

GAHC010040582024



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

Case No. : Cont.Cas(C)/104/2024

GUNAJIT BAYAN
S/O- LATE ANANDA BAYAN, R/O- BIJNI, P.O. AND P.S. BIJNI, DIST.
CHIRANG, BTC, ASSAM, PIN- 783390.

VERSUS

AKASH DEEP
PRINCIPAL SECRETARY, BODOLAND TERRITORIAL COUNCIL,
KOKRAJHAR-783370.

Advocate for the Petitioner : MR. A BORO

Advocate for the Respondent : MR. D SAIKIA (r-1)

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 10.06.2024

Heard Mr. A. Boro, learned counsel for the petitioner. Also heard Mr. S. Bora, learned counsel for the respondent.

By filing the contempt petition, the petitioner is drawing the attention of this Court to the alleged willful and deliberate disobedience of the order dated 05.05.2022 passed in WP(C)/724/2022.

The case of the petitioner is that the petitioner had filed WP(C)/724/2022 for release of the outstanding amount of Rs. 59,17,800/- against the bill in connection with the work for "Gargaon FIS (Phase III) RCC lining of branch Canal I from Ch.0m to Ch.1400 m and branch Canal II from Ch.880 m to Ch.985 m. under SCA to TSP for the year 2016-17, Group No. 3 under the Kokrajhar Division (Irrigation), Kokrajhar, Assam".

In the aforesaid writ petition, this Court by order dated 05.05.2022, directed the respondent in the BTC to consider the case of the petitioner for payment of the admitted amount as per his entitlement in terms of the order dated 15.11.2021 passed by the Principal Secretary, BTC.

It is the specific case of the petitioner that the aforesaid order has not been complied. As such, the present contempt petition has been filed.

Heard the parties and perused the materials available on record.

It appears from the averments made in the affidavit-in-opposition file on behalf of the sole respondent that upon investigation, it was learnt

that the sanction orders of the schemes in connection with the work order issued in favor of the petitioner was fake and accordingly the petitioner is not entitled for any payment.

Paragraph 4 of the aforesaid affidavit is reproduced herein under for ready reference:-

“4. That the deponent begs to state that the contempt case was filed by the contempt petitioner against BTC authority for non-payment of contractual bills against the allotted work order issued by the erstwhile BTAD authority under Schemes of SCA to TSP and other Grants under Article 275(1) of Constitution of India during 2016-17. It is to be mention herein that the sanctioned orders of the said Schemes said to have been issued by the Govt. of India in this regard were later on found to be fake and does not exist at all. In this context, an FIR was filed by the CHD, Irrigation Department, BTC vide letter Memo No. CHD/3/M-239/Pt./2020-21/3467, dated 20.10.2021. It is pertinent to mention herein that the CM's Special Vigilance Cell, Assam is also investigating into the matter and the BTC is co- operating with the authorities of CM's Special Vigilance Cell, Assam as on date.

Since the sanctioned orders were fake therefore BTC cannot shoulder the illegal liability that have been accrued from the work orders allotted from the fake sanctioned orders thereof. The BTC cannot be held responsible for payment to instant contempt petitioner/contractor for any contractual work done on the basis of such fake orders. It is a settled law that fraud vitiates everything.

It is reiterated that the Chief Minister's Special Vigilance Cell, Assam, Guwahati is enquiring into the matter and an FIR has already been lodged by the CHD himself before Kokrajhar Police Station in order to investigate into the matter. The enquiry investigation is under process.

Furthermore, it may be stated that the BTC decided to conduct comprehensive audit both financial verification and physical verification wherever applicable

against outstanding liabilities Created by the erstwhile BTAD authority since 2011 to February, 2020 vide this Secretariat Order Memo No. BTC/F(Audit)49/2021/Pt-I/1, dated 15.11.2021. Later on, it was resolved vide Resolution No. 10.2 in the BTC Executive Council Meeting that held on 20.09.2022 that the comprehensive audit that was carried out through M/s NITCON LTD., will be restricted to SOPD FUND only. Since the fake orders did not relate with the SOPD FUND therefore BTC did not conduct comprehensive audit pertaining to the Schemes under SCA to TSP and other Grants under Article 275(1) of Constitution of India during 2016-17.”

In response to the aforesaid affidavit, the petitioner by filing an affidavit-in-reply stated that he participated in the tender process and after due selection he was awarded the said work and accordingly work was commenced.

It further appears from the letter dated 23.09.2016 (Annexure-1 of the affidavit-in-reply), issued by the Deputy Secretary, BTC, Kokrajhar issued to the Executive Engineer, Kokrajhar Division (Irrigation) that it is specifically mentioned in the aforesaid administrative approval that the work should not be started and no liability should be incurred without prior technical sanction from the competent authority.

Be that as it may, the issue involved in this contempt petition is whether the respondent has deliberately and willfully disobeyed the order dated 05.05.2022, passed by this Court.

The order of this Court was to the effect that a direction was issued to the respondent to consider the entitlement of the petitioner of the admitted amount in terms of order dated 15.11.2021 passed by the Principal Secretary, BTC.

The explanation at paragraph 4 of the affidavit-in-opposition filed by the respondent indicates that the respondent have duly considered the case of the petitioner.

That being so, no case of contempt is made out against the respondent.

Accordingly, this contempt petition stands dismissed.

This contempt petition stands disposed of.

JUDGE

Comparing Assistant