

GAHC010049342024



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

Case No. : WP(C)/1397/2024

ELITE AGENCY
REPRESENTED BY ITS PROPRIETOR-
SRI GAUTAM KOTOKY,
SON OF DHARMESWAR KOTOKY,
HOUSE NO. 61, SENDURI ALI,
JONALI, ZOO ROAD, GUWAHATI- 24,
KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HEALTH AND FAMILY WELFARE DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL SECRETARY
KARBI ANGLONG AUTONOMOUS COUNCIL-CUM-CHARIMAN
DISTRICT HEALTH SOCIETY
KARBI ANGLONG
ASSAM.

3:THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
ASSAM
CHRISTIANBASTI
GUWAHATI-5.

4:CHIEF CONSULTANT (CIVIL WORKS)
NATIONAL HEALTH MISSION
ASSAM
CHRISTIANBASTI

GUWAHATI-5.

5:DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI
KAMRUP(M)

ASSAM

Advocate for the Petitioner : MR. A K SHARMA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

18.03.2024

1. Heard Mr. K.N. Choudhury, learned Sr. Counsel for the petitioner assisted by Mr. A.K. Sarma, who submits that the termination of the petitioner's contract vide the impugned order dated 22.02.2024 issued by the Mission Director, NHM, Assam should be set aside.
2. The petitioner's case in brief is that the petitioner was given a work order to construct a Girls Hostel for Diphu Medical College on 12.06.2020. The building was to be a G+2 building. However, as the bill of quantities and the estimate prepared by the respondent authorities was not commensurate with the construction of a G+2 building, review of the bill of quantities and the estimate was prepared, wherein, the construction to be made was reduced to G+1.
3. The petitioner's counsel submits that subsequent to the above, revised

work order was issued on 07.02.2023. He however submits that even the revised bill of quantities and estimate would not be sufficient to make a G+1 building. He accordingly submits that an expert committee should look into whether the revised bill of quantities and estimate was sufficient for constructing a G+1 building.

4. On the other hand, Mr. B. Gogoi, learned counsel for the NHM submits that as per the contract agreement executed between the parties on 12.06.2020, there is an arbitration clause, providing for resolution of disputes or differences between the parties, in connection with the construction of the building. He accordingly submits that the petitioner should avail of the arbitration clause provided in the contract agreement.

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

6. Clause 20 of the contract agreement executed between the parties, provides that in case of a dispute or difference arising between the employer and the domestic contractor, relating to any matter arising out of or connected with the agreement, such dispute or difference can be settled in accordance with the Arbitration and Conciliation Act, 1996. It further states that the parties shall make efforts to agree on a sole Arbitrator and only if such an attempt does not succeed, an Arbitral Tribunal consisting of 3 Arbitrators, one each appointed by the employer and the contractor and the third Arbitrator to be chosen by the two arbitrators so appointed by the parties shall be constituted.

7. Clause 20 of the contract agreement states as follows-

“20. ARBITRATION (GCC Clause 25.3)

The procedure for arbitration will be as follows:

- (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting 3 arbitrator one each appointed by the Employer and the Contractor and the third arbitrator to be chosen by the two Arbitrators so appointed by the parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed jointly by the Employer and the Contractor.
- (b) The Arbitration Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties, and shall act a presiding arbitrator. In case of failure of the two arbitrators appointed by both the parties to reach upon consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed jointly by both the Employer and the Contractor.
- (c) Deleted.
- (d) Arbitration proceedings shall be held in Guwahati, and the language of the Arbitration proceedings and that of all documents and communications between the parties shall be in English.
- (e) The decision of majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses Incurred by each party in connection with the preparation, presentation etc. of its

proceedings as also the fees expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by its party itself.

(f) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are subject matter of the arbitration proceedings."

8. In view of the above existing arbitration clause, the parties are given the liberty to invoke the arbitration clause for settling the disputes between the parties. The petitioner shall, within 3(three) days from today, approach the respondent authorities for appointment of an Arbitrator agreeable to both the parties and the respondent authorities shall thereafter, immediately take a decision on the same within a further period of 1(one) week. The interim order passed by this Court on 11.03.2024, directing that the bank guarantee of the petitioner should not be encashed, will continue to be in force for a period of 1(one) month from today or till a decision is taken by the Arbitrator with regard to whether the interim order should continue or not, whichever is earlier.

9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant