

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C) 45 (AP) of 2012

Shri Wilson Jerang
S/o Shri Tali Jerang,
R/o Mikong Village,
P.O/P.S Ruksin,
District East Siang,
Arunachal Pradesh

....Petitioner.

– VERSUS –

1. The State of Arunachal Pradesh, represented by the Secretary, ICDS, Govt. of Arunachal Pradesh, Itanagar.
2. The Director, Social Welfare & Child Development Department, Naharlagun, Govt. of Arunachal Pradesh.
3. The Deputy Director, ICDS, East Siang District, Pasighat, Arunachal Pradesh.
4. The Child Development & Project Officer (CDPO), East Siang District, Pasighat, Arunachal Pradesh.

.....Respondents.

Advocate for the petitioner: Mr. O. Pada

Advocate for the respondents: Mr. S. Tapin, Govt. Advocate

::: BEFORE :::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : **18.06.2019.**

Date of Judgment : **20.06.2019**

JUDGMENT AND ORDER (CAV)

Heard Mr. O. Pada, the learned counsel for the writ petitioner and Mr. S. Tapin, the learned Senior Govt. Advocate for the State respondents.

2. The facts of the case in brief is that the petitioner was given work order for construction of boundary wall covering 150 meters, vide work order issued under Memo. No.PSG/ICDS-68-07-970-73, dated 21.11.2007-08 (Annexure-1), which was signed by the Deputy Director (ICDS), Pasighat. Pursuant to the issuance of the work order, the petitioner completed the construction work by making a double brick boundary wall, but he was only paid for Single Brick wall. Being aggrieved, the petitioner served a legal notice to the Director of Social Welfare, Women and Child Development Department, which was received by the said authority on 29.08.2011. As per the said notice, it was the claim of the petitioner that the fencing wall was for an estimate price of Rs.9,51,959/-, but he was only paid Rs.3,22,549/-. Hence, he demanded payment of the balance

amount i.e., Rs.6,29,410/- from the said authority. Having received no response, the petitioner has filed the present writ petition.

3. Mr. O. Pada, the learned counsel submits that from the communication dated 03.03.2010 of the Deputy Director, Divisional Level ICDS Cell, East Siang District at Pasighat to the Director of Social Welfare Women & Child Development Department, which is annexed as Annexure-2 to the writ petition, it is clear that as per standard calculation, the estimated cost of 150 meters brick wall fencing is Rs.9,51,959/-. The petitioner having received only a sum of Rs.3,22,549/-, a sum of Rs.6,29,410/- is therefore still due to be paid to the petitioner. The said amount being an admitted liability, it should be paid to the petitioner.

4. The learned counsel further submits that although, the work order dated 21.11.2007-08 mentioned about the specification for constructing the boundary wall, there are however, no such specification made by the respondents. The petitioner therefore, in the best interest of all concerned made Double Brick walling and therefore, the respondents should pay him in accordance with the work undertaken and completed. The learned counsel by further referring to Section 70 of the Indian Contract Act, 1872 submits that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. The petitioner therefore, having made the wall construction

by using double bricks for the benefit of the user or the respondents has to be compensated for the work executed. In this connection, he relies upon the decision of the Apex Court rendered in *Food Corporation of India & Ors. Vs. Vikas Majdoor Kamdar Sakari Mandli Ltd.*, reported in 2007(13) SCC 544. Mr. O. Pada thus, submits that under the facts and circumstances of the case, the respondents may be directed to pay the petitioner the amount due as reflected in the communication of the Deputy Director dated 03.03.2010.

5. Mr. S. Tapin, the learned Senior Govt. Advocate, on the other hand, by referring to the affidavit-in-opposition filed by the respondent Nos. 1 & 2 on 31.05.2012 submits that in the work order issued to the petitioner, it was specifically mentioned that the work has to be executed as per specification and ordinarily, in every construction work, there is an approved estimate made by the competent authority. In the present case as well, there is an approved estimate prepared by the Deputy Director, Urban Development & Housing Department, Pasighat. There is no mention about using of double brick in the work order or in the estimate approved by the competent authority and therefore, payment to the petitioner for double brick wall construction does not arise. The amount already paid to the petitioner should be treated as the full and final payment.

6. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

7. The issue to be decided in the present controversy from the projection made by the parties is as to whether the petitioner has been appropriately paid for

the construction of the boundary wall undertaken by him in terms of the work order dated 21.11.2007-08. A perusal of the work order goes to show that the petitioner was required to construct the boundary wall covering 150 meters as per the specification and within the time prescribed. However, no such specification is available to be seen either from the work order or from the communication dated 03.03.2010 made by the Deputy Director, Divisional Level ICDS Cell, East Siang District, Pasighat. Under the circumstances, it would be difficult to accept the fact that an amount of Rs. 6,29,410/- after making payment of Rs. 3,22,549/- to the petitioner still remains due and unpaid. However, it may be noticed that from the stand taken by the respondent Nos. 1 & 2 in the affidavit-in-opposition and also the estimate prepared by the Deputy Director, Urban Development & Housing Department, Pasighat, the estimated cost of the construction of the boundary wall per meter has been fixed at Rs. 3795.51/-. The stand taken in Paragraph No.7 of the said affidavit-in-opposition also speaks about the approved estimate. It would therefore, appear that the petitioner will only be entitled to payment for the construction work undertaken by him at the rate fixed by the concerned Deputy Director, Urban Development & Housing Department.

8. The case of the *Food Corporation of India & Others (Supra)* relied upon by the learned counsel for the petitioner on facts pertains to a tender notice requiring the respondents' society to handle 750 metric tons per day @ Rs.108 per metric ton. However, in compliance with the subsequent letters of the employer FCI asking the respondents to handle more than the prescribed quantities, the respondents started handling cargo to the tune of 1200 to 1300 metric tons per

day. For doing the extra work, the respondents had to incur additional expenses. The appellant corporation denied the respondents from paying any additional compensation for the extra work. When the matter was taken before the Trial Court, the same was decided against the respondents' employee. The employee therefore, approached the High Court and the High Court by applying the principal of quantum meruit upheld the respondents claim and decreed the suit in its favour. The corporation then filed an appeal before the Apex Court and the Apex Court upheld the High Court's decision with certain modifications. The facts however, in the present case as may be noticed are different inasmuch as there was no such request from the respondent authority, written or otherwise to construct the fencing wall by using double bricks. Therefore, I do not find the referred case to be applicable in the present case.

9. As already noticed earlier, it is the stand of the respondents themselves that the rate for construction of the fencing wall has already been fixed by the competent authority @ Rs.3795.51/-. That being the position, I am of the considered view that the petitioner is entitled to payment for the construction work he undertook in terms of the aforesaid fixed rate.

10. In the result, the petitioner would be entitled to a sum of Rs.5,69,326.50 i.e., (150x3795.51). Since the petitioner admittedly has already been paid an amount of Rs.3,22,549/-, the respondents will be at liberty to deduct the same from the amount as calculated above.

11. The writ petition is therefore disposed of with a direction to the respondent authorities to pay the petitioner a sum of Rs.2,46,800/-(rounded) within a period of 6(six) weeks from the date of receipt of a certified copy this order, failing which, the same shall carry simple interest @ 6% per annum from the expiry of the 6(six) weeks till final payment is made.

12. Parties are directed to bear their own cost.

JUDGE

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