

(2024) 01 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6630 Of 2018

Maresh Chandra Kakati

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 19-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2024) 01 GAU CK 0023

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : S J Sarmah, N.N. Upadhaya

Final Decision : Disposed Of

Judgement

1. The instant Writ Petition has been filed by the petitioner claiming a direction upon the respondent authorities to pay the amount of Rs.7,89,262/-(Rupees seven lakh eighty nine thousand two hundred sixty two) only, which is the amount due against the Final Bill No.RA/III/591/5, dated 06.06.2009 and also for a further amount of Rs.2,43,395/- (Rupees two lakh forty three thousand three hundred ninety five) only, which is the security deposit, lying with the respondent authorities in respect to the contract in question.

(2) The facts as could be discerned from the Writ Petition is that the petitioner herein was issued a work order on 05.11.2007 for modernization of Sukla FIS under NABARD RIDF-XI modernization and re-construction of X-Drainage work at Chainage 16100.00 M of Canal "D". The petitioner duly completed the work and was issued a certificate of completion stating inter alia that the work was completed on 20.10.2010. Thereupon, the petitioner who was required to maintain the work for a period of one year from the date of completion also carried out the said maintenance.

(3) Upon the said, the petitioner was entitled to the refund to the amount of Rs.2,43,395/- which was deposited as the security deposit and further an

amount of Rs.7,89,262/-, which was the amount to which the petitioner claims is entitled to as the final bill amount.

(4) The record reveals that the amount pertaining to the security deposit i.e. Rs.2,43,395/- was duly admitted by the respondent authorities and in that regard, a cheque was also issued by the Department to the Treasury. However, the said cheque was not honoured by the Treasury. The record further reveals that since 30.11.2016, the said security deposit amount of Rs.2,43,395/- had not been released to the petitioner. It is also seen from the records that the respondent authorities have also duly admitted the amount of Rs.7,89,262/-, as there has been various communications so issued by the concerned respondent authorities to the petitioner, as on 28.06.2018 also. However, as the said amounts were not paid, the petitioner was constrained to approach this Court by filing the instant Writ Petition.

(5) I have also heard the learned counsel appearing on behalf of the parties.

(6) Mr. S.J. Sarmah, learned counsel appearing on behalf of the petitioner submits that the petitioner is not only entitled to the amount which has been claimed but would also be entitled to the interest on the said amount at the present Banking rate, taking into account that the respondent authorities have most illegally deprived the petitioner of his dues for reasons best known. He further submitted that pursuant to the filing of the instant Writ Petition and notice being issued on 24.09.2018, the respondent authorities have also not filed any affidavit-in-opposition denying the amounts.

(7) I have also heard Mr. N.N. Upadhaya, learned Standing Counsel appearing on behalf of the Irrigation Department who submits that as per the work order which was issued to the petitioner, it was specifically mentioned that payment of the bill of the work would be made when the funds are available from the Government and as in the instant case, the petitioner with his open eyes had accepted the said work order, the petitioner cannot claim any interest on the said amount.

(8) Upon hearing the learned counsel appearing on behalf of the parties and also upon perusal of the materials on record, it appears that the petitioner is entitled to the refund of the security deposit upon successful completion of the work in question. There is no denial to the fact that the petitioner did not complete the work and also pursuant to the completion has also maintained the work for one year.

(9) The respondent authorities have duly admitted that the petitioner is entitled to the amount of Rs.2,43,395/- on account of the security deposit. It is the opinion of this Court that payment of the bills for the work so done stands on a completely different footing from the questing of refunding the security deposit.

(10) Under such circumstances, this Court is of the opinion that the petitioner is entitled to the amount of Rs.2,43,395/- and also interest on the said amount

w.e.f. 30.11.2016 that is the date on which the Treasury had failed to honour the payment of the cheque issued by the Department.

(11) However, as regards the other amount of Rs.7,89,262/-, the record reveals that the Engineer In-Charge has duly certified that the petitioner is entitled to the said amount. Be that as it may, there is no certificate given by the Chief Engineer in that regard. This Court is of the opinion that if the respondent authorities have taken the work from the petitioner, the respondent authorities cannot deny the payment or the dues to the petitioner on the ground that they do not have the funds. The delay in disbursal of the amounts beyond the reasonable period makes the actions of the respondent authorities unreasonable and unfair and thereby violating the mandate of Article 14 of the Constitution. Under such circumstances, it is the further opinion of the Court that the petitioners dues if any, in respect of the work in question, has to be paid within a stipulated period. The said amount to be paid to the petitioner on account of the final bill, however would be subject to certain verifications to be carried out by the respondent authorities, taking into account that the Chief Engineer have not certified the said amount.

(12) Accordingly, the instant Writ Petition is therefore disposed of with the following observations and directions:-

(i) The petitioner herein is entitled to Rs.2,43,395/- (Rupees two lakh forty three thousand three hundred ninety five) only, on account of the security deposit, w.e.f. 30.11.2016. The petitioner herein would be entitled to interest @8% p.a. from 30.11.2016.

Accordingly this Court therefore, directs the respondent Nos.1 and 2 to take effective steps for release of the said amount of Rs.2,43,395/- (Rupees two lakh forty three thousand three hundred ninety five) only, along with interest @8% p.a. with effect from 30.11.2016, till the date of payment. The said respondents shall ensure that the payment is made not later than three (3) months from the date a certified copy of the instant order is served upon the Respondent Nos.1 and 2.

(ii) This Court further directs the respondent No.2 to verify as to whether the petitioner is entitled to the amount of Rs.7,89,262/- (Rupees seven lakh eighty nine thousand two hundred sixty two) only, so claimed and which has been duly certified by the Engineer In-Charge. Upon verification, if it is found that the petitioner is entitled to the said amount or any part thereof, the same be paid to the petitioner. The said exercise be completed within a period of four (4) months from the date a certified copy of the instant order is served upon the Respondent No.2.

(13) With the above observations and directions, the instant Writ Petition stands disposed.