(2001) 02 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 1123 of 2001

Swadesh Lal Roy APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:
Constitution of India, 1950 — Article 298, 299, 300

Citation : (2001) 1 GLT 332

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : Amitava Roy and P. Chakraborty, for the Appellant; H. Rahman, for the Respondent

Judgement

N.S. Singh, J.—Upon hearing Mr. Amitava Roy, learned senior Counsel assisted by Ms. P. Chakraborty, learned Counsel for the Petitioner and also Mr. H. Rahman, learned Govt. Advocate for the State Respondents at some length, I am of the view that this matter can be disposed of at this stage considering the simple nature of the case and, accordingly, this writ petition is disposed of with the following short order.

2. In this writ petition, a prayer has been made by the writ Petitioner for a direction to the official Respondents to release the outstanding amount of Rs. 7,82,509/00 (Rupees Seven lakhs eighty two thousand five hundred and nine) only of the Petitioner''s bills for the work of metalling and blacktopping of Laisang Rajabazar Road Phase-I, Sector II from 11th to 20 KM, Group III at 14th to 15th KM. along with the interest @ 12% with effect from the dates of the final bills till the payment thereof by contending inter alia, that the Petitioner executed the related work and completed the same for which the official Respondents concerned had prepared the final bills and the related statements showed the outstanding liabilities in favour of the present writ Petitioner to the tune of Rs. 7,82,509/-. Supporting the case of the writ Petitioner, Mr. Amitava Roy, learned senior Counsel had drawn my attention to the document marked as Annexure-3

to the writ petition which is the office letter dated 29.12.2000, bearing No. NEC.II/Acct. 14/2000/3915 issued by the Executive Engineer, P.W.D., Silchar N.E.C., Division. II and submitted that the authority concerned had accepted the outstanding liabilities in favour of the Petitioner. I have perused the same which is the related liability certificate against the work ''Metalling & Blacktopping of Laisong Rajabazar Road Phase-I, Sector. II from 11th to 20th KM. Group-III at 14th to 15th KM and, this document establish the factum of the said outstanding liabilities in favour of the present writ Petitioner to the tune of Rs. 7,82,509/-. The learned senior Counsel also contended that in view of the well settled law of the land, the liabilities which was one admitted by the appropriate authority, it should be released forthwith but, it was not done so by the appropriate authority thus, putting the Petitioner in hardship and, the Petitioner having no alternative approached this Court for an appropriate order and direction from the end of this Court in the matter.

3. At the hearing, Mr. H. Rahman, learned Govt. Advocate appearing for the State Respondents submitted that the authority concerned might have given the part payment of the work done out of the said outstanding bills amount and, as such, the learned Govt. Advocate sought for sometime to have instructions in the matter and, according to him, in case any part payment is made, the same is to be examined by the appropriate authority.

4. The liability and actionability of Governments in contract have been widely recognised in the Anglo-Saxon jurisprudence. In India the contractual liability of the Government is to be found in Articles 298, 299 and 300 of the Constitution. Article 298 lays down that for the purpose of carrying out the functions of the State Government can enter into contracts. Article 299 contains essential formalities which a government contract must fulfil. Article 300 provides the manner in which suits and proceedings against or by the government may be instituted. The constitutional code for government contract is not complete, therefore, it is supplemented by the provisions of the Indian Contract Act, 1872. The legal analysis of government contracts is a matter of growing importance. Government contracts cannot be viewed purely as being similar in all respects to private contracts between two individuals, for here both administrative and contractual powers intersect. In this area, there is need to protect public interest and also to protect individuals against unfair exercise of administrative power. Such contracts raise problems of public law, such as, estoppel, natural justice, fundamental rights, writ jurisdiction etc. The law in this area in India is still in the process of evolution. Formerly the judicial view had been that a writ petition is not an appropriate remedy for the enforcement of contractual obligations. The remedy in case of breach of a government contract was simply a suit for damages. In recent times the judicial trend is to regard contracts between government and private individuals as not merely a matter of private law but, to some extent, of public law as well. A feeling is gathering strength that government is always a government whether it is dealing with matters of administration or contract. The government ought therefore be held subject to

some public law discipline in the contractual area.

5. In the case in hand, the competent authority i.e. the Executive Engineer, P.W.D., Silchar N.E.C., Division. II issued a liability certificate against the related work mentioned above and, admitted the factum of the outstanding liabilities in favour of the present writ Petitioner to the tune of Rs. 7,82.509/- as discussed above and, as such, it would be just and fair on the part of the official Respondents/competent authority concerned to release the outstanding liabilities in favour of the Petitioner as early as possible so that justice is being done from their end and the writ Petitioner will not require further to approach the authorities concerned even, the court from time to time. In my considered view, the writ Petitioner has enforceable legal right in the instant case as the appropriate authority cannot deny or object at the moment about the validity of the related statement showing the factum of outstanding liabilities as in Annexure-3 to the writ petition and, if they raise objection to this statement of liabilities, it should be barred by principle of estoppel and they cannot question the validity of it in any appropriate authority even, before this Court. Therefore, I direct the State Respondents/competent authority concerned to release the outstanding liabilities to the tune of Rs. 7,82,509/- (Rupees seven lakhs eighty two thousand five hundred and nine) and make payment of it to the writ Petitioner as early as possible preferably, within a period of 3 (three) moths from today, if not paid earlier but, it is made clear that such payment should be made without interest as claimed by the writ Petitioner. It is also made clear that if any part payment is made out of the outstanding bills, it should be adjusted accordingly by the appropriate authority after verifying it. However, it is further made clear that if the outstanding liabilities mentioned above is not paid within the stipulated period of 3 (three) months as directed by this Court, the official Respondents concerned are bound to pay interest @ 12% per annum from the date of the making of preparation of the final bills of contractual amount till the full payment of it is made.

For the reasons, observations and directions made above, this writ petition is disposed of but, no order as to costs.

