
(2006) 05 GAU CK 0057
In the Gauhati High Court

L.S.Puni

APPELLANT

Vs

State of Manipur and Ors

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0057

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Th.Modhu Singh, Md.Ismail Khan, Advocates appearing for Parties

Judgement

1. Heard Mr.Ismail Khan, learned counsel appearing on behalf of the petitioner, Mr.L.Gunindro, learned counsel appearing on behalf of the respondents 1 to 4 and Mr. Th.Modhu, learned counsel appearing on behalf of the respondent No.5.

2. This writ petition has been filed praying mainly for quashing the work order dated 08.9.2005, a copy of which is at AnnexureA/13 of the writ petition, issued by the Executive Engineer, PHED, Senapati Division, Manipur in favour of the respondent No.5 in respect of the work of augmentation of water supply scheme of Senapati Headquarter and the agreement dated 08.9.2005 for execution of the said work. Further, the petitioner prays for directing to invite him in a fresh restricted tender for the said work in accordance with normal procedure, etc.

3. I have heard perused the decisions of this court passed in WP(C) No. 498 of 2005 and the Civil Review Petition No. 34 of 2005 on 27.9.2005 and 05.1.2006 respectively. The pleading of the parties are also perused.

4. This court disposed of the WP(C) No 498 of 2005 on 27.9.2005 with the following directions :

?(1) The petitioner No.2, Shri L.S. Puni , shall also be invited along with other eligible contractors in the fresh restricted tenders for the said work,i.e., Augmentation of Water Supply Scheme at Senapati District H.Q;

(2) The respondents have to follow the normal procedures for acceptance of

tenders as contemplated in the CPWD Manual and other relevant rules followed by the PHED, Govt. of Manipur;

(3) Only after completing the procedures for normal procedures for selection of tenders, the respondents may issue the necessary work orders;

(4) The respondents shall not give effect to any work order/s issued for the said work. i.e., Augmentation of Water Supply Scheme for Senapati District HQ during the pendency of the present writ petition.

(5) Interim order, if any, in the present writ petition stands vacated.

With the above directions, this writ petition is allowed and disposed of.?

4. The above said decisions was reviewed and recalled by allowing Civil Review Petition No. 34 of 2005 vide order passed on 5.1.2006. While disposing of the said review petition, this court observed and held as follows:

¶13. As mentioned above, this court had passed the final judgment and order dated 27.9.2005 for disposing the WP(C) No. 498 of 2005 without knowing the new facts brought by the review petitioners with the 5 directions mentioned in the Judgment and Order dated 27.9.2005. It is now clear that the tender No. 453 dated 20.9.2003 for the work of Augmentation of Water Supply Scheme at Senapati District HQ had already been cancelled under the said office order dated 12.4.2005 and fresh restricted tender dated 30.4.2005 was issued. The Tender Committee in its sitting held on 19.8.2005 found Mr.V.S.Nganingkhui, Spl. Contractor as the lowest tenderer and work order dated 8.9.2005 for the said contract work had already been issued in favour of Mr.V.S.Nganingkhui, Spl. Contractor and further, an agreement for execution of contract work between Mr. V.S.Nganingkhui, Spl. Contractor and the Executive Engineer, Senapati PHE Division, PHED, Manipur had already been entered into and after execution of the work agreement Mr.V.S.Nganingkhui, Spl. Contractor had started execution of the contract work. But because of the final judgment and order of this court dated 27.9.2005, the civil review petitioner No.3/respondent no.3 in the writ petition vide its office letter No.CE/PHE/9 33/05/1604 dated 7.10.2005 directed the Executive Engineer, Senapati, PHE Division, PHED, Manipur to inform Mr.V.S.Nganingkhui, Spl. Contractor for keeping the progress of the work under suspension temporarily. In pursuance of the said letter, the Executive Engineer, Senapati, PHE Division, PHED, Manipur vide his office letter No.EE/SPT/PHE/NLCPR/Spt.Hd.Qtr./05 06/114 dated 10.10.2005 directed Mr. V.S.Nganingkhui, Spl. Contractor to suspend the work immediately. As a result, further progress of the time bound work is suspended and there is no chance to complete the time bound work of the project thereby affecting the interest of the general public.

14. For the reasons discussed above, this court is of the considered view that this court is duty bound to correct with grace its mistakes in passing the judgment and order dated 27.9.2005 when a patent error is brought to the notice of this court. Further, this court is of the view that the law is to bend for justice and if

the court finds that an error pointed out in the judgment and order dated 27.9.2005 in the review petition was due to mistake of facts and the earlier judgment and order would not have been passed, this court is duty bound to prevent the miscarriage of justice in passing the judgment and order dated 27.9.2005.?

5. Another important fact brought to the notice of this court in the said Civil Review petition is found at Para 9 of the court's order :

9. The new important facts/matters brought to the notice of this court are that in pursuance of the said impugned letter /decisions of the Government dated 7.4.2005 the civil review petitioner no.3/respondent no.3 in the writ petition issued an office memorandum No.CE/PHE/TECH/933/105/Pt/126 dated 12.4.2005 canceling the said NIT dated 453 dated 20.9.2003 for the work of ? Augmentation of Water Supply Scheme at Senapati District HQ? and informed the said cancellation to all concerned. It is said that after issuance of the said memorandum dated 12.4.2005, a fresh restricted tender being No.1 dated 30.4.2005 was issued. It is also specifically stated that the office of the civil review petitioner no.3/respondent no.3 in the writ petition vide office letter No.CE/PHE/TECH/933/Pt/05 dated 2.5.2005 informed the respondent no.2/writ petitioner no.2 of the restricted tender notice and requested to participate in the same. It is also said that a copy of the said letter dated 2.5.2005 was collected by Mr.P.K.Josheph who is one of the members of the respondent no.1/writ petitioner no.1 and an agent of the respondent no.2/writ petitioner no.2 from the office of the Civil Review Petitioner No.3/Respondent No.3 in the writ petition on 3.5.2005. One Shri Nameirakpam Subaschandra Singh, B.E (Civil) working as Laboratory Assistant in the Public Health Engineering Department, Govt. of Manipur had submitted an affidavit stating that as directed by the Chief Engineer, PHED, Manipur from the first week of April, 2005 he was dealing with the connected files of the tender notice No. 453 in connection with ?Augmentation of Water Supply Scheme at Senapati District HQ?. Further, in his affidavit it is said that from the second week of April, 2005, Shri P.K.Josheph came to his office and met him and he introduced himself as an agent of the respondent No.2./writ petitioner no.2. Thereafter, Shri P.K.Josheph met him in the office frequently and enquired about the development in connection with the said tender notice. On 3.5.2005, at about 3 P.M. Shri P.K.Josheph came to the office and enquired from him (Nameirakpam Subaschandra Singh) whether any further notice in connection with the said scheme was issued or not. And Shri Nameirakpam Subaschandra Singh informed him that a restricted tender notice was issued and he handed over to him a copy of the restricted tender notice dated 30.4.2005 along with the copy of the invitation letter No. CE/PHE/TECH/933/Pt/05 dated 2nd May, 2005 addressed to the respondent no.2/writ petitioner no.2 requesting him to participate in the same. Shri Nameirakpam Subaschandra Singh also obtained the signature of Shri P.K.Josheph for receiving the said tender notice and invitation letter on the office copy.?

6. The present writ petition has apparently been filed in view of the observations made by this court in the said civil review petition to the effect that it was left to the writ petitioner to challenge the work order dated 8.9.2005 issued in favour of Mr.V.S.Nganingkhui, Spl. Contractor by filing a fresh writ petition. In the present writ petition, the petitioner is challenging the said work order dated 8.9.2005 mainly on the ground that he was never informed about the restricted tender No.1 , dated 30.4.2005 of the Chief Engineer, PHED. There is a dispute on the question if the writ petitioner was informed about the said restricted tender or not. According to the government respondents, the writ petitioner was informed about the restricted tender vide office letter CE/PHE/TECH/933/Pt./05 dated 02.5.2005 and a copy of the said letter was received on 3.5.2005 by P.K.Josheph, an agent of the writ petitioner. On the other hand, as noted above, according to the writ petitioner, he was never informed about the said restricted tender and the said P.K.Josheph is not his agent.

7. It has been brought to this court's notice that some of the components of the contract works have been completed and that some other are in progress for their completion within the targeted period of 18 months under the strict supervision of the concerned authorities. Since the contract works are for the purpose of giving drinking water to villagers, there is an overriding public interest in the completion of the said works within the stipulated time without any disruption. A copy of the report submitted by the EE, Senapati, PHED to the Chief Engineer, PHED, Manipur in this connection is at Annexure P/13 to the rejoinder affidavit of the respondent No.5.

8. Considering the entirety of the case, in my opinion, at this stage, the petitioner is not entitled to any of the prayers made in this writ petition. In the facts and circumstance of the case and having regard to the stage of the works, I am of the opinion that public interest will be served if the impugned work order is not interfered with. In the result, the prayers are rejected and this writ petition stands disposed of. No order as to costs.