptance [LoA] dated 02.04.2023 [Annexure-1] for a contract-work viz. 'Pilling and RCC Works for Delayed Coker Unit [DCU] Revamp Project of Numaligarh Refinery Limited' ['the Contract-Work', for short] at a total value of Rs. 8,54,15,930/- inclusive of GST & BOCW cess. The LoA was followed by a Work Order no. 4300075516 dated 25.04.2023. After compliance of requisite formalities, a Contract Agreement no. K 500811 dated 05.05.2023 had been executed between the petitioner on one part and the respondent NRL on the other part.

2.1. It is the case of the petitioner that after issuance of the LoA, it proceeded to execute the Contract-Work and completed the Contract-Work to the extent of about 40% till date. In the process of executing the Contract-Work, the petitioner had been using Ready Mix Concrete [RMC] of two entities, [i] M/s NUVOCO Vista Corporation Limited, and [ii] M/s PECO Projects & Infrastructure Private Limited, who are authorized suppliers of Ready Mix Concrete [RMC] Plant approved by the respondent NRL. The petitioner has, thus, projected that the petitioner is not using any forest produces directly in executing the Contract-Work and the suppliers, M/s NUVOCO Vista Corporation Limited and M/s PECO Projects & Infrastructure Private Limited who, in the event of use of any forest produces, have been obtaining the necessary Forest Clearance Certificates from the competent authorities in the Environment and Forest Department, Assam. It is, thus, projected that the petitioner is not liable to deposit any forest royalties in connection with the Contract-Work as it is not using/procuring any forest produces directly. It is, thus, contended that any deduction from the running bills of the petitioner by the employer i.e. NRL would amount to payment of forest royalties on the same forest produce twice. With such projections, the petitioner has challenged deduction of two amounts – Rs. 2,05,753/- & Rs. 2,85,160/- - as forest royalties from the running bills of the petitioner by the employer i.e. NRL.

3. Issue notice, returnable in 4 [four] weeks.

4. As Ms. Kalita, learned counsel has appeared and accepted notices on behalf of the respondent nos. 1 – 3, no formal notice need to be issued to the said respondents. Mr. Sarma, learned counsel for the petitioner shall furnish requisite nos. of extra copies of the writ petition along with the annexures, to Ms. Kalita within 3 [three] working days from today.

5. The petitioner shall take steps for service of notice upon the respondent nos. 4, 5, 6, 7, 8, 9 & 10 by registered post with A/D within 3 [three] working days from today.

6. In support of its contention, Mr. Sarma, learned counsel for the petitioner has referred to an Office Memorandum bearing no. BB.56/2000/1 dated 17.06.2000 of the Finance [Budget] Department, Government of Assam. The Office Memorandum dated 17.06.2000 has provided for method and procedure for calculation/payment of forest royalties in respect of execution of any construction contract. Having regard to the projection so made on behalf of the petitioner, it is provided that till the returnable date, the respondent authorities in the NRL while processing any future running bills of the petitioner, shall process the same in strict adherence to the method and procedure laid down in the Office Memorandum dated 17.06.2023.

JUDGE

Comparing Assistant