

GAHC010050322022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1852/2022

M/S TRIBENI ASSOCIATE AND ANR
A REGD. PARTNERSHIP FIRM, HAVING ITS OFFICE AT HATIGAON
CHARIALI, P.O. AND P.S. HATIGAON, GUWAHATI-781038, DIST. KAMRUP
(M), ASSAM, REP. BY ITS PARTNER, MD. NURUL HAQUE.

2: MD. NURUL HAQUE
S/O. SIDDIQUE RAHMAN
R/O. HOUSE NO. 136
HATIGAON
CHARIALI
UNION BANK BUILDING
P.O. AND P.S. HATIGAON
GUWAHATI-781038
DIST. KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. O THE GOVT. OF ASSAM, SOIL
CONSERVATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SOIL CONSERVATION

ASSAM
BHUMI SANGRAKSHAN BHAWAN
R/G BARUAH ROAD
GUWAHATI-781005.

3:THE DEPUTY COMMISSIONER

KAMRUP (R0 DISTRICT
AMINGAON
GUWAHATI.

4:THE DIVISIONAL OFFICER

NALBARI SOIL CONSERVATON DIVISION
P.O. AND P.S. NALBARI
DIST. NALBARI
ASSAM

Advocate for the Petitioner : MR. T HUSSAIN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

01.05.2024

- 1.** Heard Mr. Y.S. Mannan, learned counsel for the petitioners and Mrs. R.S. Deuri, learned counsel for the Soil Conservation Department. Mr. G. Bakalial, learned Government Advocate appears for the respondent no.3.

- 2.** The petitioners are aggrieved by non-payment of the outstanding bill amount of Rs.6,20,160/-, besides the non-refund of Earnest Money and Security Deposit for executing the work "Protective Afforestation of Hahara Village under SOPD-G during 2019-2020" under the Nalbari Soil Conservation, which was allotted to the petitioners, vide work order dated 29.08.2019. The work order stated that the work was to be completed on or before 26.09.2019, or else the fund would lapse.

- 3.** The petitioners' further case is that the work contract consisted of 2 (two) parts/components. The first part being the afforestation work including the

fixing of barbwires, putting up RCC posts, providing tubewells etc. amounting to Rs.6,11,332/- . The Second component/part of the contract work was for maintaining the afforestation work for 1 (one) year. The petitioners' counsel submits that the afforestation work, as required in the first part of the contract work, was to be done on or before 26.09.2019 and comprised 80% of the work contract. The remaining 20% of the work contract was for the maintenance of the afforestation work for one year, at a cost of Rs.1,17,342/-.

4. The petitioners' counsel submits that the petitioners completed the 80% part of the work, i.e. the first component of the contract work on 26.09.2019 and thereafter raised their bill for completion of the 80% work. The same was verified by the Range Officer, Rangia Soil Conservation Range and a completion certificate for the 80% of the contract work was issued, which was countersigned by the Division Officer, Nalbari Soil Conservation Division. The bill value payable to the petitioner was stated to be Rs.6.2060 lakhs, i.e. Rs.6,20,160/-, in terms of the Completion Report made by the above authorities. The petitioners' counsel submits that the above amount has not been given to the petitioners.

5. Ms. R.S. Deuri, learned counsel for the Soil Conservation Department submits that the physical verification carried out by the Range Officer, Rangia Soil Conservation Range, with respect to the work done by the petitioners, showed that 80% of the contract work was completed by the petitioners. However, as per the tender agreement and work order, the petitioners were to complete 80% of the work contract by the cut off date i.e. 26.09.2019. She also submits that the project/ contract was closed, as per the decision of the

Government on 26.09.2019 and the name of the petitioners appeared in the list of non-starters for the afforestation plantation scheme held during 2019-2020.

6. Ms. R.S. Deuri further submits that the Director of Soil Conservation, vide letter no. BUD-8/NALBARI/2019-20/5961 dated 21.01.2020 had written a letter to the Secretary to the Government of Assam, Soil Conservation Department, praying to accord necessary financial sanction for an amount of Rs.6.2016 lakhs, in respect of work done under the "Protective Afforestation at Hahara Village during 2019-2020", implemented by the Nalbari Soil Conservation Division during the financial year 2019-2020. Thereafter, vide letter dated 02.02.2021 issued by the Under Secretary to the Government of Assam to the Director, Soil Conservation, Assam, it was informed that the "Protective Afforestation at Hahara Village under Nalbari Soil Conservation Division during 2019-2020" had already been cancelled, as per the decision of the meeting held on 26.09.2019, chaired by the Hon'ble Minister, Soil Conservation etc. due to the project being a non-starter. However, as allotment of work had been initiated against the above afforestation work, the Director of Soil Conservation was requested to thoroughly enquire into the matter and submit a report to the department for further action.

7. The counsel for the Soil Conservation Department, by relying upon the additional affidavit dated 30.06.2023 submitted by the Director, Soil Conservation, submits that a field inquiry was undertaken by the Soil Conservation Department, with regard to the work done by the petitioner. As per the inquiry report, it showed that the petitioner had done some work of afforestation as per the project, which amounted to 80% of the actual work

done.

8. I have heard the learned counsels for the parties.

9. The fact that the petitioner had done 80% of the contract work is not disputed by the State respondents. However, a perusal of the Detailed Estimate for Protective Afforestation at Hahara Village, which was made by the Range Officer, Rangia and countersigned by the respondent no.4, shows that the contract work had been divided into two components. The first component is in relation to the putting up of barbwire, construction of approach road, supply and fixing of tube-wells, putting up of RCC posts, planting of saplings, etc. The estimated cost for the first component was Rs.6,11,332/- . The second component of the afforestation/contract work provides for maintaining the aforesaid area for one year at the estimated cost of Rs.1,17,342/- . The above two estimated costs with the addition of GST @12% comes to Rs.8,16,000/- in total. However, the issue here is with regard to non payment of the first part of the contract work amounting to Rs.6,20,160/- . The question of the petitioners being non-starters in respect of the contract work can only be relatable to the 2nd component of the contract work, i.e., maintenance of the work for one year. The same could not be done by the petitioners, as the contract work was cancelled, after the petitioners had completed the first component (80%) of the contract work.

10. The completion report with regard to the work done by the petitioners issued by the Range Officer, Rangia Soil Conservation Range and which has been countersigned by the respondent no.4, shows that 80% of the work has

been completed by the petitioners at a cost of Rs.6.2016 lakhs, which is a slight variation from the estimated cost of Rs.6,11,332/-, i.e. by Rs.1000/- odd. The completion report thus clearly shows that the 80% of the work had been done and the maintenance component which accounted for 20% of the work, was to be done for a period of one year thereafter. The documents annexed to the affidavit-in-opposition filed by the respondent nos.2 & 4 shows that the project of afforestation had been closed, in terms of the meeting dated 26.09.2019, on which date the petitioners had completed 80% of the work. The closure of the project was communicated by the Director, Soil conservation, Assam to the Secretary to the Government of Assam, Soil conservation Department vide letter dated 15.10.2019. A reading of the letters dated 21.01.2020 and 01.09.2020 issued by the Director, Soil conservation, Assam (respondent no.2) shows that the Director, Soil Conservation had asked for financial sanction and release of Rs.6.2016 lakhs for the work done by the Nalbari Soil Conservation Division. In this respect, another letter no. BUD-8/NALBARI/2020-21/1609 dated 01.09.2020 issued by the respondent no.2, shows that the afforestation work had been implemented by the petitioners under the Nalbari Soil Conservation Division. The same is reproduced hereinbelow, as follows :

*“To : The Secretary to the Govt. of Assam
Soil Conservation Department, Dispur, Guwahati - 6
Sub : Submission of proposal for Financial Sanction & FOC
under SOPD-G during 2020-21*

Sir,

With reference to the subject cited above, I have the honour to submit herewith the proposal for Financial Sanction and release of fund through FOC amounting to Rs. 6.2016 Lakh (Rupees Six Lukh Twenty Thousand One Hundred Sixty) only in respect of "Protective Afforestation at Hahara Village during 2019-20" implemented by Nalbari Soil Conservation Division. Nalbari during the financial year 2019-20.

(Rs. In Lakh)

<i>SI. No</i>	<i>Head of Account</i>	<i>Name of Project</i>	<i>Name of Division</i>	<i>Amount Proposed</i>
1	-4402-00- 102-1141- 000-14-99-	<i>Protective Afforestation at Hahara Village during 2014-20</i>	<i>Nalbari Soil Conservation Division, Nalbari</i>	<u>6.2016</u>
<i>TOTAL</i>				<i>6.2016</i>

(Rupees Six Lakh Twenty Thousand One Hundred Sixty) only

All the necessary documents like Form C 1. Completion Report. Inspection Report, Technical Sanction. Administrative Approval, Photographs of completed works etc. are enclosed herewith for your ready reference. Therefore, the Govt. in Soil Conservation Department is requested kindly to accord necessary Financial Sanction for the proposed amount and accordingly move the Finance Department for release of the said fund through FOC.

This is for favour of information and necessary action."

11. The additional affidavit filed by the respondent no.2 on 30.06.2023 shows that a field enquiry had been undertaken to verify the work done by the petitioners and the conclusion of the field enquiry report, as given in the additional affidavit, shows that the petitioner had done afforestation work. However, as the inquiry report had been made three and a half years after the completion the afforestation work by the petitioners, the enquiry report shows

that only some of the contract work could still be seen. The conclusion of the field enquiry report as given in the additional affidavit is reproduced hereinbelow, as follows :

- “1. *The total area of the plantation created by M/s Tribeni Associates as measured in field allowing extra 20% area due to error of jungle is 3.0 Hect. which less than the actual 5.30 Hect.*
- 2. *Total nos. of RCC post counted is 152 nos. which is less than actual 247 numbers.*
- 3. *The barbed wire is broken and can' be measurable, which should be 3700 meter.*
- 4. *As proposed, 5909 numbers, of different varieties of afforestation plants are targeted, but in the field nearly only 1,000 numbers of plants are noticed of varieties Teak, Koroi, Simalu, Gamari, Sagun, Balkor, Krishnasura etc.”*

12. On considering the various documents issued by the respondents and the fact that the State respondents have not denied that the petitioners had completed 80% of the contract work as was required by them to be done, on or before 26.09.2019, this Court is of the view that the petitioner would have to be paid their dues, in terms of the completion report made by the State respondents, showing that the petitioners were entitled to payment of Rs.6.2016 lakhs, i.e., Rs.6,20,160/-Only the maintenance work for one year, which was 20% of the contract work, remained to be done, which was however cancelled by the State respondents. As the respondents are bound to pay the petitioners their admitted contractual dues, the respondents are directed to make a proposal for sanction and payment of the required amount of Rs.6,20,160/-, to be paid to the petitioners. The earnest money and the security

deposit which have been submitted by the petitioners, if not returned earlier, should be also returned to the petitioners. The entire exercise should be concluded within a period of 3 (three) months, from the date of receipt of a certified copy of this order.

13. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant