

GAHC010056602024



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

Case No. : WP(C)/1622/2024

DILIP PATOWARY
@ PACKAGE NO (C AND D/65) ,
S/O- LATE JOGENDRA NATH PATOWARY ,
R/O- H.NO-19, LUIT PATH, JYOTINAGAR,
P.O- BAMUNIMADAM,
P.S- CHANDMARI, GUWAHATI-21, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY, GUWAHATI
DEVELOPMENT DEPARTMENT, 4TH FLOOR, BLOCK D, ASSAM
SACHIVALAYA, DISPUR, GUWAHATI-781006

2:GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY ITS COMMISSIONER
PANBAZAR GUWAHATI- 781001

3:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR GUWAHATI-0

Advocate for the Petitioner : MR S P DAS

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

Date : 20.03.2024

Heard Mr. S. P. Das, learned counsel for the petitioner and Mr. S. Bora,
learned counsel for all the respondents.

2. The petitioner's prayer in this writ petition is for a direction to be issued to the respondent authorities to pay to the petitioner for the works done by him, pertaining to "Cleaning, Desilting and Maintenance of all city drains in Guwahati city for the year 2020-2021".

3. The petitioner's case in brief is that pursuant to the Invitation For Bids (in short, 'IFB') dated 28.01.2021 for clearing, desilting and maintenance of city drains for the year 2020-2021, the petitioner participated in the tender process. The respondents thereafter issued a letter of acceptance dated 05.05.2021 to the petitioner, stating that his bid at the contract price of Rs. 7,03,68,363/- had been accepted. Pursuant to the above, the respondent No. 3 issued "Issue of notice to proceed with work" dated 11.05.2021 to the petitioner, pertaining to Package No. C&D/65. The respondent No. 3 thereafter issued a show-cause-notice dated 08.06.2021 to the petitioner, stating that inspite of the work done by the petitioner, a majority of the drains in many areas had been inundated with rain water during the monsoon season. Further, as reported by the Divisional Engineer, approximately 25-30% of the works had been found to be completed so far. As it had been observed that the petitioner would not be able to complete the work within the stipulated time, it would adversely affect public health and endanger public life and property, he was asked to show cause as to why the contract agreement should not be terminated.

4. The petitioner thereafter submitted a reply dated 10.06.2021 to the show-cause-notice, stating that 50% of the first phase of the contract work had been completed and he would definitely be able to complete the work within the stipulated time. The respondent No. 3 however terminated the contract agreement with the petitioner, vide letter dated 12.06.2021.

5. The petitioner's counsel submits that similarly situated persons, whose contract works were similar to the petitioner and whose contract agreements had also been terminated, had approached this Court by filing WP(C) Nos. 3164/2021 and 3397/2021. This Court, vide a common order dated 20.12.2022, disposed of the same by directing the respondents to undertake a verification exercise, which would include the measurement of the works done. Thereafter, payment was to be made, in terms of the measurement undertaken. He further submits that the direction passed in WP(C) Nos. 3164/2021 and 3397/2021 should also be issued in this case.

6. Mr. S. Bora, learned counsel for the respondents, on the other hand, submits that as three monsoon seasons have already passed since termination of the petitioner's contract work, it would be impossible to measure the works done by the petitioner. He accordingly submits that the direction passed, vide order dated 20.12.2022 in WP(C) Nos. 3164/2021 and 3397/2021, cannot be made applicable to the facts of this case.

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

8. As can be seen from the pleadings and the submissions made by the parties, the petitioner, amongst others, had been given the contract for clearing, desilting and maintenance of city drains for the year 2020-2021. The petitioner's contract agreement had been terminated by the respondent No. 3 on 12.06.2021. The petitioner has not made a challenge to the same, except by way of this writ petition, which had been filed only on 18.03.2024. As three monsoon seasons having already passed since the termination of the petitioner's contract agreement, it is quite apparent that the work done by the petitioner,

prior to 12.06.2021 on the drains in the city of Guwahati cannot be measured as on date. As such, the directions passed by a Co-ordinate Bench vide the order dated 20.12.2022 in WP(C) Nos. 3164/2021 and 3397/2021 cannot be made applicable to this case. Further, in the order dated 20.12.2022, the Co-ordinate Bench has held that the said order would not be a precedent for other works. There is another aspect of the matter, for which this Court is of the view that the directions passed for measuring the works of the petitioners in WP(C) Nos. 3164/2021 and 3397/2021, cannot be applied to the facts of this case, i.e., in view of the petitioner being a fence sitter.

9. In the case of ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others***, reported in ***(2015) 1 SCC 347***, the Supreme Court has held that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit, which has been given to the particular set of employees. Otherwise, it would be violative of Article 14 of the Constitution. The Supreme Court further held that this principle is however subject to well recognized exceptions in the form of laches and delays as well as acquiescence. They would be treated as fence-sitters and laches, delays and acquiescence would be a valid ground to dismiss their claim.

In the present case, the petitioner herein is a fence sitter and is trying to ride piggyback on the order passed in WP(C) Nos. 3164/2021 and 3397/2021.

10. The above being said, the letter dated 12.06.2021 issued by the respondent No. 3, terminating the petitioner's contract agreement, states that the executed quantity of work undertaken by the petitioner till 12.06.2021

would be measured within a short notice by the concerned Divisional Engineer in presence of 3rd party monitoring agency engaged by the GMC.

11. In view of the said statement made in the letter dated 12.06.2021, this Court is of the view that the petitioner should be paid for the amount of work executed by him, as measured by the respondents, in terms of the letter dated 12.06.2021 issued by the respondent No. 3. The relevant paragraph of the said letter dated 12.06.2021 is to the following effect:-

“That after careful application of mind, on perusal of the reply and physical progress of work on field as to the report of the Divisional Engineer and in outmost consideration of interest of public involving in the nature of the work, the work order dated 11.05.2021 bearing No. GER/CR/1905/2021/09 against package No. C&D/65 hereby stand terminated with immediate effect.

The executed quantity of work till date will be measured within a short notice by concerned Divisional Engineer in presence of 3rd party monitoring agency engaged by the GMC.”

12. At this stage, the petitioner’s counsel submits that the petitioner would be satisfied if a direction is issued to the respondent authorities, to pay to the petitioner for the amount of work done by him, as measured by the concerned Divisional Engineer, in presence of a 3rd party monitoring agency engaged by the GMC, in terms of the letter dated 12.06.2021.

13. Accordingly, in view of the above, this Court directs the respondents, more

particularly the respondent No. 3, to pay to the petitioner the executed quantity of work done, as measured by the concerned Divisional Engineer, in presence of 3rd party monitoring agency engaged by the GMC, in terms of the letter dated 12.06.2021. The entire exercise should be concluded and payment made to the petitioner for the amount of work done by him, within a period of 6 (six) months from the date of receipt of a certified copy of this order.

14. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant