
(1998) 01 GAU CK 0016
In the Gauhati High Court
Case No : Writ Appeal No. 522 of 1997

Green Valley Industry

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Citation : (1999) 1 GLT 604

Hon'ble Judges : M. Ramakrishna, C.J;P.C. Phukan, J

Bench : Division Bench

Advocate : N. Dhar and P.B. Majumdar, for the Appellant; S.S. Dey, for the Respondent

Judgement

M. Ramakrishna, C.J.—This is an appeal presented by the Appellant seeking to question the order of the learned Single Judge dated 31.7.97 by which one year's time was granted to the Government for making payment for the grounds taken in the appeal

2. The order has been called cryptic, inasmuch as, the grounds taken in the writ petition were not disclosed in the order while directing issue of a writ of mandamus against the State of Assam for payment of the sum of Rs. 8,38,632/- in favour of the Appellant.

3. It has been mentioned that though the Appellant-writ Petitioner succeeded in obtaining relief at the hand of the writ court, the only grievance of the Appellant is, that the writ Court should not have granted one year period for payment of the amount in favour of the Appellant, inasmuch as, no reason whatsoever has been assigned in the order under appeal while granting one year period. Therefore, the Appellant wants that the amount of money ordered to be paid by the State Government, the Respondent herein, shall be directed to be paid in favour of the Appellant forthwith. It is for this reason, the appeal came up for consideration.

4. Mr. SS Dey, learned Additional Senior Government Advocate, appearing for the

State of Assam, at the outset has pointed out that from the affidavit sworn by the Executive Engineer, the Respondent No. 5 herein, in Civil Rule No. 582/96 presented before the writ court, it is seen that the liability of the State Government to the extent of Rs. 8,38,632/- being the balance amount payable to the Appellant-writ Petitioner in regard to the completion of certain work for the Public Works Department the deponent-Executive Engineer admitted the liability of the State Government for payment of the said sum.

5. But so far as the granting of one year time for payment of the amount in question is concerned. Mr. Dey submits that for want of resources the Govt. was not in a position to make the payment and on prayer being made on behalf of the Government, perhaps the writ court took into consideration the prayer and thereby granted time for one year to make the payment.

6. However, we have brought to the notice of the Government Advocate that since as on today five months time have elapsed from 31.7.97, it is a fit case for directing the Government to pay the amount in question to the Appellant-writ Petitioner instead of waiting for 12 months as we do not see any acceptable reason for granting 12 months time. However, Mr. Dey, learned Govt. Advocate submits that regard being had to the facts of the case and the amount involved in the instant case, the Court may grant further 2 months time to enable the Government to make the payment to which learned Counsel for the Appellant-writ Petitioner has no objection.

7. Although the writ court has not considered the averments made in the writ petition and the defence taken by the State Government in the counter affidavit with a view to allow the writ petition for insurance of a writ of mandamus for payment of Rs. 8,38,632/-, we see by a perusal of the averments made in the writ petition as well as the defence taken by the State of Assam, that this is a fit case for issuing a writ of mandamus. Learned Counsel for the Appellant has brought to our notice a similar view taken by the writ court in *Md. Rahimulla v. State of Assam and Ors.* reported in 1995(1) GLJ 121. It is seen therefrom that in similar circumstance after completion of the work by the contractor and that the Executive Engineer having written to the Government regarding the completion of the work by the Contractor to the tune of Rs. 248,202/- the writ court held that the contractor-Petitioner was entitled to the amount in regard to the work done by him and accordingly allowed the writ petition with a direction to the authority to pay the amount in question in favour of the writ Petitioner.

8. Therefore, in the light of the foregoing this appeal stands allowed in terms of the said decision with a direction to the Respondents to pay the amount of Rs. 8,38,632/- to the Appellant-writ Petitioner within a period of 2 months from today.

9. It is further made clear that in so far as the method of proportionate payment to the contractor/supplier as observed by the writ court is connected, this is not applicable in the instant case because other than the writ Petitioner- Appellant

we do not have other parties impleaded in this case.