

GAHC010048002024



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

Case No. : WP(C)/1351/2024

PHYLLA BOK SYIEM
S/O- MR. DRANSLY WANNIANG, R/O- VILL.- RIANGDO, P.O. RIANGDO, P.S.
NONGSTOIN, PIN- 793119, DIST. WEST KHASI HILLS, MEGHALAYA.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
THROUGH THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS DEPTT. (PWD), DISPUR, GHY-6.

2:THE ADDL. CHIEF ENGINEER
PWD (R AND B) HILLS
ASSAM DIPHU
KARBI ANGLONG
PIN- 782460
ASSAM

3:EXECUTIVE ENGINEER
PWRD
BAITHALANGSO DIVISION DONKAMOKAM
PIN- 782485
ASSAM

4:DEPUTY COMMISSIONER
WEST JAINTIA HILLS
JOWAI
PIN- 793150
MEGHALAYA

Advocate for the Petitioner : MR P P MEDHI

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 11.03.2024

Heard Mr. P. P. Medhi, learned counsel for the petitioner and Mr. R. S. Ronghan, learned counsel for the Karbi Anglong Autonomous Council (in short, 'KAAC') and Mr. P. Nayak, learned counsel for the respondent No. 1.

2. The petitioner has challenged the termination of his contract work issued, vide notice dated 20.05.2023, by the Executive Engineer, PWRD, Baithalangso Division, Donkamokam.

3. The petitioner's counsel submits that the petitioner was awarded the contract work of M & BT and construction from road Umkhirmi Somatan to Mukroh under Clause 9.4 of MOS signed between GOI, GOA and UPDS for the year 2017-2018. The petitioner's counsel submits that as the contract work for the road fell between the disputed boundary of the State of Meghalaya and the State of Assam, the petitioner was threatened with stoppage of his contract work by officials from the State of Meghalaya. He submits that there was even loss of life as a result of the boundary dispute.

4. The petitioner's counsel submits that he approached the PWD, Assam and KAAC Authorities, with regard to the difficulties faced by him and requested them to sort out the matter. However, instead of sorting out the difficulties faced by the petitioner with his contract work, the petitioner's contract was terminated by the respondent Nos. 1, 2 and 3, vide notice of termination dated 20.05.2023, on the ground that he had stopped the work and failed to show any progress of

the work. He accordingly submits that the impugned notice of termination should be set aside.

5. Mr. R. S. Ronghan, learned counsel for the KAAC submits that he has got no instructions at this stage and as such, he is not in a position to make any comments.

6. Mr. P. Nayak, learned counsel for the PWD, on the other hand, submits that the termination of the contract of the petitioner was done due to stoppage of the work by the petitioner unilaterally for more than 28 days and due to failure to make any progress with the work since the date of starting of the contract work. Accordingly, the contract work was terminated, in terms of Clause 59.1 and 59.2(a) of the General Conditions of Contract.

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

8. The impugned notice of termination dated 20.05.2023 states as follows:-

“Ref: 1. F.W.O No. ACEH/CS/MOS/43/2021-22/12, Dtd. 04/02/2022

2.T.O. Letter No.BD/T/NLCPR(MOS)/40/2014-15/2094

Dtd.03/11/2022

Sir,

With reference to the subject cited above, I am to inform you that the above stated work was awarded to you by the Additional Chief Engineer, PWD (R&B) Hills, Assam, Diphu, hereinafter called the "employer" and

1) Whereas you have stopped the work for more than 28 days unilaterally and has not been authorized by the undersigned causing fundamental breach of

the contract agreement under clause 59.2(a).

2) Whereas you have miserably failed to show any progress of the work since the date of award of the work and measurable physical progress of the work stands Nil as on date, causing great inconveniences and embarrassments to the department by your irresponsible act.

3) Finally, you have failed to respond to this Office Letter No under Ref. Sl. No 2 and show any concrete intention to resume and complete the work at the earliest.

In view of the above, I, the undersigned, on behalf of the Governor of Assam, in exercise of power conferred upon the employer under clause 59.1 of General Conditions of Contract, subsequently delegated to the undersigned, do hereby give you the Notice of Termination of the Contract Agreement on the charge of fundamental breach of contract by you."

9. Clause 59.1 and 59.2(a) of the General Condition and Clause 3 of the Special Conditions of Contract state as follows:-

59.1. *The Employer of the contractor may terminate the contract if the other party causes a fundamental breach of the contract.*

59.2(a). *The contractor stops work for 28 days when no stoppage of work is shown on the current programme and the stoppage has not been authorized by the Engineer.*

3. ABTIRATION (GCC Clause 25.3)

25.3 (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 dispute 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 of 3 arbitrators one each to be 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 by the Council, Indian Roads Congress.

(b) The Arbitral 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 by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed consequently, the Presiding arbitrator shall be appointed by the Council, Indian Roads Congress.

(c) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) and (b) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Council, Indian Roads Congress shall appoint the Arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.

(d) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(e) The decision of the 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 and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.

(d) 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 the subject matter of the arbitration Proceedings.

10. The averments made in the writ petition and the submissions made by the petitioner's counsel clearly show that there are disputed questions of facts and whether the same is correct or not would require some evidence to be led. Accordingly, in the opinion of this Court, it would not be possible for this writ Court to decide disputed questions of facts, which have been raised by the petitioner vis-à-vis reasons given by the PWD, Assam for termination of the petitioner's contract work.

11. As there is an arbitration clause provided in the contract agreement executed between the parties, which provides for settling of disputes, this Court is of the view that the said arbitration clause would have to be availed of by the

parties, in deciding whether the impugned notice of termination dated 20.05.2023 was justified or not. The parties are accordingly given the liberty to avail the arbitration clause provided in the contract agreement, for settlement of their dispute.

12. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant