
(1989) 05 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1005 of 1982

Prabin Dawka

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-05-1989

Acts Referred:

Citation : (1991) 1 GLJ 295

Hon'ble Judges : B.L.Hansaria, C.J. and M.Sharma, J

Bench : Division Bench

Advocate : P.Gogoi, P.C.Kataki, M.Barkakati, D.P.Chaliha, J.M.Choudhary,
Advocates appearing for Parties

Judgement

B.L.Hansaria, C.J.

1. A sum of Rs. 10,27708 has been sought to be realised from the petitioner through the aid of the machinery provided by the Bengal Public Demand Recovery Act, 1913. The aforesaid sum allegedly became payable by the petitioner to the respondents pursuant to the construction of culverts for which the contract was entered into between the parties. The amount payable consists of mainly some price for some stock materials which are remained with the contractor as excess of stock materials along with some dues as cost of remaining work done by other agencies. It may be stated here that out of seven culverts for which the contract was made, the petitioner had completed one culvert fully and half of three others. In this proceeding we are, however, not concerned whether the amount claimed by the department had really become due or not. What has been assailed is the authority of the Bakijai Officer in seeking to realise the aforesaid amount through the machinery provided by the aforesaid Act.

2. A perusal of the Act shows that the same can be used to realise a public demand which has been denned in the Act to mean any arrear of money mentioned or referred to in Schedule 1 of the Act. Reference to

Schedule shows that the only paragraph which ca., e ..tractsd is paragraph 9 which reads as s

"Any money payable to an officer of the government or any local authority, in respect of which the person is liable to pay the same as agreed, by written instrument, duly registered, that it shall be recoverable as a public demand".

In the present case through there is a written agreement between the parities it is fairly stated by Shri Chaliha, that the agreement does not contain any clause authorising the department to recover the amount due as a public demand. A similar matter has come up for consideration by this Court in Md. Anwamlla vs. Assam Board of Revenue, 198S (2) G.L.R. 424, in which it was held that if a suti of money could not be regarded as "public demand" within the meaning of the Act, the provisions provided by the Act could not be used to recover the amount. Similar is the position in the present case.

3. In view of what has been stated above, we are of the opinion, that the proceeding initiated against the petitioner had no authority of law. The same is, therefore, quashed.

4. The petition is allowed accordingly.