

GAHC010056862023



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

Case No. : WP(C)/1699/2023

IMDADUL HUSSAIN

S/O- LT. ABDUR RAHMAN, VILL- AMIN PATTY, T.S. ROAD, P.O. NAGAON,
P.S. SADAR, DIST.- NAGAON, ASSAM, PIN- 782001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, WATER
RESOURCE DEPTT., DISPUR, GHY-06

2:THE EXECUTIVE ENGINEER
MORIGAON WATER RESOURCE DIVISION
MORIGAON WATER RESOURCE DIVISION
MORIGAON

3:THE SUPERINTENDING ENGINEER
NAGAON WATER RESOURCE CIRCLE
NAGAON

4:THE CHIEF ENGINEER
WATER RESOURCE DEPTT.
GOVT. OF ASSAM
CHANDMARI
GUWAHATI-03

5:THE UNION OF INDIA REPRESENTED BY THE MINISTRY OF JAL SHAKTI
(LIT)
MINISTRY OF WATER RESOURCE DEPARTMENT
GOVERNMENT OF INDIA
E-GOVERNANCE CELL
6TH FLOOR CABIN
SHRAM SHAKTI BHAWAN

RAFI MARG
NEW DELHI-11000

Advocate for the Petitioner : MR. M A SHEIKH, MR M H CHOUDHURY,MS. A BEGUM

Advocate for the Respondent : SC, WATER RESOURCE, MR. R K D CHOUDHURY,DY.S.G.I. (R 5)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

30.08.2024

1. Heard Mrs. A. Begum, learned counsel for the petitioner. Also heard Ms. D. Jain, learned counsel appearing for the Water Resources Department, Government of Assam and Ms. A. Gayan, learned CGC appearing for the Ministry of Jal Shakti.
2. The petitioner's case is that he is a registered contractor with the Water Resources Department, Government of Assam. He was given work contracts under the Scheme "R/S to T/dyke along both banks of Kopilli river from Charaihagi to Tuklaitup (L/B), Basundhari to Killing Kopilli Junction (L/B) and Chaparmukh Ahatguri Amsoi P.W.D. Road (r/B) including Anti-erosion measures at different reaches."
3. Though the petitioner had completed the work contracts and was paid a certain sum of money, the balance amount of Rs.2,71,179/- has not been paid to the petitioner.
4. The petitioner's counsel submits that a direction may be issued to the

respondents to pay to the petitioner the balance amount of Rs.2,71,179/-.

5. Ms. D. Jain, learned counsel for the Water Resources Department submits that the Central Government share of the funds under the FMBAP Scheme is 90% and the share payable by State Government is 10%. However, the Central Government has not released the Central share in full till date. She submits that the petitioner is still to be paid the admitted amount of Rs.2,71,179/-.

6. However, Ms. A. Gayan, learned CGC has submitted letter dated 22.03.2022 issued by the Executive Engineer-II, office of the Chief Engineer-II, Brahmaputra Board, River Development and Ganga Rejuvenation, Department of Water Resources, Ministry of Jal Shakti and letter dated 09.01.2023 issued by the Chief Engineer-II, Brahmaputra Board, River Development and Ganga Rejuvenation, Department of Water Resources, Ministry of Jal Shakti, wherein the Ministry of Jal Shakti had requested clarifications from the Government of Assam against the Flood Management and Boarder Areas Programme (FMBAP) Scheme under the Water Resources Department, Government of Assam, for release of the balance Central share of the funds. The learned CGC submits that the State Government have not furnished the appropriate reply/clarifications to the Central Government till date. She submits that once the clarifications are made by the State Government, the Central funds would be released.

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

8. This Court, in a series of cases, the leading case being ***WP(C) 4734/2021 (Nazim Hussain -vs- The State of Assam and 8 others)***, while disposing of the similar matters, had passed the following direction, which

are as follows:-

“(1) Within 15 (fifteen) days from today, the concerned official of the State Government of Assam will communicate the supplementary budget passed in the last Assembly Session pertaining to the scheme to the competent authority of the Ministry of Jal Shakti, Government of India.

(2) Within 60 (sixty) days from the date of receipt of such communication, the Ministry of Jal Shakti to release the amount due under the schemes to the concerned Department of the Government of Assam.

(3) Upon receipt of the amount, bills of the writ petitioners shall be processed and cleared within a further period of 45 days”

9. Paragraph 11 of the affidavit filed on behalf of the respondent No.4, i.e., the Chief Engineer, Water Resources Department is to the effect that the admitted balance amount payable to the petitioner is Rs.2,71,179/-. As the Chief Engineer has admitted that the petitioner is liable to be paid Rs.2,71,179/-, the petitioner would have to be paid the admitted amount. Paragraph 11 of the affidavit filed by the respondent No.4 is extracted hereinbelow, as follows:-

“11. That the deponent begs to state that the total bill value of the petitioner against all of his work order is Rs.8,99,009/- (Rupees Eight Lakhs Ninety Nine Thousand and Nine Rupees) only and out of which proportionate payment of Rs.6,27,830/- (Rupees Six lakhs Twenty- Seven Thousand Eight Hundred Thirty) only has already been paid to the petitioner till date. However full payment could not be paid to the petitioner as full amount of fund is yet to be received from the Central Government. The concerned department is taking all the possible steps for release of fund from the Government. There is no discrimination from the part of the deponent in making payment to the petitioner.”

10. As can be seen from the affidavit of the respondent No.4, i.e., the Chief Engineer, Water Resources Department, Government of Assam, the Chief Engineer has admitted their liability towards the petitioner. However, the State

Government has allegedly not been able to pay the petitioner his outstanding liability, on the ground that the Central share of the funds for the FMBAP Scheme has not been forthcoming, even though the State Government has allegedly allotted the full amount of the State 10% share for the FMBAP Scheme.

11. The non payment of the outstanding liability of the petitioner, as can be culled out from the submissions made by the counsel for the State Government and the counsel for the Ministry of Jal Shakti, clearly shows that the issue lies with non release of the Central share for the FMBAP Scheme, due to clarifications not being provided by the State Government to the Central Government, i.e., Ministry of Jal Shakti.

12. In the view of this Court, the above issue is an issue to be sorted out by the Central Government and the State Government and it has nothing to do with the petitioner. The petitioner would have to be given his dues if the same is admitted by the concerned Chief Engineer. The tussle and differences between the State Government and the Central Government should not come in the way of the petitioner not getting his contractual dues.

13. The contents of the letter No.BB/CE-II/FMP/2656/ 2020/10 dated 22.03.2022 issued by the Executive Engineer-II, office of the Chief Engineer-II, Brahmaputra Board, River Development and Ganga Rejuvenation, Department of Water Resources, Ministry of Jal Shakti is reproduced hereinbelow as follows:-

*“ The Deputy Secretary-II to the Govt. of Assam
Water Resources Department*

Dispur, Guwahati

*Sub:- Monitoring Status report of the FMP Scheme code AS-83
and AS-103*

Ref: WR(C) 313/2017/Pt-III/33 Dated:15.02.2022

Sir,

In inviting reference to the letter above, submitting the proposal for release of Central share In respect of FMP scheme code AS-83 and AS-103, it is observed that-

- 1. The audit certificate against the scheme code AS-83 is not submitted which needs to be submitted to this office.*
- 2. The balance amount of Central Share against the scheme code AS-83 is wrongly reflected in the FMP-1 and the budget provision for the financial year 2021-22.*
- 3. The total amount of fund released against the scheme code AS-103 is Rs. 4434.373 Lakh (Central Share = Rs. 2914.20 L and State Share = Rs. 1297.194 L). Utilization amount towards the court case is Rs. 222.979 Lakh). However, in Audited Statement of expenditure, it is seen that the total audited amount is Rs. 2684.10521 Lakh only and less amount disallowed as per Audit objection is Rs. 1159.76 Lakh. The compliance of the observation with the Accountant General (Audit), Guwahati may be submitted.*

It is therefore, requested to clarify the above observations/discrepancies for onward submission to the Ministry of Jal Shakti, Department of Water Resources, RD&GR for release of Central Assistance in respect of above FMP schemes.

This issue with the approval of the competent authority."

14. The letter No.BB/CE-II/2661/2021/158 dated 09.01.2023 issued by the Chief Engineer-II, Brahmaputra Board, River Development and Ganga Rejuvenation, Department of Water Resources, Ministry of Jal Shakti states as follows-

*“The Additional Chief Secretary to the Government of Assam
Water Resources Department
Dispur, Guwahati-06, Assam*

Sub: Observation of FMBAP scheme code AS-80, AS-83, AS-102, AS-103, AS- 121 & AS-122.

*Ref: 1. No.BB/CE-II/FMP/2656/2020/10 dated 22nd March, 2022
2. No.BB/CE-I/FMP/285/2020/4 dated 22nd March, 2022
3. No.BB/CE-I/SE(P)/FMP-II/182/2018/8 dated 6th June, 2022
4. No. BB/CE-I/FMP-II/151/2015/23 dated 13th June, 2022*

Sir,

Inviting reference to the letters above (copy enclosed), it was requested to submit the replies of the observations/ discrepancies found against FMBAP scheme code AS-80, AS-83, AS-102, AS-103, AS-121 & AS-122 under WRD, Government of Assam for recommendation of balance Central Assistance. Reply of which still awaited.

In this regard, it is requested to furnish the replies of the observations/discrepancies against the above FMBAP schemes at the earliest please for recommendation of balance Central Assistance and onward submission to the Ministry of Jal Shakti, DoWR, RD & GR, New Delhi.”

15. In the case of **Tamsher Ali and Etc. Etc Vs. State of Assam and Ors**, reported in **2008 (4) GLT 1**, the Full Bench of this Court had directed that the Head of the Department, such as the Chief Engineer of the concerned department would have to verify the claim of the contractor and the admitted amount should thereafter be paid by the State respondents.

16. In view of the admission made by the Chief Engineer, Water Resources Department that the petitioner is liable to be paid Rs.2,71,179/-, this Court directs all the respondents to make the required clarifications with regard to the FMBAP Scheme and release the funds for the scheme, for payment of the admitted dues of the petitioner. The entire exercise should be concluded by the

respondents within a period of 5(five) months from the date of receipt of a certified copy of this order.

17. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant