

(2023) 06 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4752 Of 2021

M/S Eastern Agro Marketing Agencies

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 02-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Contract Act, 1872 — Section 70

Citation : (2023) 06 GAU CK 0036

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : U J Saikia

Final Decision : Disposed Of

Judgement

1. Heard Ms.M. Das, the learned counsel for the Petitioner. Mr. R. Dhar, the learned counsel appears for the Respondent Nos. 1, 3 & 4 and Mr. R. Borpujari, the learned counsel appears for the Respondent No. 2.

2. The case of the petitioner herein is that pursuant to a E-Tender dated 30/10/2015 for supply of Polar Blankets (100% Polyester) from registered Manufacturers or his Authorised Dealers for Procurement under the Chief Minister's Special Programme during the year 2015-16 for supply of the aforesaid materials in six groups, the Respondent No. 3 issued a work order to the respondent No. 4 vide order bearing No. DHTP.73/2015/196-99 dated 18/1/2016 for supply of 426565 pieces of Polar Blankets (100% Polyester) for distribution to the beneficiaries under the Chief Minister's Special Programme during the year 2015-16 in respect to Group -A, C and F. The total quantity of materials to be supplied to each group was also set out in the said order as well as the rate at which the said supply was to be made. On the basis of the said work order, on 18/1/2016 an agreement was entered into between the Respondent Nos. 1 and the Respondent No. 4.

3. Subsequent thereto on 21/1/2016, the Respondent No. 4 on the basis of the agreement dated 18/1/2016 issued a work order to the Petitioner as handling agent for supply of 85031 pieces of Polar Blankets under Group-A for distribution to the beneficiaries under the Chief Minister's Special Programme for the year 2015-16. On the basis of the said work order an agreement was entered into on 21/1/2016.

4. At this stage, if this Court peruses the agreement which has been enclosed as Annexure-3 to the writ petition, it transpires that amongst various Clauses, one of such Clause is that the respondent No. 4 shall release the payment to the petitioner only upon receipt of the payment from the indenting Directorate of Handloom and Textiles, Assam after deduction of 2% service commission and other taxable amounts. It was further mentioned in the said agreement that the Respondent No. 4 would not be responsible for any delay caused due to the failure/lapse on the part of the Respondent No. 3 i.e. the Director of Handloom, Textiles, Assam in releasing the fund for supply of the materials.

5. It further appears that the Petitioner claims that the Petitioner had supplied the said materials in terms with the agreement entered into on 21/1/2016 and raised Invoice dated 29/2/2016 amounting to Rs. 2,83,15,068/-.

6. In the meantime, while the said claim of the petitioner was pending settlement there were various other writ petitions filed before this Court claiming amounts on the basis of supplies made pursuant to the Chief Minister's Special Programme for the year 2015-16.

7. The Coordinate Bench of this Court vide the judgment dated 28/6/2019 passed in W.P.(C) No. 2610/2017 and analogous matters was of the opinion that a High Power Committee is required to be constituted to look into the various aspects pointed out in the said judgment and thereafter to take appropriate decision. In paragraph No. 83 of the said judgment, the Coordinate Bench of this Court further expressed its opinion as to what the High Power Committee was required to do. Paragraph 83 of the said judgment is quoted herein below :

"86. The committee shall examine payment of dues to the petitioners for supply of polar blankets having due regard to quantity and quality of the materials supplied and having regard to the discussions made above particularly in the context of Section 70 of the Contract Act; in this regard, Committee shall take a decision whether the goods (polar blankets) were accepted and enjoyed. Further, committee shall examine violation of tendering norms and guidelines in the tender process pursuant to NIT dated 30.10.2015 and fix responsibility whereafter departmental steps may be taken. The mode and manner of issuance of supply orders by AGMC shall be looked into. Committee shall also examine as to whether there was any criminality involved in the tendering and supply process involving various persons. If such examination results in an affirmative finding, Commissioner and Secretary to the Government of Assam, Handloom, Textiles and Sericulture Department shall lodge first information before the CID

Police Station whereafter law will take its own course.”

8. It further appears that pursuant to the judgment dated 28/6/2019 passed in W.P.(C) No. 2610/2017, the High Power Committee submitted a report on 30/1/2020. From a perusal of the said report, it transpires that the High Power Committee did not make any recommendation for cancellation of the orders or not to pay to the suppliers who supplied the materials.

9. Be that as it may, that pursuant to the High Power Committee’s report on 30/1/2020, an amount of Rs. 79,28,219/- was paid to the petitioner. However, an amount of Rs. 2,03,86,849/- remained pending as claimed in the writ petition for which the instant writ petition has been filed seeking a direction for payment of the said amount along with interest @ 24% per annum.

10. It appears from the records that on 20/9/2021, this Court issued notice and further observed that pendency of the writ petition shall not be a bar for the Respondents herein to release the amount as per his entitlement, following due procedure and in accordance with law, if there was no impediment in releasing the same to the petitioner. However, the instant matter thereafter has been listed today before this Court.

11. I have heard the learned counsel for the parties and perused the materials on record.

12. The learned counsel appearing on behalf of the Respondent Nos. 1, 3 and 4 submitted that as per Clause of the agreement dated 21/1/2016, the Respondent No. 4 would only make payment upon receipt of the amount from the Respondent Nos. 1 and 3 and as such till the amount is received by the Respondent No. 4 from the Respondent No. 1 and Respondent No. 3, the Petitioner does not have any enforceable right seeking a direction from this Court for payment of the said amount.

13. This Court put a specific query upon the learned counsel appearing for the Respondent Nos. 1, 3 and 4 as to whether the petitioner had supplied the said materials and as to whether the work order as well as the agreement on the basis of which the Petitioner supplied the materials, at any point of time was terminated or cancelled by the authorities. The learned counsel for the Respondent Nos. 1, 3 and 4 submitted that no doubt the petitioner had supplied materials in pursuance to the work order and the Deed of Agreement dated 21/1/2016 but the fact how much materials the petitioner had supplied is subject to verification. The learned counsel further submitted that the amount so payable to the petitioner upon verification would require some time to be disbursed taking into account that the budget on the basis of which the said work orders were issued by the respondent Nos. 1 and 3 have already lapsed. He therefore submitted that for that purpose some approval would be required from the Finance Department in that regard.

14. Upon hearing the learned for the parties and taking into account the

agreement between the Respondent No. 4 and the Petitioner and on the basis of which the Petitioner had already supplied the materials, this Court is of the opinion that the Petitioner therefore would be entitled to the amount in respect to the supply so made in pursuance to the agreement dated 21/1/2016. No doubt there is a Clause in the agreement to the effect that the petitioner would be entitled to the amount only upon receipt of the money by the Respondent No. 4 from the Respondent Nos. 1 and 3, but too long a delay in disbursing the said amount by taking recourse to the said Clause in the opinion of this Court would render the said Clause arbitrary and unreasonable.

15. This Court further is of the opinion that the extent to which the Petitioner had supplied the materials cannot be ascertained by this Court under Article 226 of the Constitution and as such, this Court is of the view that such steps would be best left to the Authorities to decide on the basis of the materials placed.

16. Considering the above, the instant writ petition therefore stands disposed off directing the Respondent No. 1, 3 and 4 to make necessary verification as regards the supply so made by the petitioner and thereupon, if it is found that the petitioner is entitled to the said amount claimed in the writ petition or such other amount as is found due on the basis of the verification, the said amount be paid to the Petitioner. In that regard, the Respondent Nos. 1 and 3 may submit appropriate proposal before the Respondent No. 2 for sanctioning the said amount if the budget had already lapsed and the Respondent No. 2 shall also take appropriate steps so that the Petitioner gets his entitlement.

17. The said exercise be completed within a period of six months from the date a certified copies of this judgment is served upon the Respondent No. 3 and 4 respectively.

18. With the above observations and directions, the petition stands disposed off.