

(2016) 01 GAU CK 0045
In the Gauhati High Court
Case No : Review. Pet. 108 of 2013

Deben Thaosen

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 15, 2

Citation : (2016) 3 GauLJ 53 : (2016) 2 GauLT 486 : (2016) 4 NEJ 1

Hon'ble Judges : B.K. Sharma, J.

Bench : Single Bench

Advocate : A.C. Borbora, Sr. Advocate, B. Chakraborty, G. Rahul, D.K. Mishra, Sr. Advocate, P.K. Sharma, M. More, S.A. Sangma, N. Saikia, R. Borbora and M. Dutta, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

B.K. Sharma, J. (Oral) - By means of this review petition, the petitioner has prayed for review of the Judgment and Order dated 26th June, 2013 passed in WP(C) No. 2515/2013. Be it stated here that the present petitioner was the writ petitioner. The writ petition was disposed of with the following order:-

"Heard learned counsel for the parties. This writ petition is directed against the communication dated 3.12.2012 by which the particular contract awarded to the petitioner was terminated invoking the clause 52.4 of the General Conditions of Contract (GCC). The petitioner is also aggrieved by the Annexure-24 NIT dated 26.2.2013. The said NIT was issued for completion of the balance work. In the mean time, the petitioner preferred an appeal under Clause 24.1 of the GCC for revocation of the impugned order of termination dated 3.12.2012. The said appeal was disposed of by Annexure-22 order dated 27.2.2013. By the said order, the appeal was dismissed upholding the impugned order dated 3.12.2012.

In the counter affidavit filed by the respondents it has been stated that the petitioner having invoked the alternative remedy by way of preferring the appeal

against the termination of contract, the instant writ petition is not maintainable. It has been stated that in spite of granting several extension, when the petitioner could not complete the work, the impugned order had to be passed terminating the contract and thereafter pursuant to the impugned NIT and upon evaluation of 3 bids received from the bidders, the contract has been awarded to one Shri Amar Chand Dey vide Work Order dated 24/04/2013, 29/04/2013 and 08/05/2013 and also Shri Abdul Hannan vide Work Order dated 23/04/2013. It has been stated that the contractors have already started their works.

The contract earlier awarded to the petitioner having been terminated as per the GCC and the petitioner having already invoked the provision thereof seeking remedy under the same, there could not have been simultaneous proceeding by way of the present writ petition. Moreover, pursuant to the termination of the contract and the impugned NIT, the balance work has already been awarded to 3rd parties. It will always be open for the petitioner to pursue such legal remedy as may be available to him under the provisions of GCC.

In view of the above, the writ petition is disposed of directing the respondents to dispose of the appeal that has been preferred by the petitioner under Clause 24.2 of the GCC (Annexure-27), as expeditiously as possible. As per the provisions of the GCC, the petitioner was to nominate his own representative towards disposal of the appeal. Till disposal of the appeal, the Bank Guarantee as deposited by the petitioner as Performance Guarantee may not be encashed. However, its validity shall be extended, if necessary.

Interim order operating in this proceeding stands vacated."

2. As will be evident from the order, the writ petition was disposed of taking note of the specific stand of the respondent No. 1 in his counter affidavit in which it was stated that there being alternative remedy available to the petitioner by way of dispute redressal system and he having already preferred an appeal before the Standing Empowered Committee, the writ petition was not maintainable. He also took the plea that pursuant to the speaking order passed on 27th February, 2013, an NIT was issued for completing the balance work and the said NIT was published in 2(two) daily newspapers and upon completion of the tender process, contract was awarded to 2(two) contractors.

3. In the review petition, the petitioner has pointed out that the aforesaid stand on the part of the respondent No. 1 was not based on record inasmuch as the NIT in question was never published in the newspapers, namely, "Assam Post" and "Aaji" and that the purported tender process was stage managed. It has further been contended that in case of floating of tender and publication of the same in the newspaper, the matter is required to be routed through the Directorate of Information and Public Relations (DIPR), but the same was not done in the instant case. Thus, according to the review petitioner, but for the misleading statements made in the counter affidavit filed by the respondent No. 1, the order under review would not have been passed.

4. When the matter was first taken up on 16th August, 2013, notice was issued and thereafter, by order dated 12th September, 2014, the respondents were directed to furnish explanation in respect of the allegation made by the petitioner in paragraph-25 of the review petition to which there was no denial in the counter affidavit filed on 31st June, 2013 by the respondent Nos. 1, 2, 3 and 4. For a ready reference, the order is quoted below:-

"Although the respondents No. 1, 2, 3 and 4 have filed their counter affidavit on 31.6.2013, but there is no denial of the specific allegation made by the review petitioner in paragraph-25 that the earlier purported tender process was staged managed. The petitioner has also referred to the statement made in paragraph-9 of the counter affidavit that was filed by the respondents No. 1 to 4 in WP(C) No. 2515/2013, in which there was specific statement regarding publication of the NIT in the two newspapers. Although as has been stated by the petitioner in the review petition and not denied by the said respondents, there is no publication of any NIT in the newspaper.

In view of the above, it would be appropriate for the respondents to furnish explanation. The respondents are directed to furnish explanation in writing within three weeks.

Let a copy of this order be furnished to Mr. J. Patowary, learned Standing Counsel, PWD.

List on 10.11.2014."

5. When the matter was taken up on 21st January, 2015, taking note of the serious anomalies in purported publication of the NIT in the concerned newspapers, the following order was passed:-

"In terms of the earlier orders passed, the respondents have filed an additional affidavit on 7th January, 2015. Interestingly while in the newspapers, namely, "Assam Post" (English daily) and "Aaji" (Assamese Daily), the particular NIT is shown published but on the issues of the same newspapers dated 26th February, 2013 produced by Mr. A.K. Baruah, learned counsel for the petitioner, do not contain the advertisement. According to him, the NIT shown published in the issues of the newspaper produced by Mr. G Rahul is stage managed, as no such NIT was published in other issues.

This is a serious matter. Mr. Baruah, learned counsel for the petitioner prays for 4(four) weeks time to file response to the additional affidavit filed on 7th January, 2015.

Prayer is allowed.

Let the matter be listed on 23rd February, 2015.

The newspapers produced by the respective learned counsel shall be returned and shall be produced again on the next date of hearing."

6. When the matter was again taken up on 3rd March, 2015, entire facts and circumstances involved in this case was recorded as follows:-

"This review petition has arisen out of the final order dated 26/06/2013 passed in WP(C) No. 2515/2013. For a ready reference, the order is quoted below :-

"26/06/2013

Heard learned counsel for the parties. This writ petition is directed against the communication dated 3.12.2012 by which the particular contract awarded to the petitioner was terminated invoking the clause 52.4 of the General Conditions of Contract (GCC). The petitioner is also aggrieved by the Annexure-24 NIT dated 26.2.2013. The said NIT was issued for completion of the balance work. In the mean time, the petitioner preferred an appeal under Clause 24.1 of the GCC for revocation of the impugned order of termination dated 3.12.2012. The said appeal was disposed of by Annexure-22 order dated 27.2.2013. By the said order, the appeal was dismissed upholding the impugned order dated 3.12.2012.

In the counter affidavit filed by the respondents it has been stated that the petitioner having invoked the alternative remedy by way of preferring the appeal against the termination of contract, the instant writ petition is not maintainable. It has been stated that inspite of granting several extension, when the petitioner could not complete the work, the impugned order had to be passed terminating the contract and thereafter pursuant to the impugned NIT and upon evaluation of 3 bids received from the bidders, the contract has been awarded to one Shri Amar Chand Dey vide Work Order dated 24/04/2013, 29/04/2013 and 08/05/2013 and also Shri Abdul Hannan vide Work Order dated 23/04/2013. It has been stated that the contractors have already started their works.

The contract earlier awarded to the petitioner having been terminated as per the GCC and the petitioner having already invoked the provision thereof seeking remedy under the same, there could not have been simultaneous proceeding by way of the present writ petition. Moreover, pursuant to the termination of the contract and the impugned NIT, the balance work has already been awarded to 3rd parties. It will always be open for the petitioner to pursue such legal remedy as may be available to him under the provisions of GCC.

In view of the above, the writ petition is disposed of directing the respondents to dispose of the further appeal that has been preferred by the petitioner under Clause 24.2 of the GCC (Annexure-27), as expeditiously as possible. As per the provisions of the GCC, the petitioner was to nominate his own representative towards disposal of the appeal. Till disposal of the appeal, the Bank Guarantee as deposited by the petitioner as Performance Guarantee may not be encashed. However, its validity shall be extended, if necessary.

Interim order operating in this proceeding stands vacated."

In the writ proceeding, Shri Mohan Ch. Boro, the then Commissioner and Special Secretary to the Government of Assam, PWD, filed an affidavit-in-opposition on

behalf of respondents No. 1, 2, 3 and 4, inter alia, with the following statement :-

"9. That the statements made in paragraph 13 of the writ petition being misconceived and baseless the deponent denies the correctness of the same. In this regard it is respectfully brought to the notice of this Hon"ble Court that pursuant to the passing of the speaking order dated 27.02/2013 an NIT was issued for completing the balance work pertaining to package No. AS-19-02. The respondent authority published the said NIT in two news papers, i.e. The Assam Post (which is a state level English daily) and Aaji (which is a state level assamese daily) on 26.02.2013. Pursuant to the said NIT dated 26.02.2013 three bidders namely Sri Amar Chand Dey, Sri Abdul Hannan and Sri Pallab Kr. Pandit participated in the tender process. The competent authority thereafter awarded the balance work to Sri Amar Chand Dey vide work orders dated 24.04.2013, 29.04.2013 and 08.05.2013 and Sri Abdul Hannan vide work order dated 23.04.2013 and the contractors has already started the balance work. However, the deponent tenders his unconditional apology as the said fact could not be inadvertently brought to the notice of this Hon"ble Court while passing the interim order dated 16.05.2013."

If we go by the aforesaid stand of the Commissioner and Secretary, PWD, the NIT was issued pursuant to passing of the speaking order dated 27/02/2013, which is factually incorrect, inasmuch as, the NIT was shown published in two local news papers, namely, "Aaji" and "the Assam Post" on their issues published on 26/02/2013.

When the review petition was taken up it was submitted that, in fact, the particular NIT was shown issued only in limited issues of both the newspapers and were not published in all the issues. While Mr. G. Rahul, learned Standing Counsel, PWD, produced one issue each of the newspapers containing the particular NIT, but the learned counsel for the petitioner produced other issues of both the newspapers of the same date i.e. 26/02/2013 which did not contain the NIT. Accordingly to the review petitioner, the entire episode is stage managed one and with a view to favour some favoured contractors, the NIT was shown issued only in the limited issues of both the newspapers.

In the first affidavit in this proceeding filed by one Shri Surendra Nath Das, Superintending Engineer, PWD, did not deal with the specific allegation made by the review petitioner in paragraph 25 of the review petition, which is quoted below :-

"25. That the petitioner, in view of the conduct of the respondents particularly their refusal to furnish information under the RTI Act, got suspicious and made enquiries. He was further shocked to learn that the NIT was neither published in the "The Assam Post" nor "Aaji". Naturally the entire purported tender process has been stage managed. It is obvious that such an action could not have been possible without an illegal nexus between contractors and the departmental officials in question. In fact as it appears, the NIT has been superimposed on a

copy of the newspaper and photocopies have been made therefrom for the consumption of public at large and the official records. It is clear that a fraud of enormous proportion has been committed."

In para 5 of the said counter affidavit, the deponent has simply referred to the statements made in paragraph 1 to 28, as matters of record denying and disputing the statements therein which are contrary to records. A second affidavit was filed on 07/01/2015 by the Executive Engineer, Nagaon State Road Division and the same was filed pursuant to the direction of this Court dated 12/09/2014. For a ready reference, the order dated 12/09/2014 is quoted below :-

"12.09.2013

Although the respondents No. 1, 2, 3 and 4 have filed their counter affidavit on 31.6.2013, but there is no denial of the specific allegation made by the review petitioner in paragraph-25 that the earlier purported tender process was staged managed. The petitioner has also referred to the statement made in paragraph-9 of the counter affidavit that was filed by the respondents No. 1 to 4 in WP(C) No. 2515/2013, in which there was specific statement regarding publication of the NIT in the two newspapers. Although as has been stated by the petitioner in the review petition and not denied by the said respondents, there is no publication of any NIT in the newspaper.

In view of the above, it would be appropriate for the respondents to furnish explanation. The respondents are directed to furnish explanation in writing within three weeks.

Let a copy of this order be furnished to Mr. J. Patowary, learned Standing Counsel, PWD.

List on 10.11.2014."

In the said affidavit dated 07/01/2015, the deponent has stated the following :-

"4. That in terms of the aforesaid order dated 12.09.2014 the deponent begs to furnish its reply to the said paragraph 25 of the review petition. The deponent categorically denies the allegation of the petitioner that the NIT was not published in the news papers, the "Assam Post" and the "Aji". Such statement of the petitioner is absolutely incorrect and the deponent as such, undertakes to furnish the issues of the news papers in original, namely, the "Aji" dated 26.02.2013 and the "Assam Post" dated 26.02.2013, wherein the NIT was published inviting tenders from intending tenderers for the works in question. As such, the allegation of the petitioner that the entire tender process was stage managed and there was an illegal nexus between the contractors and the departmental officials is absolutely incorrect, without any basis and thus, the same is denied by the deponent. From a bare perusal of the original issues of the said news papers dated 26.02.2013 it is clear that the NIT was never superimposed on the newspaper and thereafter photocopies were made

therefrom, as has been alleged by the petitioner. The deponent denies that while allotting to the work to the third parties any fraud has been committed.

5. That the deponent begs to state that the Government of Assam in the Information and Public Relations department had issued a Notification dated 18.11.2014, whereby a list of local dailies, weeklies, biweeklies, monthlies etc were approved for making Government advertisement. A similar list of daily newspaper for the year 2013-14 was also prepared and is available in the internet. The said list of the approved daily newspaper for the year 2013-14 and also the list published along with notification dated 18.11.2014 contains the names of the newspapers "Aji" and "Assam Post". As such the NIT in question was published in the two daily newspapers which are duly approved by the Government of Assam, Information and Public Relation Department."

Having regard to the seriousness in the matter, this Court by its order dated 21.01.2015 provided for filing of rejoinder by the petitioner which he filed on 20/02/2015, bringing on record his RTI application dated 08/01/2015 and the reply thereof dated 21/01/2015, furnished by the SPIO and Deputy Director of Information and Public Relations. To the specific query made by the petitioner as to whether the Superintending Engineer, PWD (Roads), Nagaon Circle had made any request for publishing the particular NIT in the newspapers, the DIPR by his reply dated 21/01/2015 categorically stated that no such request for publication of the advertisement/NIT was made. The particular NIT which got issued only in few issues of both the news papers refers to Janasanyog No. 3436/2012. To the specific query made by the petitioner as to what advertisement/notice was published against the said number, the said letter dated 21/01/2015 has stated that the same was pertaining to the land acquisition matter and was issued to "Janasadharan".

Mr. I. Choudhury, learned counsel for the petitioner has also drawn my attention to the notification dated 29/01/2009 of the Government of Assam in the Information and Public Relations Department providing for publication of advertisement etc, requiring publication of advertisement etc. through the DIPR. It also provides that in no case Government Departments shall issue advertisement directly to newspapers/periodicals.

From the above narration of facts, the following things have emerged :-

1. Contrary to the stand of the Commissioner and Secretary, PWD, that it was pursuant to the speaking order dated 27/02/2013, the NIT was published, the NIT was shown published on 26/02/2013 in the issues of "Aaji" and "Assam Post" (limited issued and not in all issues). Thus, the NIT was published before the speaking order. Mr. G. Rahul, learned Standing Counsel, PWD has produced the communications made with the said two newspapers vide letter dated 30/01/2015 of the Superintending Engineer, Nagaon Road Circle. By the said two letters queries were made about the allegation made by the petitioner that the concerned NIT was shown issued only in the limited issues of both the

newspapers, the reply furnished by both the news papers vide their letter dated Nil and letter dated 14/02/2015 are reproduced below :-

"To

The Superintending Engineer, PWD Nagaon Road Circle, Nagaon.

Subject : Publication of notice inviting tender (NIT) in newspaper Aaji on 26.02.2013.

Ref : Your letter No.

NRC/TB/PMGSY/GC/01/2014-15/28 dated 30.01.2015.

Sir,

With reference to your above mentioned letter, I would like to inform you that our news paper agency publish news and advertisement in all the copies of newspaper as per normal procedure without making any changes in its contents and consistency. However, some minor changes has to be done in copies to the circulated at Guwahati i.e. "Mahanagar Sanskaran" keeping in view of the importance of news meant for Guwahati only. Some times we make changes to some business advertisement having its limited scope of jurisdiction as like giving discount on sale to certain product of a company in a particular city like Lakhimpur or Silchar and release copies only for these districts. But as regard publication of notice inviting tender of a Govt. deptt. for floating tender, no question of making any changes in news paper publication. So, if anything happens like this i.e. publication of NIT have not been done in some of the copies of the news paper Aaji in the issue of 26.02.2013, that may be a matter of technical fault while changing out software due to the reasons as stated above and for that reason we feel extremely regretted.

This is for favour of your kind information and necessary action.

Yours faithfully,

Sd/-

Editor/Proprietor of

News Paper Aaji".

"Dated 14/2/15.

To,

The Superintending Engineer, PWD, Nagaon Road Circle, Nagaon.

Sub: Publication of NIT in "The Assam Post" on 26th of Feb 2013.

Ref: Your letter No. NRC/TB/PMGSY/GC/01/2014-15/28 dated 30-01-2015.

Respected Sir,

Reference to the above cited letter and with humble submission, we, on behalf of the "The Assam Post" would like to inform you that the issue of "The Assam Post" on that very day i.e. on 26-02-2013 was published limited copies of "The Assam Post" due to delay from our end and as a result the press had to fail to print requisite number of copies of the issue. It is to be mentioned that on that very day some technical discrepancies occurred in printing due to some machinery failures and stopped printing all the copies of "The Assam Post". Due to these reason in some of the copies, NIT publication might be dripped.

We request you kindly to measure the deficiency as only unfortunate work done.

This is for your kind information and necessary action.

Yours faithfully,

Sd/- 14.2.15

(Kailash Choudhury)

Editor, "The Assam Post"

2. Although, it was the specific stand of the Commissioner and Secretary, PWD and for that matter the authorities of the said department that the NIT dated 26/02/2013 was published in the said two newspapers, but the fact of the matter is that the same was issued only in limited issues (in how-many issues not known) and not in all the issues of both the newspapers dated 26/02/2013. This is precisely the reason as to why the petitioner has alleged that it was a stage managed affair, inasmuch as, the same was confined to few contractors leaving aside others.

3. The PWD directly communicated with the newspapers for publication of the NIT without routing the same through the DIPR as required as per the notification dated 21/01/2009 of the Government in the Information and Public Relation Department laying down the policy regarding publication of advertisement etc.

4. Although the NIT was shown published only in the few issues of both the news papers mentioning a particular number "Janasanyog/3436/12", but as clarified by the DIPR, same pertains to land acquisition matter and that too "Janasadharan" and thus did not relate to the NIT dated 26/02/2013.

Above revelations from the pleadings and records of the case have serious implications like withholding of facts from the Court, suppression of material facts, interference with the decision making process of the Court etc, which may entail criminal proceedings against the responsible officers. In this connection, Mr. I. Choudhury, learned counsel for the petitioner has referred to the provisions of Cr.P.C. and IPC. Coupled with this, the responsible officers may also be liable for criminal contempt of Court proceeding.

Mr. G. Rahul, learned Standing Counsel, PWD, prays for 3 (three) weeks time to

show response to the aforesaid revelation and he prays for a copy of this order.

List on 27/03/2015, requiring all the authorities referred to above to file their individual affidavits clarifying their stand in the matter.

Let a copy of this order be furnished to Mr. G. Rahul, learned Standing Counsel, PWD."

7. I have heard the learned counsel representing the parties including Mr. I. Choudhury, learned counsel for the petitioner and so also Mr. A.C. Borbora, learned senior counsel representing the respondent No. 1. I have also heard Mr. D.K. Mishra, learned senior counsel representing the Superintending Engineer (Respondent No. 3). I have also perused the entire materials on record.

8. Mr. Choudhury, learned counsel for the petitioner in his elaborate submissions referring to the following decisions and the provisions of the Contempt of Courts Act, 1971 and the Code of Criminal Procedure, 1973 submitted that not only it is a fit case for reviewing the order in question so as to hear the writ petition afresh, but is also a fit case for ordering an enquiry in respect of fake issuance of NIT and initiation of contempt of Courts proceeding (criminal) against the erring officials including the respondent No. 1.

(i) Chanra Shashi v. Anil Kumar Verma reported in (1995) 1 SCC 421;

(ii) Dhananjay Sharma v. State Of Haryana and Ors. reported in (1995) 3 SCC 757;

(iii) K.D. Sharma v. Steel Authority Of India Limited and Ors. reported in (2008) 12 SCC 481;

9. Mr. A.C. Borbora, learned senior counsel representing the respondent No. 1, vehemently opposing the aforesaid submission of Mr. I. Choudhury, learned counsel for the petitioner, submitted that the respondent No. 1 having clarified his position through his affidavit filed in this proceeding, there is no question of initiation of any contempt of Courts proceeding against him.

10. Mr. D.K. Mishra, learned senior counsel representing the respondent No. 3 submits that there was no role of the Superintending Engineer in the entire episode but he has been unnecessarily dragged into this proceeding and he has been found a easy scape goat.

11. In the writ petition the prayer of the petitioner was against the cancellation of the particular contract earlier awarded to him and also for cancellation of the short NIT that was issued by the respondent No. 3 through Janasanyug/3436/12 and the letter of acceptance dated 4th April, 2013. While entertaining the writ petition, an interim order was passed on 16th May, 2013 not to issue any work order to the respondent Nos. 5 and 6 and also not to encash the bank guarantee deposited by the writ petitioner as Performance Security Money, if not already encashed. In spite of the said interim order, the respondents did not bother to get the same vacated and at least seek clarification but filed their affidavit with the

aforesaid stand in paragraph-9, quoted above. It is in such circumstances, the writ petition was disposed of upholding the impugned action of the respondents. Now it has emerged that such a stand on the part of the respondent No. 1 was not based on record although he verified paragraph-9 of the counter affidavit as true to his information derived from records.

12. As recorded in the order dated 3rd March, 2015, quoted above, in the issues of both newspapers of the same date, i.e. 26th February, 2013, they did not contain the NIT in question. As recorded in the said order, the NIT in question which got issued only in few issues of both the newspapers referred to Janasanyug No. 3436/12. Strangely enough the said number pertained to land acquisition matter and was issued to another newspaper "Janasadharan". It was also recorded in the said order that as per the notification dated 29th January, 2009 of the Government of Assam, for publication of advertisement etc., the same is required to be routed through the Directorate of Information and Public Relation (DIPR). The notification further provides that in no case, the Government Departments shall issue advertisement directly to newspapers/ periodicals.

13. From the above narration of fact and also the detail discussions made in the order dated 3rd March, 2015 what has emerged is that contrary to the stand of the respondent No1, there was no publication of the NIT in the 2(two) newspapers in its true sense and that the Janasanyug number that was referred to against the said NIT in fact was pertaining to a land acquisition matter and was issued to "Janasadharan".

14. Section 2 of the Contempt of Courts Act, 1971 defines "Criminal Contempt" as follows:-

"2. Definitions. - In this Act, unless the context otherwise requires, -

(C) "criminal contempt" means the publication (whether by words, spoken or written or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which -

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

Under Section 15 of the said Act, the High Court is entitled to take action on its own motion towards taking cognisance of criminal contempt.

15. In Chanra Shashi (supra), the Apex Court rejecting to the production of forge and fabricated documents filed in Court held that such process results in interference with administration of justice and amounts to contempt of Court.

16. In *Dhananjay Sharma* (supra) dealing with filing of a false affidavit, the Apex Court held that in case of swearing of false affidavits in judicial proceedings there is always the tendency of causing obstruction in the due course of judicial proceedings and that it has also the tendency to impede, obstruct and interfere with the administration of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct. Anyone who makes an attempt to do so commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with law.

17. In *K.D. Sharma* (supra) also the Apex Court dealing with misrepresentation in judicial proceedings held that if the Court does not reject a petition on that ground, the Court would be failing in its duty and in fact such an applicant is required to be dealt with for contempt of Courts for abusing the process of law.

18. During the course of hearing, the learned counsel for the parties broadly agreed that the order under review, so far as the same relates to the finding that the work order was issued in favour of the successful tenderers pursuant to a process of NIT, is required to be reviewed inasmuch as there was no publication of the NIT in the newspapers in question but the same was shown published. They have also agreed that having regard to the manner and method in which the process of NIT was stage managed and/or pocket managed, an enquiry is required to be conducted to unearth the racket, if any. However, as regards the submission made by Mr. I. Choudhury, learned counsel for the petitioner that it is a clear case for initiation of criminal contempt of Court proceeding, it was submitted by the learned counsel representing the respondents that such a course of action is not called for, in view of the stand of the respondents in their affidavits.

19. It is a serious matter of obstructing the judicial process. As already noted above, but for the stand of the respondent No. 1 in the counter affidavit that was filed, the order under review would not have been passed. A categorical statement was made by him swearing the affidavit on behalf of all the respondents that pursuant to the speaking order rejecting the appeal filed by the petitioner, NIT was issued and published in the newspapers and thereafter, work orders were issued in favour of the private respondents upon acceptance of their tenders. Believing the said stand of an officer of the PWD in the rank of Commissioner and Special Secretary, the writ petition was disposed of without entering into the validity of the tender process. On the other hand, the fact of the matter is that the tender was never published and the particular Janasanyug number, which was depicted against the NIT also pertained to some other matter and was meant for another newspapers, namely, "Janasadhan". Thus, there was a huge conspiracy behind and everything was stage managed. Available materials, which have come on record prima facie disclose the same.

20. The respondent No. 1 has tried to shift the burden to the respondent No. 3 unmindful of the fact that it was he who had sworn the affidavit with the falsification of truth. Because of the affidavit filed by him, the order under review

was passed believing that in fact the NIT was published in the newspapers and it was through the regular process of tender the work orders were issued to the private respondents. The facts revealed and referred to above speak otherwise.

21. In view of the above, the order dated 26th June, 2013 passed in WP(C) No. 2515/2013 stands recalled so far as the same relates to non interference with the impugned NIT and the work orders. Accordingly, the writ petition also stands revived limiting to that issue.

22. It is very much evident that a racket is operating towards showing publication of the NIT in the newspapers although the fact of the matter is that there was no proper publication of the NIT in the newspapers. As per the own admission of the respondents, the NIT was also not routed through the Directorate of Information and Public Relations for its publication in the newspapers. As per the counter affidavit filed by the respondent No. 3, he had sent his Junior Engineer to the newspaper authorities for their publication. On the other hand, the Junior Engineer in his letter addressed to the Superintending Engineer stated that the NIT was handed over to the newspaper authorities and they had assured to do the needful in consultation with the Directorate of Information and Public Relations. This was not the correct procedure of publication of the NIT. Not only that even the Janasanyug number depicted against the said NIT was also not pertaining to the said NIT but pertained to some land acquisition matter and was meant for another newspaper, namely, "Janasadharan".

23. The entire episode narrated above, requires a thorough investigation so as to avoid repetition and/or continuation of the same. Accordingly, the Chief Secretary to the Government of Assam is directed to cause an enquiry either by himself or through an authorised and trusted officer, who could be of the District Administration, to find out what operated in the entire episode and who are the responsible officers. The enquiry shall be completed preferably within 3(three) months.

24. As regards the initiation of criminal contempt of Court proceeding, there being prima facie materials suggesting that the Court was misled by making false statement, it will be appropriate for initiating a suo muto criminal contempt of Court proceeding with issuance of notice to the respondent No. 1 for his response.

25. Least any prejudice caused to the parties involved, it is hereby made clear that above findings are on the basis of the prima facie materials and are tentative. Further course of action in the matter will be subject to the outcome of the enquiry to be conducted by the Chief Secretary and the order to be passed in the writ petition on its revival. As regards the issuance of notice for initiation of criminal contempt of Court proceeding, naturally further course of action will be on the basis of showing cause by the respondent No. 1. Further in course of the said proceeding, if any other officers are found to be involved, they shall stand

arrayed as party respondents in the writ petition with due notice to them for showing cause.

26. With the above directions and observations, the review petition stands disposed of.

27. The Registry is directed to register a case in this regard.